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## 2 Paths, 2 Outcomes: DOJ's Inconsistent Corporate Self-Disclosure Policies

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The DOJ has recognized that, given limited law enforcement resources available to combat white-collar crime, an effective enforcement regime depends on persuading companies to voluntarily self-report wrongdoing. These policy nuances have significant practical implications: Companies that successfully leverage guaranteed declination policies avoid criminal prosecution entirely, while those subject to prosecutorial discretion may face deferred prosecution agreements, compliance monitoring, substantial fines and lasting reputational harm that can affect business operations, regulatory relationships and stakeholder confidence for years.

In January 2023, DOJ's Criminal Division announced its corporate enforcement and voluntary self-disclosure policy (CEP) designed to reward self-reporting companies. Then, in June 2023, the US attorney's offices (USAOs) collectively announced a similar policy.

About two years later, in May 2025, the Criminal Division updated its policy to provide enhanced benefits and a guaranteed declination of prosecution under established criteria. Yet, the USAO policy remains unchanged and does not provide the same guarantee. Rather, it provides only that prosecutors will “not seek a guilty plea” where criteria are met but leaves open the possibility of a USAO requiring companies to enter into non-prosecution agreements or deferred prosecution agreements.

We expect that US attorney's offices will feel pressure to honor the guarantee in the Criminal Division's policy, and, indeed, earlier this month Deputy Attorney General Todd Blanche announced at a white-collar law conference that the DOJ planned to roll out a “single” corporate enforcement policy.

In the meantime, however, the possibility exists that companies may receive better outcomes by self-reporting to the Criminal Division rather than to an individual USAO, typically in the districts in which they are headquartered or incorporated. This choice of reporting agency has several implications for companies, including placing a premium on quickly conducting thorough internal investigations when misconduct is suspected.

**The Criminal Division's attempt to enhance clarity for voluntary self-**



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## reporting

The DOJ's 2025 policy revision garnered attention for strengthening the incentive for companies to self-report misconduct. As Criminal Division chief Matthew Galeotti announced, "Companies that meet our core requirements will not be required to enter into a criminal resolution. This is a clear path to declination."

The Criminal Division "will decline" to prosecute when the following criteria are met:

- **Voluntary:** The company's self-disclosure must come from the company itself before an imminent threat of disclosure or government investigation and within a reasonably prompt time after the company becomes aware of the misconduct. Note: A company can still qualify for declination even if a whistleblower reports to the DOJ first, provided the company self-discloses within 120 days of receiving the internal whistleblower report and meets other voluntary self-disclosure requirements.
- **Full cooperation:** The company must disclose all relevant facts known to the company at the time, must make officers and employees available for interviews and must also share potential leads for further investigation.
- **Timely and appropriate remediation:** The company must implement effective corporate compliance programs and maintain accurate business records to support detailed root-cause analyses when misconduct is identified. Remediation efforts must include disciplining employees involved in misconduct.
- **No aggravating factors:** These factors relate to the nature and seriousness of the offense, the pervasiveness of the misconduct within the company, the severity of harm caused by the misconduct and whether the company has engaged in similar misconduct in the past five years.

In addition, the 2025 policy creates a "near miss" category for companies that voluntarily disclose and act in good faith but do not technically qualify for guaranteed declination. This feature addresses circumstances in which a company attempts to self-disclose in good faith only to discover that the government was already aware of the misconduct or that aggravating factors warrant some form of criminal resolution despite the company's efforts to cooperate. In such cases, the Criminal Division "shall" provide benefits in the form of non-prosecution agreements, probationary terms of fewer than three years, no requirement for independent compliance monitoring and 75% reductions off the low end of the sentencing guidelines fine range.

## Daylight between the current DOJ and USAO policies

The USAO policy substantially mirrors the Criminal Division's policy in identifying the criteria needed to qualify for the policy's benefits. Unlike the Criminal Division's policy, however, the USAOs' policy does not guarantee a declination. Rather, USAOs "will not seek a guilty plea where a company

has (a) voluntarily self-disclosed in accordance with the criteria [in the policy], (b) fully cooperated and (c) timely and appropriately remediated the criminal conduct.”

In cases where a USAO does “not seek a guilty plea,” the resolution could “include a declination, non-prosecution agreement or deferred prosecution agreement.”

Thus, while a USAO has discretion to decline to prosecute a self-disclosing company, that outcome is not guaranteed, and it appears that USAO prosecutors have more discretion than their counterparts in the Criminal Division to seek a resolution that imposes obligations or conditions on a company.

While the DOJ has indicated that it may rectify this difference between the policies, until this happens, the USAO policy does not provide the same clear path to a declination as the DOJ's May 2025 update.

### **Strategic decisions for companies**

Despite the differences in the policies outlined above, the fundamental principle is the same: Companies that build strong cultures of compliance, detect misconduct early and cooperate fully with government investigations will benefit significantly. From this principle, two strategic imperatives stand out:

First, companies should place a premium on quickly conducting a thorough internal investigation when potential wrongdoing is suspected. Speed is important because both voluntary self-disclosure policies apply only when a company makes a “reasonably prompt” disclosure prior to an “imminent” government investigation or public allegations. Thoroughness is important because, under both policies, a company is required to disclose all facts known to it and to provide guidance to the government on where to gather additional information.

Second, companies should begin remediation of misconduct as soon as possible. When considering whether a company qualifies under their respective voluntary self-disclosure policies (and to what extent), both the Criminal Division and USAOs will look at whether a company has taken timely and concrete steps to stop misconduct.

Having taken these steps, the next questions are (a) whether to self-report; and (b) to whom: the Criminal Division of main Justice, the applicable USAO or both.

For companies outside of major cities, the local USAO may have an enhanced understanding of the relevant business and industry compared to Criminal Division prosecutors based in Washington, D.C. Self-reporting to a USAO that covers one geographic district can also lead to a relatively higher level of predictability because prior resolutions may carry more weight with the USAO when it considers a new, similar matter. Moreover, in our experience, rural states do not historically garner as much attention from the Criminal Division as do larger urban centers on the coasts. All

else being equal, this can create more uncertainty for a company self-reporting to the Criminal Division.

This potential uncertainty is exactly what the Criminal Division's May 2025 revision seeks to address by guaranteeing a declination if a company satisfies the requirements in the policy. After weighing both the Criminal Division's policy and the potential advantages of reporting to a USAO, it may be advisable to report simultaneously to both.

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