CLIENT ALERTS & INSIGHTS

The Exception, Not the Rule: DOJ's Updated Corporate Compliance Monitorship Guidance

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On May 12, 2025, the United States Department of Justice's Criminal Division published a series of memoranda outlining updated white-collar enforcement priorities. Benesch previously reported on the Department's Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime memorandum, which outlined the Administration's goal to focus on high-impact threats, fairness in the treatment of individuals and corporations, and efficiency in investigative practices.

As part of this policy rollout, the Memorandum on Selection of Monitors in Criminal Division Matters (the "2025 Monitor Memo") updates the Department's guidance on the standards and procedures for imposing, selecting, and overseeing corporate monitors. [1] The 2025 Monitor Memo seeks to (1) clarify the factors that prosecutors must consider when determining whether a monitor is appropriate; and (2) ensure that when a monitor is necessary, prosecutors appropriately tailor the scope of the monitor's review. Altogether, this guidance suggests that moving forward, monitorships will be disfavored and imposed in only limited circumstances.

Key Takeaways:

- **Monitorships must be narrowly tailored to address specific issues and compliance concerns while minimizing expense and burden on business operations.**
- **Criminal Division prosecutors are likely to disfavor monitorships for highly regulated entities, criminal conduct not involving national interests, and companies who voluntarily engage third-party compliance consultants.**
- **Monitorships are intended to be a "collaborative endeavor" between the government, monitor, and company where the monitor's budget and scope will be subject to ongoing review.**

The 2025 Monitor Memo incorporates prior guidance from the 2008 Morford Memorandum [2] on the selection and use of monitors and supersedes similar monitorship memoranda from 2009, 2018, and 2023.

Historically, DOJ has imposed independent compliance monitors as part of corporate resolutions to oversee and enhance internal compliance controls following criminal investigations or prosecutions. While the 2025 Monitor Memo emphasizes that "monitors can be an effective resource to ensure that corporate offenders comply with the terms of corporate criminal resolution," it also noted that monitors can create "substantial expense" and "interfere with lawful business operations."

Therefore, the Criminal Division's new priorities are to impose monitors only when "necessary;" that is, never for a punitive purpose, and always to minimize expense, burden, and interference with the business.

Determining Whether a Monitor is Needed

As initially laid out in the Morford Memorandum and reiterated in the 2025 Monitor Memo, Criminal Division prosecutors must "strike the appropriate balance between" the benefits and costs of imposing a monitorship on a company's operations. To strike this balance, the 2025 Monitor Memo outlines the following factors for prosecutors to consider:

- Risk of recurrence of criminal conduct that significantly impacts the United States' interests;
- Availability and efficacy of other independent government oversight;
- Efficacy of the compliance program and culture of compliance at the time of the resolution; and
- Maturity of the company's controls and its ability to independently test and update its compliance program.

Additionally, while not an enumerated factor, the 2025 Memo directs prosecutors to consider "the incremental benefits the monitor has above and beyond the requirements imposed on corporate leadership in all Criminal Division corporate resolutions." These requirements may include a company leader's personal certification under penalty of perjury that the company has implemented effective compliance procedures to prevent the recurrence of criminal conduct.

In all, a monitorship may not be appropriate if a company's conduct: (1) does not significantly impact national interests (that is, criminal conduct "detrimental to national security" like trade fraud, foreign bribery, and crimes related to cartels); (2) is regulated by other government bodies; (3) is remediated by instituting a compliance program; or (4) is already scrutinized by a mature internal compliance program.

Ensuring Monitorships Are Narrowly Tailored

When a monitorship is imposed, the 2025 Monitor Memo directs the Criminal Division to take the following oversight over the monitor:

1. Ensure that the monitor's costs are proportionate to the underlying criminal conduct's severity, the relevant corporate entity's profits, and the company's present size and risk profile.

   The 2025 Monitor Memo imposes a new cap on the hourly rates charged by monitors. Monitors will now be required to submit a budget for approval, including the anticipated number of personnel on the monitor's team and an assessment of the expected hours necessary for the engagement to both the Criminal Division and the company. The Criminal Division must approve the budget estimate before the monitor begins their review.

2. Hold “at least bi-annual tri-partite meetings” between the government, monitor, and company.

   The goal of these meetings is to ensure open communication between all parties and to mitigate against monitor overreach.

3. Encourage an “ongoing and open dialogue” about the progress of the monitorship.

   The 2025 Monitor Memo describes monitorships as a “collaborative endeavor” in which the government, monitor, and company work together to achieve an appropriately tailored and effective compliance program designed to detect and prevent the recurrence of relevant misconduct.

Selecting and Assigning Monitors

The 2025 Monitor Memo retains much of the monitor selection process from earlier DOJ guidance, including the use of the Criminal Division’s Standing Committee on Selecting of Monitors and the necessary approvals required from the Assistant Attorney General and the Office of the Deputy Attorney General. Companies subject to monitorships can recommend a pool of preferred monitor candidates to go through the selection process.

Conclusion

The 2025 Monitor Memo suggests that the use of monitors will likely decrease in future corporate resolutions. In cases where a monitorship is imposed, however, the Criminal Division must exercise increased oversight of the monitor’s conduct, budget, and communications with the affected company. In conjunction with DOJ’s new enforcement priorities, these changes underscore the importance of robust internal compliance measures. Benesch’s White Collar, Government Investigations & Regulatory Compliance Group can assist in creating and updating compliance controls tailored to your organization’s specific needs and risks.

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[1] The other memoranda include Focus, Fairness, and Efficiency in the Fight Against White Collar Crime; Corporate Enforcement and Voluntary Self-Disclosure Policy; Corporate Whistleblower Awards Pilot Program. These new policy updates are intended to carry out the Administration’s “America First” priorities. America First Guidance.

[2] The Morford Memorandum requires each Department component to “create a standing or ad hoc committee . . . of prosecutors to consider the selection or veto, as appropriate, of monitor candidates.” Memorandum to Heads of Department Components and United States Attorneys from Craig S. Morford, Acting Deputy Attorney General, March 7, 2008.