

New Section in USAM Title 1

1-12.100 - Coordination of Corporate Resolution Penalties in Parallel and/or Joint Investigations and Proceedings Arising from the Same Misconduct

In parallel and/or joint corporate investigations and proceedings involving multiple Department components and/or other federal, state, or local enforcement authorities, Department attorneys should remain mindful of their ethical obligation not to use criminal enforcement authority unfairly to extract, or to attempt to extract, additional civil or administrative monetary payments.

In addition, in resolving a case with a company that multiple Department components are investigating for the same misconduct, Department attorneys should coordinate with one another to avoid the unnecessary imposition of duplicative fines, penalties, and/or forfeiture against the company. Specifically, Department attorneys from each component should consider the amount and apportionment of fines, penalties, and/or forfeiture paid to the other components that are or will be resolving with the company for the same misconduct, with the goal of achieving an equitable result.

The Department should also endeavor, as appropriate, to coordinate with and consider the amount of fines, penalties, and/or forfeiture paid to other federal, state, local, or foreign enforcement authorities that are seeking to resolve a case with a company for the same misconduct.

The Department should consider all relevant factors in determining whether coordination and apportionment between Department components and with other enforcement authorities allows the interests of justice to be fully vindicated. Relevant factors may include, for instance, the egregiousness of a company's misconduct; statutory mandates regarding penalties, fines, and/or forfeitures; the risk of unwarranted delay in achieving a final resolution; and the adequacy and timeliness of a company's disclosures and its cooperation with the Department, separate from any such disclosures and cooperation with other relevant enforcement authorities.

This provision does not prevent Department attorneys from considering additional remedies in appropriate circumstances, such as where those remedies are designed to recover the government's money lost due to the misconduct or to provide restitution to victims.