
The Department of Justice's Corporate Enforcement Policy

How the DOJ's new self-disclosure policy
makes early and accurate risk identification
a commercial advantage

The DOJ's CEP rewards companies that self-disclose misconduct

The U.S. Department of Justice (DOJ) has announced the Revised Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP), outlining the clear cost benefits of self-disclosing misconduct. In what has been labeled the “most transparent and streamlined” version of this policy, the DOJ has set out a three-path framework for corporate criminal resolutions.

The three routes to resolution

1. Declination

Declination, in this case, refers to a decision by a prosecuting authority to not pursue legal action against a person or entity, despite evidence of a violation. Companies that voluntarily self-disclose misconduct to the DOJ may receive a declination if they fully cooperate with investigations, produce a timely and appropriate remediation, and have engaged in no egregious misconduct.

2. “Near miss” voluntary self-disclosures or aggravating factors warranting resolutions

Where a company voluntarily self-discloses misconduct, cooperates, remediates, and has engaged in no egregious misconduct, it may not qualify for declination if the self-disclosure is not considered a voluntary “good faith” self-disclosure. This would include instances where the company had previous knowledge of the misconduct or had aggravating factors that warranted a criminal resolution. Where a self-disclosure is not considered to be in “good faith,” the company will:

- Receive a Non-Prosecution Agreement with a term of fewer than three years
- Receive no independent compliance monitor
- Pay a fine that is 75% below the low end of the sentencing guidelines range

3. Resolution in other cases

Companies that voluntarily self-disclose but fail to self-report in good faith, do not cooperate with investigations, or engage in egregious aggravation factors can still meet resolution. In this circumstance, the DOJ will recommend up to 50% off the sentencing guidelines calculation.

The cost benefits of self-disclosure

The DOJ's latest changes to the CEP favor companies that can detect misconduct at inception and quickly disclose findings of misconduct to the regulator. To reap the cost benefits of these changes, companies should review their compliance and monitoring infrastructures to ensure they're enabling the real-time detection of misconduct. Proactive disclosure to a U.S. regulator is a very different approach to what we have seen pharmaceutical legal advisers adopt in the past. This directive may result in a sea-change approach by legal counsel in how they manage risk identification, investigation, and reporting, expediting the process to inform the regulator before they find out themselves.

In July 2020, Taro Pharmaceuticals U.S.A. admitted to conspiring with competitors to fix prices, rig bids, and allocate customers for generic drugs, including clotrimazole. Individual executives from Taro communicated with rival pharmaceutical companies to coordinate pricing and market allocation from 2013 to 2015. Taro entered a Deferred Prosecution Agreement with the DOJ and paid \$205.7 million. The case was part of a broader investigation where seven companies paid over \$681 million in penalties.

Under the DOJ's new framework, AI-enabled communications monitoring would have allowed these companies to detect the misconduct as it happened, empowering them to self-report to the regulator and avoid millions of dollars in fines. As well as meeting regulatory expectations, this proactive approach to compliance reduces financial and reputational risks associated with undetected misconduct. **If Global Relay's solution had been adopted, the case could have looked very different.**

Diagram 1 The Department of Justice's three-path approach to resolution

Key

- Part I Declination Path
- Part II Path
- Part III Path

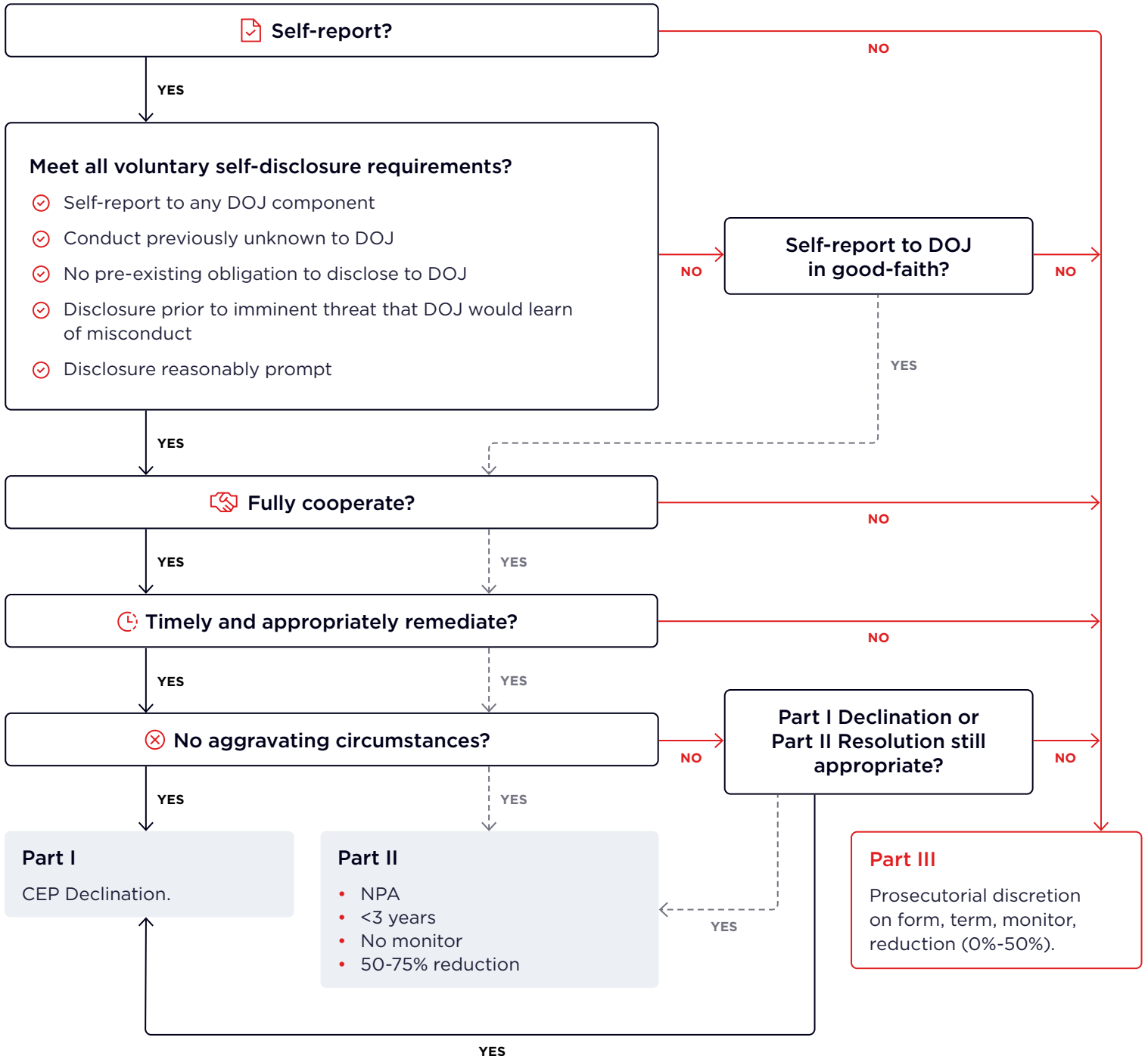
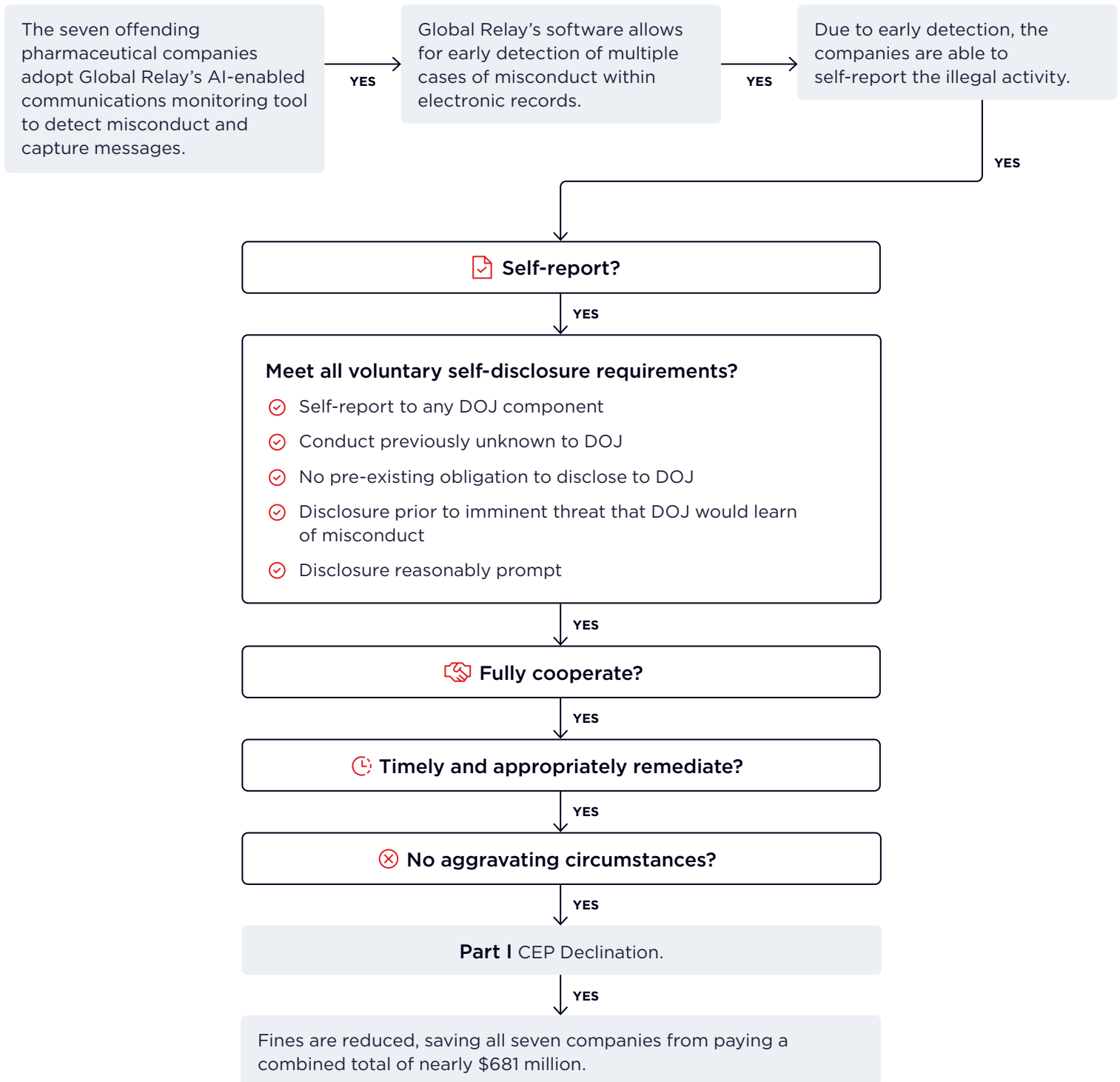


Diagram 2 The difference Global Relay's solution can make

Key
 Part I Declination Path (Global Relay Solution)



Using the DOJ's CEP as a case for surveillance ROI

This revised CEP emphasizes the need for early detection, timely reporting, and robust remediation to mitigate enforcement risk, including hefty financial penalties. With U.S. regulators issuing billions of dollars in fines for recordkeeping failures, this revised policy makes clear the return on investment (ROI) for communications monitoring and compliance tools.

Why investing in Global Relay's solution puts your company at a commercial advantage

Global Relay's communications monitoring solution uses large language models (LLMs) to identify misconduct in business communications in real time. In leveraging AI to identify risks and reduce false positives, the time required to qualify what is a real risk becomes greatly reduced. This, therefore, becomes a critical requirement to manage reduced regulatory sanctions.

Our end-to-end solution rapidly alerts compliance teams in the event of criminal activity, such as antitrust violations and healthcare fraud. This allows companies to analyze illegal activity well before external exposure and escalation.

If misconduct is detected, this gives companies an advantage in their ability to quickly self-report and thereby qualify for declination.

Staying one step ahead is critical for companies as the DOJ is seemingly looking to support early resolution and prevent regulatory violations from escalating. That said, it's up to the company to cooperate and detect.

Find out more about Global Relay's communications monitoring solution.



Integrity | Reputation | Control

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