



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 12, 2025

MEMORANDUM

TO: All Criminal Division Personnel

FROM: Matthew R. Galeotti
Head of the Criminal Division

SUBJECT: Memorandum on Selection of Monitors in Criminal Division Matters

The Criminal Division is committed to transparent and fair corporate criminal enforcement policies, including with respect to the criteria for imposing and selecting independent compliance monitors (“monitors”) in corporate resolutions. This memorandum clarifies standards, policies, and procedures for imposing, selecting, and overseeing monitors in resolutions between the Criminal Division and a business organization—including plea agreements, deferred prosecution agreements (“DPA”), and non-prosecution agreements (“NPA”).¹ It incorporates the prior guidance provided by the memorandum entitled, “Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations,” issued by then-Acting Deputy Attorney General, Craig S. Morford (hereinafter referred to as the “Morford Memorandum”)² and supersedes prior monitor selection memoranda by former Criminal Division Assistant Attorneys General.

This memorandum contains updates in two primary areas: (1) clarifying the factors that prosecutors must consider when determining whether a monitor is appropriate and how those

¹ The contents of this memorandum provide internal guidance to Criminal Division attorneys on legal issues. Nothing in it is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter by prospective or actual witnesses or parties. This memorandum revises and supersedes the June 24, 2009, October 11, 2018, and March 1, 2023 Criminal Division memoranda on monitor selection.

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.” The memorandum also requires that the Committee include an ethics advisor, the Section Chief of the involved Department component, and one other experienced prosecutor. The Criminal Division has used such a Standing Committee for years, and Assistant Attorney General Benczkowski’s October 11, 2018 Memorandum on Selection of Monitors in Criminal Division Matters previously set forth our policies and procedures, and the composition of the Standing Committee, in writing.

factors should be applied; and (2) ensuring that when a monitor is necessary, prosecutors appropriately tailor and scope the monitor's review and mandate to address the risk of recurrence of the underlying criminal conduct and to reduce unnecessary costs.

I. Principles for Determining Whether a Monitor is Needed in Individual Cases

Independent compliance monitors can be an effective resource to ensure that corporate offenders comply with the terms of a corporate criminal resolution, including to implement an effective compliance program, thereby reducing the risk of recidivism. But monitors can also impose substantial expense and interfere with lawful business operations.

As the previous memoranda have made clear, a monitor should never be imposed for punitive purposes and the scope of any monitorship should be appropriately tailored to address the specific issues and concerns that created the need for the monitor while minimizing expense, burden, and interference with the business. The Morford Memorandum explained that, “[a] monitor should only be used where appropriate given the facts and circumstances of a particular matter[.]” and set forth the two broad considerations that should guide prosecutors when assessing the need and propriety of a monitor: “(1) the potential benefits that employing a monitor may have for the corporation and the public, and (2) the cost of a monitor and its impact on the operations of a corporation.”

In evaluating the necessity and “potential benefits” of a monitor, Criminal Division prosecutors must consider case-specific factors, including those laid out in the Justice Manual. *See* JM 9-28.1700. Prosecutors will also assess the incremental benefits the monitor has above and beyond the requirements imposed on corporate leadership in all Criminal Division corporate resolutions. For example, company leaders are required to personally certify, under penalty of law, at the end of the agreement, that the company has implemented an effective compliance program reasonably designed to prevent the recurrence of the misconduct. These certifications create powerful incentives for these leaders to ensure the organization will abide by the terms of the agreement even without a monitor.

To strike the appropriate balance between the need to ensure effective compliance programs with the need to eliminate unnecessary burden, Criminal Division attorneys must consider the following when determining whether the imposition of a monitor is necessary:

1. Risk of recurrence of criminal conduct that significantly impacts U.S. interests

Criminal Division prosecutors must consider whether the nature and seriousness of the underlying misconduct—including any history of recidivism—are sufficiently serious that there is the potential for recurrence that would significantly impact U.S. interests and be mitigated by the imposition of a monitor. Examples of such conduct include offenses detrimental to national security (such as sanctions evasion and threats to the U.S. economy), foreign bribery that significantly impacts U.S. interests, trade fraud and tariff evasion, procurement and healthcare fraud, and other crimes that harm U.S. interests, such as those that facilitate cartels, transnational criminal organizations, narcotics trafficking, and material support to a foreign terrorist

organization. While no one factor is determinative, a company's risk profile—at the time of resolution—is a key factor that should drive the analysis.

2. Availability and efficacy of other independent government oversight

Criminal Division prosecutors must consider whether the company is regulated by other governmental bodies, in the United States or abroad. If a company's primary regulator can exercise sufficient oversight to ensure the implementation of an effective compliance program in conjunction with self-directed efforts but without an independent monitor, then there is no need for a monitor. By contrast, a company's proven history of committing criminal conduct while under such regulator's supervision is a significant factor and might counsel in favor of imposing a monitor.

3. Efficacy of the compliance program and culture of compliance at the time of the resolution

Criminal Division prosecutors must take into consideration any steps or remediation the company undertakes before resolving to ensure that the compliance program is effective at preventing the recurrence of misconduct. In making this assessment, prosecutors must consider whether the company's risk profile has changed and whether the current program is appropriately calibrated to the risk profile. Where misconduct occurred under different corporate leadership or within a compliance environment that no longer exists within a company, Criminal Division attorneys should consider whether the changes in corporate culture and/or leadership, in conjunction with other self-directed or agreed enhancements, are adequate to safeguard against a recurrence of misconduct. *See Criminal Division Evaluation of Corporate Compliance Programs* (revised 2024).

Before resolution, companies may not have a legal obligation to enhance or revise their compliance programs depending on the business they conduct. Those companies that enhance or revise their compliance programs before resolution can receive certain benefits, including fine reductions under the Criminal Division's Corporate Enforcement and Voluntary Self-Disclosure Policy as well as potentially avoiding the need for an independent compliance monitor. In that regard, the Criminal Division will evaluate whether a company's voluntary engagement of third-party consultants, auditors, and other experts obviates the need for a monitor. Similarly, a company's choice to take appropriate action against employees who were involved in and/or had supervisory responsibility for those involved in the misconduct reduces the likelihood of recurrence and therefore the need for a monitor.

4. Maturity of the company's controls and its ability to independently test and update its compliance program

An important factor for determining whether to impose a monitor remains whether, at the time of the resolution, the corporation has adequately tested its compliance program and internal controls to demonstrate that they would likely detect and prevent similar misconduct in the future. In making this assessment, Criminal Division attorneys should consider the following factors, none of which is dispositive: whether newly implemented controls or enhancements to a compliance program have been in place long enough to demonstrate that they are working, whether and how

the company is measuring the effectiveness of its compliance program, and whether the company has tested or has the capacity to test and update its compliance program as necessary.

II. Ensuring Monitorships Are Appropriately Tailored and Focused

In weighing the benefit of a contemplated monitorship against the potential costs, Criminal Division attorneys should consider not only the projected monetary costs to the business organization, but also whether the proposed scope of a monitor's role is appropriately tailored to avoid unnecessary burdens to the business's operations. Therefore, when a monitorship is imposed, the Criminal Division will also take the following steps to ensure it is carried out appropriately:

First, a monitor's costs must be proportionate to: (1) the severity of the underlying criminal conduct, including as reflected by the loss as well as any fine and forfeiture imposed; (2) the profits of the relevant corporate entity involved in the misconduct and, if appropriate, the larger organization; and (3) the company's present size and risk profile. While their remit requires expertise, monitors must take all reasonable steps to minimize their costs. Monitors provide a service to the public. They help ensure a company adheres to the terms of its agreement with the Criminal Division and mitigate against risk of future criminal conduct. To that end, any criminal resolution with a company that imposes a monitor will require a cap on hourly rates charged by the monitor. After selection, the monitor will be required to submit to both the Criminal Division and the company a budget for completing the entire monitorship at the time it submits its first work plan pursuant to the resolution agreement. The budget will include the anticipated number of personnel on the monitor's team and an assessment of hours expected to be necessary for the engagement. Before beginning each phase of the monitor's review, the monitor must submit to both the Criminal Division and the company an updated estimate of its costs for that review. The Criminal Division must approve this estimate before the monitor begins its review. The monitor may not be paid more than the approved amount without prior written approval from the Criminal Division upon a showing that the additional work is necessary to achieve the terms of the agreement.

Second, to maximize alignment between the monitor, the company, and the Criminal Division, the resolution agreement must specify that there must be at least biannual tri-partite meetings, i.e., between the company, monitor, and government. These meetings will help ensure the monitor clearly articulates its expectations and goals for the company with Criminal Division input and oversight. While Criminal Division attorneys will still engage bi-laterally with the company and the monitor, these tri-partite meetings are an important tool to mitigate against monitor overreach and to ensure open and regular dialogue between all parties.

Third, a monitorship should be a collaborative endeavor through which the Criminal Division, the monitor, and the company are working to achieve a single goal: an appropriately tailored and effective, risk-based corporate compliance program designed to detect and prevent the recurrence of the misconduct underlying the agreement. If the Criminal Division has determined a monitor is necessary, it is because there was a demonstrated need for and benefit to be derived from the monitorship that outweighed the cost and burden of the monitorship. During a monitorship, there must be an ongoing and open dialogue between the Criminal Division, the company, and the monitor about the progress of the monitorship. A monitor is, by design, an outside party that may not always be fully attuned to the company's business operations. A

company's attempts to explain why a monitor's proposed action is not necessary should not necessarily be viewed as failure to take seriously compliance concerns or necessary remedial measures. Conversely, a monitor's appropriate requests and recommendations should not be treated, by default, as an unnecessary intrusion.

III. Approval, Consultation, and Concurrence Requirement for Monitorship Agreements

Before agreeing to the imposition of a monitor³ in any case, the Criminal Division prosecutors handling the matter must first receive approval from their supervisors, including the Chief of the relevant Section, as well as the concurrence of the Assistant Attorney General ("AAG") for the Criminal Division, or the individual serving in that capacity.

IV. Terms of Criminal Division Monitorship Agreements

As a preliminary matter, any DPA, NPA, or plea agreement between the Criminal Division and a business organization that requires the retention of a monitor (hereinafter referred to as the "Agreement"), should contain the following:

1. A description of the monitor's required qualifications;
2. A description of the monitor selection process;
3. A description of the process for replacing the monitor during the term of the monitorship, should it be necessary;
4. A statement that the parties will endeavor to complete the monitor selection process within sixty (60) business days of the execution of the underlying agreement;
5. An explanation of the responsibilities of the monitor and the monitorship's scope;
6. The length of the term of the monitorship; and
7. An explanation of the cap on hourly rates and the requirements regarding the submission and approval of the monitor's budget.

V. Standing Committee on the Selection of Monitors

In reviewing and approving the selection of monitors, the Criminal Division shall continue to employ its Standing Committee on the Selection of Monitors (the "Standing Committee"). The Standing Committee should convene only after the AAG has approved the imposition of a monitor.

1. Composition of the Standing Committee

The Standing Committee shall comprise: (1) the Principal Deputy Assistant Attorney General or anyone serving in that capacity ("PDAAG");⁴ (2) the DAAG with supervisory

³ As used herein, the term "monitor" includes both the leader of the monitorship team and the entire team.

⁴ Should the PDAAG be recused from a particular case—or be required to serve in the AAG's capacity due to recusal of the AAG—the AAG may designate an alternate.

responsibility for the relevant Section, or his/her designee;⁵ (3) the Chief of the relevant Section, or his/her designee;⁶ and (4) the Deputy Designated Agency Ethics Official for the Criminal Division.⁷ Should further replacements not contemplated by this paragraph be necessary for a particular case, the DAAG with supervisory responsibility for the Fraud Section will appoint any temporary, additional member of the Standing Committee for the particular case.

The PDAAG shall be the Chair of the Standing Committee and shall be responsible for ensuring that the Standing Committee discharges its responsibilities. In cases brought in partnership between the Criminal Division and other offices or components, the Chair may, as warranted, invite leaders from the partner offices or components to participate in the Standing Committee.

All Criminal Division employees involved in the selection process, including Standing Committee Members, should be mindful of their obligations to comply with the conflict-of-interest guidelines set forth in 18 U.S.C. § 208, 5 C.F.R. Part 2635 (financial interest), and 28 C.F.R. Part 45.2 (personal or political relationship), and shall provide written certification of such compliance to the Deputy Designated Agency Ethics Official for the Criminal Division as soon as practicable, but no later than the time of the submission of the Monitor Recommendation Memorandum to the Assistant Attorney General for the Criminal Division.

2. Convening the Standing Committee

The Chief of the relevant Section entering into the Agreement should notify the Chair of the Standing Committee as soon as practicable that the Standing Committee will need to convene. Notice should be provided as soon as an agreement in principle has been reached between the government and the business organization that is the subject of the Agreement (hereinafter referred to as the “Company”), but not later than the date the Agreement is executed.

The Chair will arrange to convene the Standing Committee meeting as soon as practicable after receiving the Monitor Recommendation Memorandum described below, identifying the Standing Committee participants for that case, and ensuring that there are no conflicts among the Standing Committee Members.

VI. The Selection Process

As set forth in the Morford Memorandum, a monitor must be selected based on the unique facts and circumstances of each matter and the merits of the individual candidate. Accordingly, the selection process should: (i) instill public confidence in the process; and (ii) result in the selection of a highly qualified person or entity, free of any actual or potential conflict of interest

⁵ Should the DAAG be recused from a particular case, the Assistant Attorney General will appoint a representative to fill the DAAG’s position on the Standing Committee.

⁶ Should the Chief of the Section be recused from a particular case, he/she will be replaced by the Principal Deputy Chief or Deputy Chief with supervisory responsibility over the matter.

⁷ Should the Deputy Designated Agency Ethics Official for the Criminal Division be recused from a particular case, he/she will be replaced by the Alternate Deputy Designated Agency Ethics Official for the Criminal Division or his/her designee.

or appearance of a potential or actual conflict of interest, and suitable for the assignment at hand. To meet those objectives, the Criminal Division shall employ the following procedure⁸ in selecting a monitor, absent authorization from the Standing Committee to deviate from this process as described below:

1. Nomination of Monitor Candidates

At the outset of the monitor selection process, counsel for the Company should be advised by the Criminal Division attorneys handling the matter to recommend a pool of three to five qualified monitor candidates. Any submission or selection of a monitor candidate by either the Company or the Criminal Division should be made without unlawful discrimination against any person or class of persons. Within at least (20) business days after the execution of the Agreement, the Company should submit a written proposal identifying the monitor candidates, and, at a minimum, providing the following:

- a. a description of each candidate's qualifications and credentials in support of the evaluative considerations and factors listed below;
- b. a written certification, on the form attached hereto, by the Company that it will not employ or be affiliated with the monitor for a period of not less than two years from the date of the termination of the monitorship;
- c. a written certification, on the form attached hereto, by each of the candidates that he/she is not a current or recent (i.e., within the prior two years) employee, agent, or representative of the Company and holds no interest in, and has no relationship with, the Company, its subsidiaries, affiliates or related entities, or its employees, officers, or directors;
- d. a written certification, on the form attached hereto, by each of the candidates that he/she has notified any clients that the candidate represents in a matter involving any Department component handling the monitor selection process, and that the candidate has either obtained a waiver from those clients or has withdrawn as counsel in the other matter(s); and
- e. a statement identifying the monitor candidate that is the Company's first choice to serve as the monitor.

2. Initial Review of Monitor Candidates

The Criminal Division attorneys handling the matter, along with supervisors from the relevant Section, and representatives of partner offices if applicable, should promptly interview

⁸ The selection process outlined in this Memorandum applies both to the selection of a monitor at the initiation of a monitorship and to the selection of a replacement monitor, where necessary.

each monitor candidate to assess his/her qualifications, credentials and suitability for the assignment and, in conducting a review, should consider the following factors:

- a. each monitor candidate's general background, education and training, professional experience, professional commendations and honors, licensing, reputation in the relevant professional community, and past experience as a monitor;
- b. each monitor candidate's experience and expertise with the particular area(s) at issue in the case under consideration, and experience and expertise in applying the particular area(s) at issue in an organizational setting;
- c. each monitor candidate's degree of objectivity and independence from the Company so as to ensure effective and impartial performance of the monitor's duties;
- d. the adequacy and sufficiency of each monitor candidate's resources to discharge the monitor's responsibilities effectively;
- e. each monitor candidate's proposal to effectively carry out the monitor's mandate in a manner that is cost efficient and avoids unnecessary burdens to the business's operations; and
- f. any other factor determined by the Criminal Division attorneys, based on the circumstances, to relate to the qualifications and competency of each monitor candidate as they may relate to the tasks required by the monitor agreement and nature of the business organization to be monitored.

If the attorneys handling the matter and their supervisors decide that any or all of the proposed candidates lack the requisite qualifications, or if they are not satisfied with any or all of the candidates proposed, they should notify the Company and request that counsel for the Company propose another candidate or candidates within twenty (20) business days.⁹ Once the attorneys handling the matter conclude that the Company has provided a slate of three to five qualified candidates, they should conduct a review of those candidates and confer with their supervisors to determine which of the monitor candidates should be recommended to the Standing Committee.¹⁰

3. Preparation of a Monitor Recommendation Memorandum

Once the attorneys handling the matter and their supervisors recommend a candidate, the selection process should be referred to the Standing Committee. The attorneys handling the matter

⁹ A Company may be granted a reasonable extension of time to propose an additional candidate or candidates if circumstances warrant an extension. The attorneys handling the matter should advise the Standing Committee of any such extension.

¹⁰ If the Criminal Division attorneys handling the matter, along with their supervisors, determine that the Company has not proposed and appears unwilling or unable to propose acceptable candidates, consistent with the guidance provided herein, and that the Company's delay in proposing candidates is negatively impacting the Agreement or the prospective monitorship, then the attorneys may evaluate alternative candidates that they identify in consultation with the Standing Committee and provide a list of such candidates to the Company for consideration.

should prepare a written memorandum to the Standing Committee. The memorandum should contain the following information:

- a. a brief statement of the underlying case;
- b. a description of the proposed disposition of the case, including the charges filed (if any);
- c. an explanation as to why a monitor is required in the case, based on the considerations set forth in this Memorandum;
- d. a summary of the responsibilities of the monitor, and his/her term;
- e. a description of the process used to select the candidate;
- f. a description of the selected candidate's qualifications, and why the selected candidate is being recommended;
- g. a description of countervailing considerations, if any, in selecting the candidate;
- h. a description of the other candidates put forward for consideration by the Company;
- i. a description of the preliminary assessment of the monitor's proposal and associated costs; and
- j. a signed certification, on the form attached hereto, by each of the Criminal Division attorneys involved in the monitor selection process that he/she has complied with the conflicts-of-interest guidelines set forth in 18 U.S.C. § 208, 5 C.F.R. Part 2635, and 28 C.F.R. Part 45 in the selection of the candidate.

Copies of the Agreement and any other relevant documents reflecting the disposition of the matter must be attached to the Monitor Recommendation Memorandum and provided to the Standing Committee.

4. Standing Committee Review of a Monitor Candidate

The Standing Committee shall review the recommendation set forth in the Monitor Recommendation Memorandum and vote whether or not to accept the recommendation. In the course of making its decision, the Standing Committee may, in its discretion, interview one or more of the candidates put forward for consideration by the Company.

If the Standing Committee accepts the recommended candidate, it should note its acceptance of the recommendation in writing on the Monitor Recommendation Memorandum and forward the memorandum to the AAG for ultimate submission to the Office of the Deputy Attorney General ("ODAG"). In addition to noting its acceptance of the recommendation, the Standing Committee may also, where appropriate, revise the Memorandum. The Standing Committee's recommendation should also include a written certification by the Deputy Designated Agency Ethics Official for the Criminal Division that the recommended candidate meets the ethical

requirements for selection as a monitor, that the selection process utilized in approving the candidate was proper, and that the government attorneys involved in the process acted in compliance with the conflict-of-interest guidelines set forth in 18 U.S.C. § 208, 5 C.F.R. Part 2635, and 28 C.F.R. Part 45.

If the Standing Committee rejects the recommended candidate, it should so inform the Criminal Division attorneys handling the matter and their supervisors of the rejection. In this instance, the Criminal Division attorneys handling the matter, along with their supervisors, may either recommend an alternate candidate from the remaining candidates proposed by the Company or, if necessary, obtain from the Company the names of additional qualified monitor candidates, as provided above. If the Standing Committee rejects the recommended candidate, or the pool of remaining candidates, the Criminal Division attorneys and their supervisors should notify the Company. The Standing Committee also should return the Monitor Recommendation Memorandum and all attachments to the attorneys handling the matter.

If the Standing Committee is unable to reach a majority decision regarding the proposed monitor candidate, the Standing Committee should so indicate on the Monitor Recommendation Memorandum and forward the Memorandum and all attachments to the AAG for the Criminal Division.

5. Review by the Assistant Attorney General

Consistent with the terms of the Morford Memorandum, the AAG may not unilaterally make, accept, or veto the selection of a monitor candidate. Rather, the AAG must review and consider the recommendation of the Standing Committee set forth in the Monitor Recommendation Memorandum. In the course of doing so, the AAG may, in his/her discretion, request additional information from the Standing Committee and/or the Criminal Division attorneys handling the matter and their supervisors. Additionally, the AAG may, in his/her discretion interview the candidate recommended by the Standing Committee. The AAG should note his/her concurrence or disagreement with the proposed candidate on the Monitor Recommendation Memorandum, or revise the memorandum to reflect this position, and forward the Monitor Recommendation Memorandum to the ODAG. If the AAG does not concur with the proposed monitor, the attorneys handling the matter, with approval from the Standing Committee, may either recommend an alternate candidate from the remaining candidates proposed by the Company or, if necessary, obtain from the Company additional qualified monitor candidates, as provided in above.

6. Approval of the Office of the Deputy Attorney General

All monitor candidates selected pursuant to DPAs, NPAs, and plea agreements must be approved by the ODAG.

If the ODAG does not approve the proposed monitor, the attorneys handling the matter, with approval from the Standing Committee and the AAG, may either recommend an alternate candidate from the remaining candidates proposed by the Company or, if necessary, obtain from the Company additional qualified monitor candidates, as provided above. If the ODAG approves the proposed monitor, the attorneys handling the matter should notify the Company, which shall

notify the other candidates of the decision, and the monitorship shall be executed according to the terms of the Agreement.

VII. Retention of Records Regarding Monitor Selection

It is the responsibility of the attorneys handling the matter to ensure that a copy of the Monitor Recommendation Memorandum, including attachments and documents reflecting the approval or disapproval of a candidate, is retained in the case file for the matter and that a second copy is provided to the Chair of the Standing Committee. The Chair of the Standing Committee shall obtain and maintain an electronic copy of every Agreement that provides for a monitor.

VIII. Departure from Policy and Procedure

Given the fact that each case presents unique facts and circumstances, the monitor selection process must be practical and flexible. When the Criminal Division attorneys handling the case at issue conclude that the monitor selection process should be different from the process described herein, including when the Criminal Division attorneys propose using the process of a U.S. Attorney's Office with which the Criminal Division is working on the case, the departure should be discussed and approved by the Standing Committee. The Standing Committee can request additional information and/or a written request for a departure.