

DOJ's Criminal Division Turns a "New Page" on White Collar & Corporate Enforcement and Announces Changes in Self-Reporting, Monitorships, and Whistleblowers

by Nicole Engisch, Caitlin L.D. Hull, and Annie Boeckers

The Criminal Division at the Department of Justice ("DOJ") has announced that it is "turning a new page" on white-collar and corporate enforcement with an increased focus on "fairness" and "efficiency." In recent policy revisions, the DOJ takes what it suggests is a more business-friendly approach to corporate investigations by incentivizing voluntary self-disclosure, narrowing the role of corporate monitorships, and expanding the whistleblower pilot program.

On May 12, 2025, Matthew R. Galeotti, the newly-appointed Head of the Criminal Division at the Department of Justice ("Division"), spoke at the Securities Industry and Financial Markets Association's ("SIFMA") Anti-Money Laundering and Financial Crimes Conference and outlined a new white collar enforcement plan. The Division is, as Mr. Galeotti stated, "laser-focused" on what it considers the most urgent white-collar threats to America: (1) perpetrating fraud against Americans; (2) exploiting public benefits programs and government agencies through waste, fraud, and abuse; and (3) cartels, hostile nation states, and terrorists exploiting America's financial system. Going forward, Mr. Galeotti says the DOJ will prosecute these crimes with "focus, fairness, and efficiency."

Here's what companies and organizations need to know:

1. Reiterating Focus, Fairness, and Efficiency in Prosecuting White Collar Crime

First, the DOJ released a Memorandum on Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime ("White-Collar Memorandum") on May 12, 2025, which reiterates many of the same themes reflected in Mr. Galeotti's remarks at the SIFMA Conference. The White-Collar Memorandum acknowledges that "[w]hite-collar crime [] poses a significant threat to U.S. interests," with particular attention drawn to "[r]ampant health care fraud and program procurement fraud drain our country's limited resources,"

Related People

- Nicole Engisch
- Caitlin L.D. Hull
- Annie Boeckers

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including fraud in Medicare and Medicaid, among other government programs. Nonetheless, the White-Collar Memorandum expresses concern about “overbroad and unchecked corporate and white-collar enforcement [that] burdens U.S. businesses.” To “avoid overreach that punishes risk-taking and hinders innovation,” the White-Collar Memorandum thus instructs prosecutors to be “guided by three core tenets: (1) focus; (2) fairness; and (3) efficiency.”

With respect to “focus,” the White-Collar Memorandum states that the Division should “prioritize investigating and prosecuting corporate crime in areas that will have the greatest impact in protecting American citizens and companies and promoting U.S. interests.” Specifically, the White-Collar Memorandum suggests that the Division will prioritize white-collar crime in ten areas: (1) waste, fraud, and abuse, including health care fraud and federal program and procurement fraud; (2) trade and customs fraud; (3) fraud perpetrated through variable interest entities (“VIEs”); (4) fraud that victimizes U.S. investors, including elder fraud and fraud that threatens the health and safety of consumers; (5) transactions by cartels, transnational criminal organizations (“TCOs”), hostile nation-states, or foreign terrorist organizations; (6) corporations that provide support to foreign terrorist organizations; (7) complex money laundering; (8) violations of the Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act (“FDCA”), including unlawful manufacturing and distribution of chemicals and equipment used in connection with unlawful opioid distribution; (9) bribery and money laundering that impact U.S. national interests; and (10) willful use of digital assets to further criminal conduct or victimize investors and consumers. Of note, the health care industry and financial institutions are specifically identified as high-impact areas of focus for prioritized white-collar investigations and prosecutions.

The White-Collar Memorandum next focuses on “fairness” in prosecuting corporations and individuals, underscoring that DOJ’s “first priority is to prosecute individual criminals.” To that end, the White-Collar Memorandum states that “[n]ot all corporate misconduct warrants federal criminal prosecution,” and indicates that “[p]rosecution of individuals, as well as civil and administrative remedies directed at corporations, are often appropriate to address low-level corporate misconduct and vindicate U.S. interests.”

Finally, the White-Collar Memorandum emphasizes “efficiency” and the need to “streamlin[e] corporate investigations.” Mr. Galeotti acknowledged that corporate investigations have historically been costly and lengthy, and that they “can unduly interfere with day-to-day business operations.” As such, the White-Collar Memorandum instructs prosecutors to conduct efficient investigations and expeditiously make charging decisions, and to impose compliance monitor programs only “when they are necessary.”

Alongside DOJ’s other new and revised white-collar policies, as further summarized below, companies can look at the White-Collar Memorandum as the guiding framework for DOJ’s current white-collar enforcement priorities.

2. Self-Reporting under the Corporate Enforcement and Voluntary

Self-Disclosure Policy

In addition, the DOJ released revisions to its Corporate Enforcement and Voluntary Self-Disclosure Policy (“CEP”), which applies to all corporate criminal matters handled by the Division. The newly-implemented changes to the CEP incentivize both voluntary self-disclosure and full cooperation with the Division and make clear the benefits for doing so. Under the CEP, companies that meet the Division’s core requirements, by providing voluntary self-disclosure, full cooperation, timely and appropriate remediation, and with no aggravating circumstances, will not be required to enter into a criminal resolution. Further, and most notably, the new CEP guidelines ensure companies that meet the core requirements *will* receive a declination of prosecution, rather than a *presumption* against prosecution as the prior policy provided.

Additionally, the revised guidelines introduce a new framework for evaluating cases where: (1) a company has self-disclosed misconduct, but the disclosure does not qualify as a voluntary self-disclosure; and (2) a company has self-disclosed misconduct, but there are existing aggravating factors. In those instances, the CEP provides that the company may still qualify for a Non-Prosecution Agreement (“NPA”), a 75% reduction in criminal fines, and no implemented monitorship if they meet the Division’s other core requirements (e.g., full cooperation and timely remediation). And even if companies do not self-disclose or meet the Divisions’ other core requirements, prosecutors will have discretion to recommend a resolution of any form, with a three-year term, monitor and up to 50% reduction in criminal fines. Mr. Galeotti stated that the new guidance, including the easy-to-follow flow-chart, puts an end to the “guessing game” he contends companies previously faced when deciding whether to self-report instances of fraud or other misconduct. He compared the previous CEP guidelines to a faulty “carrot and stick” dilemma, in which companies assumed the DOJ would be “quick and heavy handed” with the stick and “stingy” with the carrot.

Given DOJ’s emphasis on the “carrot”-based incentives for cooperation, companies should consider proactively reviewing and assessing their internal compliance programs, including their ability to conduct a prompt and efficient internal investigation of any misconduct allegations. Companies should also be prepared to fully cooperate with the DOJ during the investigative or prosecutorial phases of a DOJ matter. The DOJ has indicated that it will likewise cooperate with companies to target any alleged individual wrongdoers. Indeed, Mr. Galeotti noted, “[w]e want to hear from you and we want your companies to hear from you. Now is the time to report, remediate, and strengthen compliance to ensure American prosperity.”

3. A Revised Approach to Corporate Monitorships

Along with revising the CEP, on May 12, 2025, the DOJ issued a Memorandum on Selection of Monitors in Criminal Division Matters (“Monitorship Memorandum”) revising its monitorship policy. The Monitorship Memorandum aims to (1) clarify the factors prosecutors must consider when determining whether a monitorship is appropriate, and (2) ensure prosecutors appropriately tailor and scope any necessary monitorships. Mr.

Galeotti and the Division assert that without appropriate oversight, monitorships can create an adversarial relationship between monitors and companies, impose significant expense, and unduly interfere with business. The changes seek to lessen the burden on American businesses and encourage companies to make self-directed improvements to solve problems internally.

The Monitorship Memorandum acknowledges that in limited circumstances monitorships may be necessary. When implementing a monitorship, prosecutors must consider the following four factors: (1) the nature and seriousness of the conduct and the risk of recurrence, (2) the availability of other effective independent government oversight (*i.e.*, regulatory oversight), (3) the efficacy of the company's compliance program and culture of compliance, and (4) the maturity of the company's controls and ability of the company to test and update its compliance program.

Here, too, is another opportunity for companies to proactively review and assess their internal compliance programs. Companies should be prepared to demonstrate that their compliance programs are not on paper only but that they are effective in practice and known and accessible throughout the company. In particular, companies should assess their programs' convenience from a two-way perspective: for those responsible for monitoring, investigating, and enforcing company policies, and for those reporting any alleged misconduct. The program must function, and function well, within all levels of the organization. Further, while the Monitorship Memorandum does not otherwise define a "culture of compliance," companies may choose to proactively run a risk analysis to determine the volume of compliance reports received within a defined time-period, whether the compliance reports are particularly concentrated in any given compliance area, the extent of employees' knowledge of how to report a concern, employees' appetite for reporting concerns, and whether there are opportunities for the company to improve its trainings or processes.

4. Expanding the Whistleblower Awards Pilot Program

Also on May 12, 2025, the DOJ expanded the scope of the Corporate Whistleblower Awards Pilot Program ("Whistleblower Program") to include the following categories of misconduct: (1) government program fraud, (2) trade, tariff, and customs fraud, (3) federal immigration law, (4) sanctions offenses, material support of terrorism, or cartels and transnational criminal organizations, and (5) money laundering and narcotics trafficking. The revisions to the Whistleblower Program did not change the requirement that, to be eligible for a monetary award, whistleblowers must provide original information about criminal misconduct that leads to criminal or civil forfeiture exceeding \$1,000,000 in net proceeds.

Companies with risk exposure to any of these new, additional categories (government program fraud, trade, tariff, customs, immigration, sanctions, etc.) should actively monitor guidance from the White House, applicable agencies, and the courts to ensure the organization is either (1) in compliance, or (2) taking steps to become compliant with current legal and regulatory requirements. Organizations may also consider performing retroactive analysis to understand the organization's risk exposure and to get ahead of

any potential government investigation.

Take-Aways

The new DOJ policy changes indicate that the DOJ is attempting to increase incentives for whistleblowers and companies alike by: (1) encouraging whistleblower engagement and channeling their efforts towards conduct the Administration is currently affording prioritized focus, and (2) incentivizing and rewarding companies that fully disclose to, and fully cooperate with, the DOJ regarding any investigations or prosecutions of wrongdoing. The DOJ *is*, however, indicating its intent to deploy a “quick and heavy handed” stick against any misconduct that, within its purview, poses the greatest risks to national and economic security. Affected companies should act now to understand these new guidelines and assess their internal compliance programs and protocols to both minimize internal disruption and maximize their ability to advocate for themselves in the event of DOJ enforcement.