

110TH CONGRESS
2D SESSION

H. R. 5086

To require the Attorney General to issue guidelines delineating when to enter into deferred prosecution agreements, to require judicial sanction of deferred prosecution agreements, and to provide for Federal monitors to oversee deferred prosecution agreements.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 2008

Mr. PALLONE introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To require the Attorney General to issue guidelines delineating when to enter into deferred prosecution agreements, to require judicial sanction of deferred prosecution agreements, and to provide for Federal monitors to oversee deferred prosecution agreements.

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. DEFERRED PROSECUTION AGREEMENT GUIDE-**
4 **LINES.**

5 (a) IN GENERAL.—The Attorney General shall issue
6 guidelines delineating when United States attorneys
7 should enter into deferred prosecution agreements, includ-

1 ing appropriate factors for United States attorneys to con-
2 sider in determining whether to enter such agreements as
3 described in subsection (b).

4 (b) APPROPRIATE FACTORS FOR CONSIDERATION.—

5 Appropriate factors for consideration in the determination
6 of whether to enter into a deferred prosecution agreement
7 include—

8 (1) the potential harm of entering into a de-
9 ferred prosecution agreement to employees, share-
10 holders, and other stakeholders of the corporation
11 that is to enter into the deferred prosecution agree-
12 ment who are not potential parties to litigation rel-
13 ative to the corporate wrongdoing;

14 (2) the degree of cooperation by a corporation
15 that is to enter into a deferred prosecution agree-
16 ment with investigators including the corporation's
17 willingness to provide documents and make available
18 for questioning employees, officers, and directors of
19 the corporation;

20 (3) remedial action taken by the corporation
21 that is to enter into a deferred prosecution agree-
22 ment in response to wrongdoing such as internal in-
23 vestigation, dismissal of employees, acknowledgment
24 of wrongdoing, payment of restitution, and other
25 structural, management, and policy changes;

1 (4) availability of criminal charges against spe-
2 cific employees who may have engaged in illegal acts
3 relative to the corporate wrongdoing; and

4 (5) availability of sufficient alternative punish-
5 ments or remedial actions pursuant to a deferred
6 prosecution agreement.

7 **SEC. 2. JUDICIAL APPROVAL OF DEFERRED PROSECUTION**
8 **AGREEMENTS.**

9 (a) IN GENERAL.—A deferred prosecution agreement
10 shall be approved by a United States district court judge
11 or a United States magistrate judge in the United States
12 district court where criminal charges would be prosecuted
13 by a United States attorney.

14 (b) SUBMISSION OF DEFERRED PROSECUTION
15 AGREEMENT.—A deferred prosecution agreement shall be
16 submitted to the appropriate United States district court
17 where criminal charges would be prosecuted by a United
18 States attorney to receive judicial sanction.

19 (c) JUDICIAL REVIEW AND SANCTION.—A United
20 States district court judge or a United States magistrate
21 judge shall review the terms of a deferred prosecution
22 agreement to ensure that the agreement comports with
23 public interest and all applicable laws and legal precedent
24 before authorizing the deferred prosecution agreement to
25 be entered into by the parties.

1 **SEC. 3. FEDERAL MONITORS.**

2 (a) IN GENERAL.—A Federal monitor shall oversee
3 a deferred prosecution agreement.

4 (b) APPOINTMENT OF FEDERAL MONITORS.—A Fed-
5 eral monitor shall be appointed by an independent third
6 party (a United States district court judge or a United
7 States magistrate judge) from a pool of pre-qualified firms
8 or individuals (or both).

9 (c) QUALIFICATIONS OF FEDERAL MONITORS.—A
10 Federal monitor shall have experience in criminal and civil
11 litigation.

12 (d) PAYMENT OF FEDERAL MONITORS.—A Federal
13 monitor shall be paid according to a pre-determined fee
14 schedule set by the United States district court.

15 (e) REPORT REQUIREMENT IN DEFERRED PROSECU-
16 TION AGREEMENT.—

17 (1) A deferred prosecution agreement shall in-
18 clude a requirement that a Federal monitor submit
19 reports to the United States attorney and to the
20 United States district court.

21 (2) A deferred prosecution agreement shall in-
22 clude the number and frequency of reports required
23 by a Federal monitor.

1 **SEC. 4. BREACH OF DEFERRED PROSECUTION AGREE-**
2 **MENTS.**

3 Upon request from a United States attorney, the pre-
4 siding judge in the district court where a deferred prosecu-
5 tion agreement was approved shall determine if the de-
6 ferred prosecution agreement has been breached.

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