

## 9-47.120 - Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy

The Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP) applies to all corporate criminal matters handled by the Criminal Division. All resolutions under this provision must be approved by the Assistant Attorney General for the Criminal Division or the individual serving in that capacity, in coordination with the Office of the Deputy Attorney General, as required by Justice Manual 1-14.000 and 9-28.000.

### **Part I. Declination Under the CEP**

The Criminal Division is committed to transparently describing the benefits a company may earn through voluntarily self-disclosing misconduct, which can create important incentives for corporate behavior. The Criminal Division will decline to prosecute a company for criminal conduct when the following factors<sup>1</sup> are met:

1. The company voluntarily self-disclosed the misconduct to the Criminal Division;
2. The company fully cooperated with the Criminal Division's investigation;
3. The company timely and appropriately remediated the misconduct; and
4. There are no aggravating circumstances related to the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct within the company, severity of harm caused by the misconduct, or criminal adjudication or resolution within the last five years based on similar misconduct by the entity engaged in the current misconduct.

If there are aggravating circumstances, prosecutors retain the discretion to nonetheless recommend a CEP declination based on weighing the severity of those circumstances and the company's cooperation and remediation. As part of the CEP declination, the company will be required to pay all disgorgement/forfeiture as well as restitution/victim compensation payments resulting from the misconduct at issue.<sup>2</sup> All declinations under the CEP will be made public.

### **Part II. "Near Miss" Voluntary Self-Disclosures or Aggravating Factors Warranting Resolutions**

If a company fully cooperated and timely and appropriately remediated but it is ineligible for a declination under Part I of this policy solely because (1) it acted in good faith by self-reporting the misconduct but that self-report did not qualify as a voluntary self-disclosure, as defined in Appendix B, or (2) it had aggravating factors that warrant a criminal resolution, the Criminal Division shall:

1. Provide an NPA—absent particularly egregious or multiple aggravating circumstances;
2. Allow a term length of fewer than three years;

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<sup>1</sup> Factors one through three are defined in Appendix B.

<sup>2</sup> See also Coordination of Corporate Resolution Penalties in Parallel and/or Joint Investigations and Proceedings Arising from the Same Misconduct, Justice Manual 1-12.100.

3. Not require an independent compliance monitor; and
4. Provide a reduction of 75% off the low end of the U.S. Sentencing Guidelines (U.S.S.G.) fine range.

### **Part III. Resolutions in Other Cases**

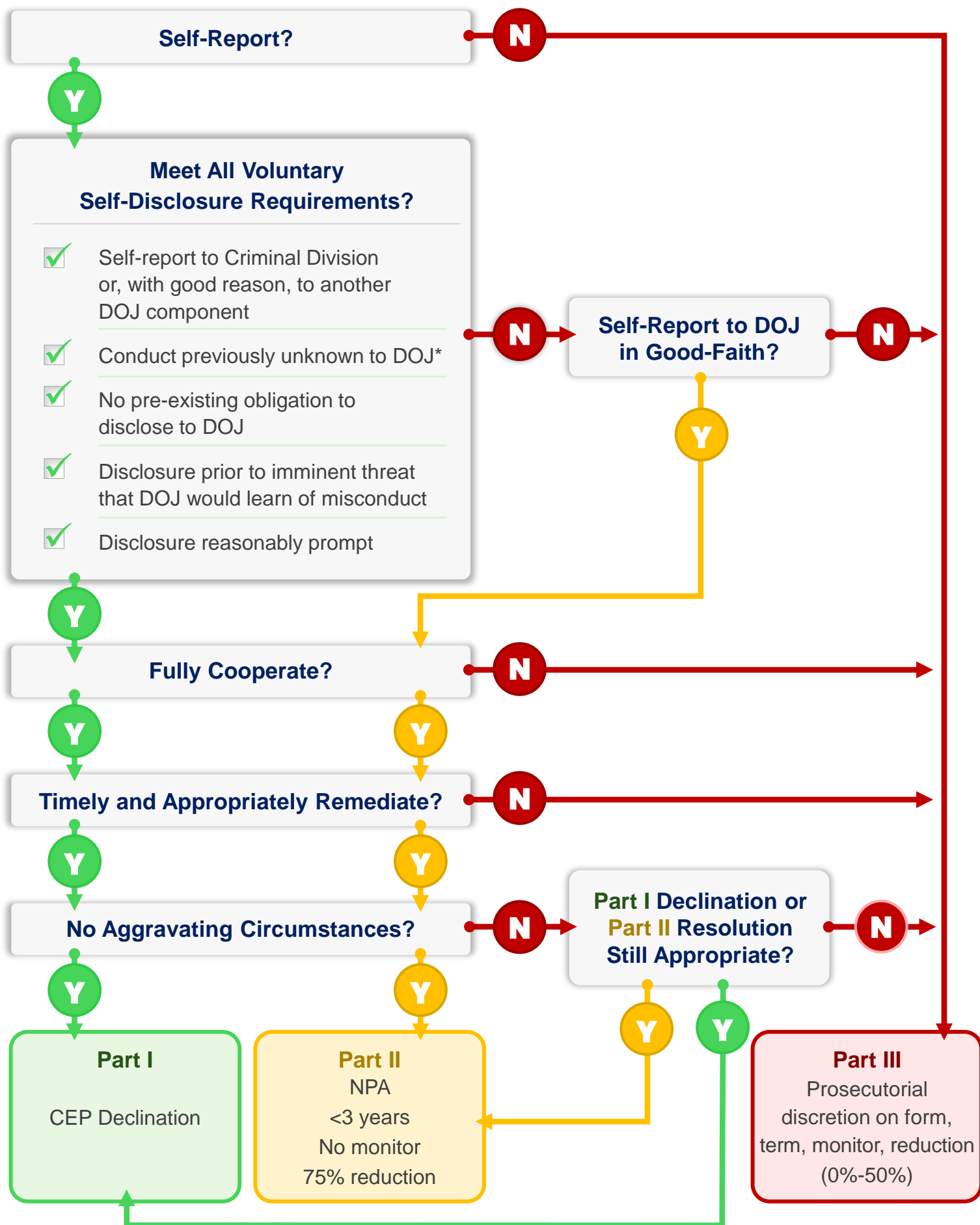
If a company is not eligible for Part I or Part II set forth above, because it met some but not all of the four factors in Part I, prosecutors maintain discretion to determine the appropriate resolution including form, term length, compliance obligations, and monetary penalty. With respect to the monetary penalty, the company will not receive, and the Criminal Division will not recommend to a sentencing court, a reduction of more than 50% off the fine under the U.S.S.G. Prosecutors will have discretion to determine the specific percentage reduction but there will be a presumption that the reduction will be taken from the low end of the U.S.S.G. range for companies that fully cooperate and timely and appropriately remediate. Otherwise, prosecutors will determine the starting point in the range based on the particular facts and circumstances of the case, including (but not limited to) the company's recidivism.<sup>3</sup>

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<sup>3</sup> The Department-wide Merger & Acquisition (M&A) Policy, see Justice Manual 9-28.600 and 9-28.900, applies to misconduct uncovered in the context of M&A pre- or post-acquisition due diligence, which is a subset of circumstances addressed by this Policy.

# Appendix A

➡ Part I Declination Path | ➡ Part II Path | ➡ Part III Path



\* See Appendix B Exception for Corporate Whistleblower Awards Pilot Program

## APPENDIX B

### Definitions, Notes, and Comments

<i>Voluntary Self-Disclosure</i>	<p>The Criminal Division encourages voluntary self-disclosure of potential wrongdoing at the earliest possible time, even when a company has not yet completed an internal investigation, if it chooses to conduct one. For the purposes of the CEP, the Criminal Division defines voluntary self-disclosure as follows:</p> <ol style="list-style-type: none"> <li>1. The company must disclose to the Criminal Division, but the company may also qualify if it made a good faith disclosure to another office or component of the Department of Justice and the resolution includes the Criminal Division;</li> <li>2. The misconduct is not previously known to the Department of Justice;</li> <li>3. The company had no preexisting obligation to disclose the misconduct to the Department of Justice;</li> <li>4. The voluntary disclosure occurs “prior to an imminent threat of disclosure or government investigation,” as defined in U.S.S.G. § 8C2.5(g)(1); and</li> <li>5. The company discloses the conduct to the Criminal Division within a reasonably prompt time after becoming aware of the misconduct, with the burden being on the company to demonstrate timeliness.</li> </ol> <p><i>Corporate Whistleblower Awards Pilot Program Exception:</i> If a whistleblower makes both an internal report to a company and a whistleblower submission to the Department, the company will still qualify for a declination under the CEP—even if the whistleblower submits to the Department before the company self discloses—provided that the company: (1) self-reports the conduct to the Department within 120 days after receiving the whistleblower’s internal report; and (2) meets the other requirements for voluntary self-disclosure and a declination under the policy.</p>
<i>Full Cooperation</i>	<p>In addition to the provisions contained in the Principles of Federal Prosecution of Business Organizations to satisfy the threshold for any cooperation credit, <i>see</i> JM 9-28.000, a company fully cooperates when it:</p> <ol style="list-style-type: none"> <li>1. Discloses all relevant, non-privileged facts known to it, including all relevant facts and evidence about all individuals involved in or responsible for the misconduct at issue, including individuals inside and outside of the company regardless of their position, status, or seniority.</li> <li>2. Timely discloses all non-privileged facts relevant to the conduct at issue, including: <ol style="list-style-type: none"> <li>a) facts gathered during a company’s internal investigation, if the company chooses to conduct one;</li> <li>b) attribution of facts to specific sources rather than a general</li> </ol> </li> </ol>

	<p>narrative of the facts;</p> <p>c) timely updates on a company's internal investigation, if the company chooses to conduct one, including but not limited to rolling disclosures of information;</p> <p>d) identification of all individuals involved in or responsible for the misconduct at issue, regardless of their position, status, or seniority, including the company's officers, employees, customers, competitors, or agents and third-parties, and all non-privileged information relating to the misconduct and involvement by those individuals;</p> <p>3. Proactively cooperates; that is, the company must timely disclose all facts that are relevant to the investigation, even when not specifically asked to do so, and, where the company is aware of opportunities for the Criminal Division to obtain relevant evidence not in the company's possession and not otherwise known to the Criminal Division, it must identify those opportunities to the Criminal Division;</p> <p>4. Timely and voluntarily preserves, collects, and discloses relevant documents and information relating to their provenance, including: (i) disclosure of overseas documents, the locations in which such documents were found, their custodians, and individuals who authored and/or located the documents; (ii) facilitation of third-party production of documents; and (iii) where requested, provision of translations of relevant documents in foreign languages;</p> <p>a) Note: Where a company claims that disclosure of overseas documents is prohibited or restricted due to data privacy, blocking statutes, or other reasons related to foreign law, the company bears the burden of establishing the existence of such a prohibition or restriction and identifying reasonable and legal alternatives to help the Criminal Division preserve and obtain the necessary facts, documents, and evidence for its investigations and prosecutions.</p> <p>5. De-conflicts witness interviews and other investigative steps that a company intends to take as part of its internal investigation to prevent the company's investigation from conflicting or interfering with the Criminal Division's investigation;</p> <p>a) Note: When the Criminal Division makes a request to a company to defer investigative steps, such as the interview of company employees or third parties, such a request will be made for a limited period of time and be narrowly tailored to a legitimate investigative purpose (e.g., to prevent the impeding of a specified aspect of the Criminal Division's investigation). Once the</p>
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	<p>justification dissipates, the Criminal Division will notify the company that the Criminal Division is lifting its request. Although the Criminal Division may, where appropriate, request that a company refrain from taking a specific action for a limited period of time for de-confliction purposes, the Criminal Division will not take any steps to affirmatively direct a company's internal investigation efforts.</p> <p>6. Subject to the individuals' Fifth Amendment rights, makes company officers and employees who possess relevant information available for interviews by the Criminal Division, including, where appropriate and possible, officers, employees, and agents located overseas as well as former officers and employees, and, where possible, the facilitation of interviews of third-parties.</p>
<i>Timely and Appropriate Remediation</i>	<p>Timely and appropriate remediation means the company has:</p> <ol style="list-style-type: none"> <li>1. Demonstrated thorough analysis of the causes of underlying conduct (<i>i.e.</i>, a root cause analysis) and, where appropriate, remediated to address those root causes;</li> <li>2. Implemented an effective compliance and ethics program. The program's criteria for effectiveness may vary based on the size and resources of the organization and the risks related to the businesses in which the organization is engaged, and may need to be periodically updated, but may include: <ol style="list-style-type: none"> <li>a) The company's commitment to instilling corporate values that promote compliance, including awareness among employees that any criminal conduct, including the conduct underlying the investigation, will not be tolerated;</li> <li>b) The resources the company has dedicated to compliance;</li> <li>c) The quality and experience of the personnel involved in compliance, such that they can understand and identify the activities that pose a potential risk;</li> <li>d) The authority and independence of the compliance function, including the access the compliance function has to senior leadership and governance bodies and the availability of compliance expertise to the board;</li> <li>e) The effectiveness of the company's compliance risk assessment and the manner in which the company's compliance program has been tailored based on that risk assessment;</li> <li>f) The reporting structure of any compliance personnel employed or contracted by the company;</li> <li>g) The compensation and promotion of the personnel involved in compliance, in view of their role, responsibilities,</li> </ol> </li> </ol>

	<p>performance, and other appropriate factors; and</p> <p>h) The testing of the compliance program to assure its effectiveness.</p> <p>3. Appropriately disciplined employees, including those identified by the company as responsible for the misconduct, either through direct participation or failure in oversight, as well as those with supervisory authority over the area in which the criminal conduct occurred;</p> <p>4. Appropriately retained business records and prohibited the improper destruction or deletion of business records. This includes implementing appropriate guidance and controls on the use of personal communications and messaging applications, including ephemeral messaging platforms, that may undermine the company's ability to appropriately retain business records or communications or otherwise comply with the company's document retention policies or legal obligations; and</p> <p>5. Any additional steps that demonstrate recognition of the seriousness of the company's misconduct, acceptance of responsibility for it, and the implementation of measures to reduce the risk of repetition of such misconduct, including measures to identify future risks.</p>
<i>Providing Cooperation Credit</i>	<p>The Criminal Division encourages and rewards cooperation. Credit for cooperation takes many forms and is calculated differently depending on the degree to which a company cooperates with the government's investigation and the commitment the company demonstrates in doing so. Where a criminal resolution is warranted, the extent and quality of a company's cooperation will be an important part of the Criminal Division's overall analysis of the case and may impact the proposed form of the resolution, as well as the fine range and fine amount. Once the threshold requirements for cooperation set out at JM 9-28.700 have been met, the Criminal Division will assess the scope, quantity, quality, impact, and timing of cooperation based on the circumstances of each case when evaluating a company's cooperation under this Policy. A cooperating company must earn credit for cooperation. In other words, a company starts at zero cooperation credit and then earns credit for specific cooperative actions (as opposed to starting with the maximum available credit and receiving reduced credit for deficiencies in cooperation).</p> <p>To fairly and meaningfully distinguish between companies that provide differing levels and qualities of cooperation, prosecutors should consider, <i>inter alia</i>, (i) varying starting points in the U.S.S.G. guidelines range for calculating a fine, and (ii) varying percentage reductions from the Guidelines range as set forth herein. A corporation that fails to demonstrate full cooperation at the earliest opportunity might reduce its ability to earn cooperation credit.</p> <p>As set forth in JM 9-28.720, eligibility for any benefits under this policy is not in</p>

	<p>any way predicated upon waiver of the attorney-client privilege or work product protection, and none of the requirements above require such waiver.</p> <p>Where a company asserts that its financial condition impairs its ability to cooperate more fully, the company will bear the burden to provide factual support for such an assertion. The Criminal Division will closely evaluate the validity of any such claim and will take the impediment into consideration in assessing whether the company has fully cooperated.</p>
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[updated May 12, 2025]