

THE JOURNAL OF FEDERAL AGENCY ACTION

Editor's Note: May It Please the Court

Victoria Prussen Spears

The Supreme Court (Again) Takes Up the Securities and Exchange Commission's Disgorgement Powers

Peter I. Altman, Katherine R. Goldstein, Michael A. Asaro, Parvin Daphne Moyne, James Joseph Benjamin Jr., Lance Jasper, Kyle Cummings, and Natalia Heguaburo

Securities and Exchange Commission Enforcement Taking Shape: What's Changed, What's the Same, and What It Means for Those Under Investigation

Matthew C. Solomon, Nowell D. Bamberger, Thomas A. Bednar, Christopher R. Kavanaugh, Jonathan S. Kolodner, and Samuel Levander

Department of Justice Releases First Department-Wide Corporate Enforcement Policy

Thomas A. Bednar, Christopher R. Kavanaugh, Joon H. Kim, David A. Last, Rahul Mukhi, Breon S. Peace, and Matthew M. Yelovich

Commodity Futures Trading Commission's Division of Enforcement Issues Prediction Markets Enforcement Advisory

J. Christopher Giancarlo, Kari S. Larsen, A. Kristina Littman, Rita M. Molesworth, Chelsea Pizzola, and Leanne Aban

Navigating the Cybersecurity and Infrastructure Security Agency Labyrinth

Nicolas Groffman

Environmental Protection Agency's Rescission of Greenhouse Gas Endangerment Finding Sets Up a High-Stakes Legal Fight

Kenneth J. Markowitz, Stacey H. Mitchell, Z.W. Julius Chen, Margaret O. Rusconi, Samantha Z. Purdy, and Charles Edward Smith

The Emerging Regulatory Framework to Power Data Centers

Stephen J. Humes, Alicia M. McKnight, and Andrew H. Jacobs

Navigating New Hemp Laws: A Major Shift for the Cannabis Industry

Jennifer German

The Journal of Federal Agency Action

Volume 4, No. 4 | July–August 2026

- 215 Editor’s Note: May It Please the Court**
Victoria Prussen Spears
- 219 The Supreme Court (Again) Takes Up the Securities and Exchange Commission’s Disgorgement Powers**
Peter I. Altman, Katherine R. Goldstein, Michael A. Asaro,
Parvin Daphne Moyne, James Joseph Benjamin Jr., Lance Jasper,
Kyle Cummings, and Natalia Haguaburo
- 227 Securities and Exchange Commission Enforcement Taking Shape: What’s Changed, What’s the Same, and What It Means for Those Under Investigation**
Matthew C. Solomon, Nowell D. Bamberger, Thomas A. Bednar,
Christopher R. Kavanaugh, Jonathan S. Kolodner, and Samuel Levander
- 239 Department of Justice Releases First Department-Wide Corporate Enforcement Policy**
Thomas A. Bednar, Christopher R. Kavanaugh, Joon H. Kim, David A. Last,
Rahul Mukhi, Breon S. Peace, and Matthew M. Yelovich
- 247 Commodity Futures Trading Commission’s Division of Enforcement Issues Prediction Markets Enforcement Advisory**
J. Christopher Giancarlo, Kari S. Larsen, A. Kristina Littman,
Rita M. Molesworth, Chelsea Pizzola, and Leanne Aban
- 253 Navigating the Cybersecurity and Infrastructure Security Agency Labyrinth**
Nicolas Groffman
- 277 Environmental Protection Agency’s Rescission of Greenhouse Gas Endangerment Finding Sets Up a High-Stakes Legal Fight**
Kenneth J. Markowitz, Stacey H. Mitchell, Z.W. Julius Chen,
Margaret O. Rusconi, Samantha Z. Purdy, and Charles Edward Smith
- 283 The Emerging Regulatory Framework to Power Data Centers**
Stephen J. Humes, Alicia M. McKnight, and Andrew H. Jacobs
- 291 Navigating New Hemp Laws: A Major Shift for the Cannabis Industry**
Jennifer German

EDITOR-IN-CHIEF

Steven A. Meyerowitz

President, Meyerowitz Communications Inc.

EDITOR

Victoria Prussen Spears

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

Lynn E. Calkins

Partner, Holland & Knight LLP

Washington, D.C.

Helaine I. Fingold

Member, Epstein Becker & Green, P.C.

Baltimore

Nancy A. Fischer

Partner, Pillsbury Winthrop Shaw Pittman LLP

Washington, D.C.

Bethany J. Hills

Partner, DLA Piper LLP (US)

New York

Phil Lookadoo

Partner, Haynes and Boone, LLP

Washington, D.C.

Michelle A. Mantine

Partner, Reed Smith LLP

Pittsburgh

Ryan J. Strasser

Partner, Troutman Pepper Hamilton Sanders LLP

Richmond & Washington, D.C.

THE JOURNAL OF FEDERAL AGENCY ACTION (ISSN 2834-8818 (online)) at \$495.00 annually is published six times per year by Full Court Press, a Fastcase, Inc., imprint. Copyright 2026 Fastcase, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner.

For customer support, please contact Fastcase, Inc., 729 15th Street, NW, Suite 500, Washington, D.C. 20005, 202.999.4777 (phone), or email customer service at support@fastcase.com.

Publishing Staff

Publisher: David Nayer

Production Editor: Sharon D. Ray

Cover Art Design: Morgan Morrisette Wright and Sharon D. Ray

This journal's cover includes a photo of Washington D.C.'s Metro Center underground station. The Metro's distinctive coffered and vaulted ceilings were designed by Harry Weese in 1969. They are one of the United States' most iconic examples of the brutalist design style often associated with federal administrative buildings. The photographer is by XH_S on Unsplash, used with permission.

Cite this publication as:

The Journal of Federal Agency Action (Fastcase)

This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Copyright © 2026 Full Court Press, an imprint of Fastcase, Inc.

All Rights Reserved.

A Full Court Press, Fastcase, Inc., Publication

Editorial Office

729 15th Street, NW, Suite 500, Washington, D.C. 20005

<https://www.fastcase.com/>

POSTMASTER: Send address changes to THE JOURNAL OF FEDERAL AGENCY ACTION, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@
meyerowitzcommunications.com, 631.291.5541.

Material for publication is welcomed—articles, decisions, or other items of interest to attorneys and law firms, in-house counsel, corporate compliance officers, government agencies and their counsel, senior business executives, and anyone interested in federal agency actions.

This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the Editorial Content appearing in these volumes or reprint permission, please contact:

David Nayer, Publisher, Full Court Press at david.nayer@clio.com or at
202.999.4777

For questions or Sales and Customer Service:

Customer Service

Available 8 a.m.–8 p.m. Eastern Time

866.773.2782 (phone)

support@fastcase.com (email)

Sales

202.999.4777 (phone)

sales@fastcase.com (email)

ISSN 2834-8796 (print)

ISSN 2834-8818 (online)

Department of Justice Releases First Department-Wide Corporate Enforcement Policy

Thomas A. Bednar, Christopher R. Kavanaugh, Joon H. Kim,
David A. Last, Rahul Mukhi, Breon S. Peace, and
Matthew M. Yelovich*

In this article, the authors discuss the first Justice Department-wide Corporate Enforcement and Voluntary Self-Disclosure Policy for criminal matters, with the exception of antitrust, announced recently by the Department.

The Department of Justice (DOJ) recently announced its first Department-wide Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP) for criminal matters, with the exception of antitrust.

The CEP explicitly supersedes any previously issued policies by DOJ components or U.S. Attorneys' Offices (USAOs).¹ Deputy Attorney General Todd Blanche explained that this change was part of DOJ's commitment to "transparency and fairness" and the new CEP "creates incentives for companies to come forward and do the right thing when misconduct occurs."²

The Department-wide CEP is largely consistent with the most recent iteration of DOJ Criminal Division's Corporate Enforcement and Voluntary Self-Disclosure Policy (Criminal Division Policy) updated in May 2025. Under the new CEP, companies that voluntarily self-disclose potential misconduct are guaranteed a number of benefits, including declination of prosecution, subject to certain requirements and absent particular aggravating circumstances. Blanche emphasized that the CEP will ensure that companies know "across the Department, they will be rewarded when they self-disclose wrongdoing, cooperate with our investigations, and remediate the misconduct."³ This development also reinforces the importance of having a robust compliance program and effective internal controls so that companies can identify potential misconduct when it arises, investigate it as appropriate, and thoroughly

evaluate whether to self-disclose in exchange for the benefits the CEP has to offer.

The Department-Wide Corporate Enforcement and Voluntary Self-Disclosure Policy

The CEP’s stated goal is to incentivize “responsible corporate behavior,” including “encouraging companies to invest in effective compliance programs, voluntarily self-report potential misconduct, meaningfully cooperate with law enforcement, and make good-faith efforts to rectify wrongdoing.”⁴

The Criminal Division previously had its own Corporate Enforcement and Voluntary Self-Disclosure Policy since 2016, which had been periodically updated over time. In May 2025, then-head of the Criminal Division Matthew R. Galeotti announced revisions to the Criminal Division Policy aimed at providing greater transparency to companies and their counsel, as well as better incentives for companies to self-report. The release of the Department-wide CEP—which supersedes the Criminal Division Policy—is another step in the same direction, now expanding the benefits of self-disclosure more broadly and ensuring that those benefits are applied consistently across the DOJ, including to all 93 USAOs and divisions of “Main Justice.” The only exception is DOJ’s Antitrust Division, which has had its own corporate leniency policy incentivizing prompt self-reporting since the early 1990s.⁵ Assistant Attorney General A. Tysen Duva of the Criminal Division confirmed this by noting that the new Department-wide CEP “takes the principles the [Criminal] Division has long promoted—disclosure, cooperation, and remediation—and applies them uniformly across the Department.”⁶

The CEP is similar in many respects to the former Criminal Division Policy, including by being organized into the same three parts:

1. guidance on obtaining a declination under the CEP (Part I),
2. guidance on DOJ’s approach to a “near miss” voluntary self-disclosure or presence of aggravating factors (Part II), and
3. guidance on how DOJ will approach resolutions in other cases (Part III).

The new CEP does, however, include noteworthy changes to both the requirements and available benefits under the policy.

Declination (Part I Under the CEP)

As was the case under the Criminal Division Policy, DOJ will decline to prosecute a company that, absent aggravating circumstances, (1) timely and voluntarily self-discloses misconduct previously unknown to DOJ, without a preexisting obligation to disclose; (2) fully cooperates; and (3) timely and appropriately remediates.⁷ The changes to Part I include:

- The CEP now takes a broader view of corporate recidivism as an aggravating circumstance.⁸ Previously, the Criminal Division Policy looked at criminal adjudications or corporate resolutions (1) within the past five years (2) related to similar misconduct by the company. Now, the CEP is stricter and considers any criminal adjudication or corporate resolution within the past five years (seemingly without regard to the type of prior conduct), as well as any prior criminal adjudication or resolution based on similar misconduct by the company engaged in the current misconduct, regardless of when it occurred.⁹ This change suggests that DOJ may take a harsh view of repeat offenders, particularly when they have a prior history of similar misconduct.
- The CEP now specifies that the self-disclosure needs to be made to “an appropriate [DOJ] criminal component.” A good faith disclosure to a different DOJ component qualifies, but a good faith disclosure outside DOJ can only qualify in specific circumstances.¹⁰
- The CEP also includes, as the Criminal Division Policy did previously, an exception for self-disclosures made after a related whistleblower report to DOJ. Previously, a company’s self-disclosure needed to be made within 120 days of the internal whistleblower report. Now, companies must self-report “as soon as reasonably practicable but no later than 120 days after receiving the whistleblower’s internal report,” further emphasizing the importance of timely disclosures.¹¹

- Similarly, while DOJ's definition of "full cooperation" remains largely the same, including the timely disclosure of relevant facts, non-privileged evidence, and documents, the new CEP notes that a company is "expected" to inform DOJ if it is going to take any action, including pursuant to any legal obligations, that may conflict with DOJ's investigation or a request by DOJ for the company to defer steps of its internal investigation.¹² In addition, prosecutors must now take into consideration a company's "size, sophistication, and financial condition" when assessing cooperation.¹³

"Near Miss" Voluntary Self-Disclosures or Aggravating Circumstances Warranting Resolutions (Part II Under the CEP)

The new Department-wide CEP still contains the "near miss" category for companies that are ineligible for declination either because their self-report did not meet all the requirements or because aggravating factors exist. In those cases, DOJ will resolve through a Non-Prosecution Agreement, allow for a term length of fewer than three years, and not require an independent compliance monitor.¹⁴

The main change to Part II is that the new CEP provides for a 50 percent to 75 percent reduction off the low end of the U.S. Sentencing Guidelines fine range, whereas the Criminal Division Policy provided for a 75 percent reduction.¹⁵ This change underscores the continued prevalence of prosecutorial discretion and the need for effective advocacy before DOJ.

Resolutions in Other Cases (Part III Under the CEP)

Part III remains largely the same under the new CEP. Prosecutors continue to maintain the discretion to determine the appropriate resolution, obligations, and monetary penalty, with only a maximum 50 percent reduction in the monetary penalty available for companies who are ineligible for Parts I or II.¹⁶

Superseded Policies

The new Department-wide CEP not only replaces the Criminal Division Policy but also preempts corporate enforcement policies from other DOJ components and across the USAOs. This approach creates uniformity for corporations and their counsel regardless of the specific misconduct at issue or the particular DOJ component with jurisdiction. Examples of policies that are now superseded by the CEP include:

1. The National Security Division Policy for Business Organizations,
2. The Environmental Crimes Section Environment & Natural Resources Division Voluntary Self-Disclosure Policy, and
3. The USAOs Voluntary Self-Disclosure Policy.

While these policies had some common considerations in corporate enforcement, the new CEP generally provides increased certainty and predictability regarding DOJ decisions and increased incentives for self-reporting. Nevertheless, it is possible that certain DOJ components and USAOs may still have or develop specific policies and practices that are consistent with the CEP.

For example, the Southern District of New York (SDNY) has stated that its “Corporate Enforcement and Voluntary Self-Disclosure Program for Financial Crimes” continues to be in effect even following the Department-wide CEP. The SDNY policy, rolled out on February 24, 2026, applies to fraud and other willful violations of federal securities and commodities laws.¹⁷ Under the policy, like the new CEP, if a company voluntarily self-discloses, cooperates, remediates, and otherwise meets requirements, it guarantees a declination. The SDNY’s policy goes further and provides that a company can obtain a conditional declination letter within two to three weeks of the self-disclosure, provided that eligibility requirements are met.¹⁸ Going forward, it remains to be seen whether other DOJ components or USAOs may implement policies or practices that supplement the new CEP while remaining consistent with it.

Key Takeaways

In announcing the new CEP, the DOJ’s leadership emphasized that the policy “allows the Department to quickly pursue culpable

individuals, secure justice for victims, and deter white-collar crime, all while not unduly burdening American businesses” and “provides predictability for companies and their counsel.”¹⁹ These changes reflect a continued push toward increased transparency of the benefits of self-disclosure for companies across the board while underscoring the continued necessity for effective internal controls and a robust compliance program, and for matters already before DOJ, strong legal advocacy.

- *Self-Disclosure, Cooperation, and Remediation.* Timely and voluntary self-disclosure and good faith cooperation and remediation continue to remain key to accessing the benefits the CEP has to offer. DOJ has made clear that individual accountability and the avoidance of undue burdens for American corporations are top priorities for corporate enforcement. In light of these factors, a company should have a well-resourced and effective compliance program, including a well-functioning whistleblower reporting channel. When potential misconduct is identified, understanding the full scope and potential ramifications is crucial, both from the perspective of how the company should properly remediate and address the situation, as well as in determining whether or not to self-report. Such an assessment is always very facts- and circumstances-specific, requiring a thorough understanding of the potential benefits, costs, and expectations that DOJ will have. Conducting a properly scoped internal investigation is of essential importance in making that determination.
- *Uniformity.* The Department-wide CEP that now applies to all criminal matters (with the exception of antitrust) speaks to both increased transparency for all companies and a uniform approach to corporate misconduct. Companies that have ongoing matters involving other DOJ divisions besides the Criminal Division or which are considering disclosing potential misconduct should carefully and thoroughly consider the new CEP and the potential related benefits and seek experienced advocacy and guidance where appropriate. The uniform application of the Department-wide CEP will impact certain strategic considerations in deciding where to report within DOJ. Companies considering self-disclosure will still need to

assess where to self-report based on a DOJ component's or office's jurisdiction, any of their specific policies or procedures that survive the CEP, their expertise in a specific area, or any professional relationships that the company or counsel may have.

- *Prosecutorial Discretion and Transparency.* Although prosecutors continue to retain a large amount of discretion under the new CEP, the policy also provides for increased transparency and predictability in certain respects. The new CEP now explicitly encourages prosecutors to make an eligibility determination for Parts I and II and, where appropriate, to inform the company of that determination “as soon as practicable” and, separately, to include in corporate resolutions “information sufficient to outline why a particular company received a particular amount of cooperation credit.”²⁰ This may afford additional transparency to companies with matters before DOJ and help them avoid drawn-out and burdensome investigations.

Notes

* The authors, attorneys with Cleary Gottlieb Steen & Hamilton LLP, may be contacted at tbednar@cgsh.com, ckavanaugh@cgsh.com, jkim@cgsh.com, dlast@cgsh.com, rmukhi@cgsh.com, bpeace@cgsh.com, and myelovich@cgsh.com, respectively. Jackie Brune and Emily Janikowski, associates at the firm, assisted in the preparation of this article.

1. Department of Justice Releases First-Ever Corporate Enforcement Policy for All Criminal Cases, Department of Justice Press Release (Mar. 10, 2026), <https://www.justice.gov/opa/pr/departments-justice-releases-first-ever-corporate-enforcement-policy-all-criminal-cases>.

2. Id.

3. Id.

4. Corporate Enforcement and Voluntary Self-Disclosure Policy, Department of Justice (updated Mar. 10, 2026), <https://www.justice.gov/dag/media/1430731/dl?inline>.

5. Leniency Policy and Procedures, Department of Justice, Antitrust Division (updated June 2022), <https://www.justice.gov/atr/page/file/1490246/dl?inline>.

6. Department of Justice Releases First-Ever Corporate Enforcement Policy for All Criminal Cases, *supra* note 1.

7. Corporate Enforcement and Voluntary Self-Disclosure Policy, *supra* note 4.

8. Id.
9. Id.
10. Id.
11. Id.
12. Id.
13. Id.
14. Id.
15. Id.
16. Id.
17. Department of Justice, United States Attorney's Office for the Southern District of New York, SDNY Corporate Enforcement and Voluntary Self-Disclosure Program for Financial Crimes (Feb. 24, 2026), <https://www.justice.gov/usao-sdny/media/1428811/dl?inline>.
18. Id.
19. Department of Justice Releases First-Ever Corporate Enforcement Policy for All Criminal Cases, *supra* note 1.
20. Corporate Enforcement and Voluntary Self-Disclosure Policy, *supra* note 4.