

110TH CONGRESS
2D SESSION

H. R. 6492

To regulate certain deferred prosecution agreements and nonprosecution agreements in Federal criminal cases.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2008

Mr. PASCRELL (for himself, Mr. PALLONE, Ms. LINDA T. SÁNCHEZ of California, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To regulate certain deferred prosecution agreements and nonprosecution agreements in Federal criminal cases.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Accountability in De-
5 ferred Prosecution Act of 2008”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “deferred prosecution agreement”
9 means an agreement between a Federal prosecutor
10 and an organization to conditionally defer prosecu-

1 tion of that organization in a criminal case in which
2 charges are filed;

3 (2) the term “nonprosecution agreement”
4 means an agreement between a Federal prosecutor
5 and an organization to conditionally decide not to
6 file criminal charges against the organization;

7 (3) the term “organization” means a person or
8 entity other than an individual; and

9 (4) the term “independent monitor” means a
10 person or entity outside the Department of Justice
11 that is selected to oversee the implementation of a
12 deferred prosecution agreement or nonprosecution
13 agreement.

14 **SEC. 3. LEGAL EQUIVALENCE OF NONPROSECUTION**
15 **AGREEMENT AND DEFERRED PROSECUTION**
16 **AGREEMENT.**

17 A nonprosecution agreement shall be subject to all
18 the requirements this Act and other law imposes on de-
19 ferred prosecution agreements.

20 **SEC. 4. ADMINISTRATIVE GUIDELINES ON AGREEMENTS.**

21 (a) IN GENERAL.—In order to promote uniformity
22 and to assist prosecutors and organizations as they nego-
23 tiate and implement deferred prosecution agreements and
24 nonprosecution agreements, the Attorney General shall,
25 not later than 90 days after the date of the enactment

1 of this Act, issue public written guidelines for deferred
2 prosecution agreements and nonprosecution agreements.

3 (b) MATTERS GUIDELINES TO COVER.—The guide-
4 lines issued under this section shall provide direction in
5 the following areas:

6 (1) The circumstances in which an independent
7 monitor is warranted for the agreement, the duties
8 and authority of such a monitor, and to whom the
9 monitor owes those duties.

10 (2) What terms and conditions are appropriate
11 in the agreement, including when, whether, and the
12 degree to which Federal prosecutors should seek
13 monetary penalties, restitution, civil settlements, and
14 post-monitoring conditions.

15 (3) Whether the agreement should include some
16 or all of the requirements of section 8B2.1 of the
17 United States Sentencing Guidelines for compliance
18 and ethics programs.

19 (4) The process by which the Department of
20 Justice decides that the organization has success-
21 fully satisfied the terms of the agreement.

22 (5) The manner and method for determining a
23 breach of the agreement.

24 (6) The extent of joint involvement of regu-
25 latory agencies in connection with the agreement

1 and the division of responsibilities with those agen-
2 cies.

3 (7) The period during which the agreement
4 should remain in effect.

5 (8) What constitutes the cooperation, if any, re-
6 quired by the agreement from the organization and
7 its employees with respect to any ongoing criminal
8 investigations, including the length of the obligation
9 to cooperate.

10 (9) When and why it would be appropriate for
11 Federal prosecutors to enter into a nonprosecution
12 agreement rather than a deferred prosecution agree-
13 ment.

14 **SEC. 5. SELECTION AND COMPENSATION OF INDEPENDENT**
15 **MONITORS OF AGREEMENTS.**

16 (a) **RULES FOR SELECTION OF MONITORS.**—The At-
17 torney General shall establish rules for the selection of
18 independent monitors in connection with deferred prosecu-
19 tion agreements.

20 (b) **NATIONAL LIST OF POSSIBLE MONITORS.**—Such
21 rules shall provide for the creation of a national list of
22 organizations and individuals who have the expertise and
23 specialized skills necessary to serve as independent mon-
24 itors. The Attorney General shall place the list on the pub-
25 lic website of the Department of Justice.

1 (c) OPEN SELECTION PROCESS.—Such rules shall
2 also provide for an open, public, and competitive process
3 for the selection of such monitors. The Department of
4 Justice shall, subject to the approval of the court, appoint
5 the independent monitor from the national list created
6 under this section.

7 (d) COMPENSATION.—The Attorney General shall es-
8 tablish a fee schedule for the compensation of independent
9 monitors and their support staff, and place that fee sched-
10 ule on the public website of the Department of Justice.
11 Before a deferred prosecution agreement that entails mon-
12 itoring is entered into, this schedule shall also be provided
13 to each organization that is to be monitored pursuant to
14 that agreement.

15 **SEC. 6. RESTRICTIONS RELATING TO AGREEMENTS.**

16 (a) PAYMENTS TO UNRELATED THIRD PARTIES.—
17 A deferred prosecution agreement shall not require an or-
18 ganization to pay money to a third party, other than a
19 monitor or the monitor’s staff, if the payment is unrelated
20 to the harm caused by the defendant’s conduct that is the
21 basis for the agreement.

22 (b) IMPARTIALITY IN SELECTION OF INDEPENDENT
23 MONITORS.—Attorneys who are or might participate in
24 the prosecution of the case against an organization to be
25 monitored shall have no role in the selection of the inde-

1 pendent monitor, other than suggesting qualifications for
2 the monitor.

3 (c) TREATMENT OF VIOLATIONS AS CONFLICTS OF
4 INTEREST.—The Attorney General shall take appropriate
5 steps to treat a violation of this section as a conflict of
6 interest and to remedy any such conflicts of interest.

7 **SEC. 7. JUDICIAL OVERSIGHT OF AGREEMENTS.**

8 (a) COURT APPROVAL OF AGREEMENT.—The Gov-
9 ernment shall file each deferred prosecution agreement in
10 an appropriate United States district court. The court
11 shall approve the agreement if the court determines the
12 agreement is consistent with the guidelines for such agree-
13 ments and is in the interests of justice. The agreement
14 shall take effect on the approval of the court.

15 (b) QUARTERLY REPORTS.—Each party to the agree-
16 ment and any independent monitor required under the
17 agreement shall submit to the court in which the agree-
18 ment is filed quarterly reports on the progress made to-
19 ward the completion of the agreement, and describing any
20 concern the filer has about the implementation of the
21 agreement. In the final quarterly report, the independent
22 monitor shall include a full and itemized statement of the
23 work done and the compensation earned for that work.

24 (c) COURT REVIEW.—The court shall, on motion of
25 any party or the independent monitor if there is one, re-

1 view the implementation or termination of the agreement,
2 and take any appropriate action, to assure that the imple-
3 mentation or termination is consistent with the interests
4 of justice.

5 **SEC. 8. PUBLIC DISCLOSURE RELATING TO DEFERRED**
6 **PROSECUTION AGREEMENTS.**

7 (a) **DISCLOSURE ON DEPARTMENT OF JUSTICE**
8 **WEBSITE.**—Upon the taking effect of a deferred prosecu-
9 tion agreement, the Attorney General shall place the text
10 of the agreement on the public website of the Department
11 of Justice, together with all the terms and conditions of
12 any agreement or understanding between an independent
13 monitor appointed pursuant to that agreement and the or-
14 ganization monitored.

15 (b) **EXCEPTIONS APPROVED BY COURT.**—Subject to
16 the limitation in subsection (c), the court may, upon peti-
17 tion of any interested party, approve an exception to the
18 requirements of this section for good cause shown. Good
19 cause includes that the information proposed to be ex-
20 cepted from the requirements is proprietary, confidential,
21 or a trade secret.

22 (c) **MINIMUM DISCLOSURE.**—The court may not ap-
23 prove an exception from the requirements of this section
24 for the fact that the deferred prosecution agreement has
25 been filed with the court, the name of the organization

- 1 to which it pertains, or the identity and financial terms
- 2 agreed upon with respect to any independent monitor cho-
- 3 sen in connection with the agreement.

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