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DOJ Announces Revised Corporate Enforcement Policy

Out of the gate, the Biden Administration made it clear that for companies under DOJ scrutiny, leniency would come at a higher price than before and failures to self-disclose, cooperate fully, and remediate completely would be met with harsher treatment. Fifteen months after Deputy Attorney General Lisa Monaco delivered her announcement of this tough-on-corporate-crime approach, Criminal Division head Kenneth A. Polite, Jr. this week [announced](#) a revised Corporate Enforcement Policy (CEP) incorporating some of its central tenets.

The new CEP reflects DOJ's effort to widen the gulf between companies that go out of their way to assist the government in its mission and those that are less compliant, transparent, and cooperative. As AAG Polite explained, "[t]he revisions make clear that there will be very different outcomes for companies that do not self-disclose, meaningfully cooperate with our investigations, or remediate." In service of that aim, the revisions give prosecutors more carrots to dangle. For example, under the old CEP, a company thinking about self-disclosing might have opted not to if the misconduct it identified implicated executive management. That aggravating factor, a company might have reasoned, would foreclose the possibility of a declination. In response, the new CEP makes clear that declination remains an option even with an aggravating factor provided that the company (a) immediately self-discloses conduct caught by an effective compliance program, (b) engages in "extraordinary" cooperation, and (c) implements "extraordinary" remediation. More generally, the new CEP gives prosecutors greater flexibility to reward self-disclosure, cooperation, and remediation. One key here is that companies cannot wait for the problem to arise to keep the hope of a declination alive. Under the new CEP, a company must have an "effective compliance program" at the time the misconduct involving an aggravating factor occurs to be eligible for a declination.

As AAG Polite put it, the "number one goal" for DOJ is "individual accountability." "[W]hen companies come forward and cooperate," that gives the Department its best shot at rooting out and punishing bad actors. For our clients, the number one takeaway is that the value of an effective compliance program has never been greater. The thoughtful design, implementation, and periodic updating of a program tailored to the full scope of the underlying business's risks will best position a company to achieve the most favorable resolution of any investigation.

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