

DOJ's Latest Compliance Monitor Policy Update Aims to Keep Scope and Costs in Check

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Cal Stein, a litigation partner at Troutman Pepper Locke, discusses the DOJ Criminal Division's updates to its compliance monitor policies and outlines how these updates will impact companies negotiating settlements in criminal enforcement actions.

On May 12, the DOJ Criminal Division (Division) issued a [memorandum](#) revising its policies on the imposition and selection of independent compliance monitors in connection with corporate resolutions. These changes aim to reduce unnecessary financial burdens on companies and decrease the likelihood of a recurrence of criminal conduct. Going forward, companies can expect to see this approach during negotiations of plea agreements, deferred prosecution agreements, and non-prosecution agreements.

Key aspects of the policy include:

- 1. Factors to Evaluate Need for Monitor:** The revised policy outlines specific factors that prosecutors must consider when determining whether a compliance monitor is needed. These factors include the risk of recurrence of criminal conduct that significantly impacts US interests, the availability of other governmental or regulatory oversight, the efficacy of the company's compliance program, and the maturity of the company's controls.
- 2. Tailoring of Monitorships:** The Division emphasizes that any imposed monitorship should be appropriately tailored to address the specific issues that necessitated the monitor, while minimizing costs and interference with business operations. This may include setting a cap on the monitor's hourly rates and requiring a detailed budget to be submitted and approved before the monitorship begins.
- 3. Enhanced Collaboration:** The revised policy mandates biannual tri-partite meetings among the company, the monitor, and the government to promote ongoing communication regarding the state and progress of the monitorship. This is to ensure alignment and the company's cooperation, as well as to mitigate the risk of monitor overreach.

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