

March 13, 2017

DOJ Announces Temporary Extension of Pilot Program to Encourage FCPA Self-Disclosures

In a [speech](#) delivered Friday by a career Department of Justice (DOJ) official serving as the acting Assistant Attorney General for the Criminal Division, the DOJ announced the temporary extension of a year-old pilot program designed to provide greater incentives for corporations to self-disclose potential misconduct and greater clarity concerning the grant of cooperation credit in connection with enforcement of the Foreign Corrupt Practices Act (FCPA). The program, originally scheduled to end on April 5, 2017, will continue in full force while the DOJ evaluates whether it merits further extension and what, if any, revisions should be made to it.

As we detailed in [a prior memorandum](#), under the program, corporations that voluntarily and promptly self-disclose FCPA misconduct, make proactive efforts to cooperate, enact appropriate remediation programs, and disgorge any ill-gotten profits are eligible for a fine reduction of up to 50% below the low end of the applicable U.S. Sentencing Guidelines range, a general presumption that no monitor will be required, and consideration of an outright declination of any prosecution. By contrast, according to the terms of the program established in the DOJ's published [guidance](#), corporations that fail to voluntarily self-disclose FCPA misconduct, but otherwise cooperate fully, will qualify only for "limited credit," identified as at most a 25% reduction below the bottom of the Sentencing Guidelines range.

Over the past year, the pilot program has figured significantly in a number of FCPA cases, with the DOJ publicly declining to prosecute [five corporate defendants](#) under its terms. However, the DOJ's decision to temporarily extend the program should not be interpreted as a clear step toward its permanent adoption. To be sure, the temporary extension serves as further indication that the Trump Administration is open to maintaining DOJ's historic active approach to FCPA enforcement, in keeping with [confirmation hearing testimony](#) by Attorney General Jeff Sessions and a [recent speech](#) by newly appointed Deputy Assistant Attorney General Trevor McFadden, both of which signaled continued commitment to

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FCPA enforcement. But with the DOJ undergoing a significant leadership transformation, marked most recently by the dismissal of all United States Attorneys appointed by President Obama, it remains to be seen whether the DOJ's energetic initiatives in the realm of FCPA enforcement will continue under the new administration.

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