CLIENT ALERTS & INSIGHTS

Compliance and Self-Disclosure of Misconduct Must be Top Priorities for Corporate Organizations, According to New Guidance from the Department of Justice

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Key Takeaways Corporations must continue to devote appropriate resources to compliance efforts. The new memorandum emphasizes and increases the importance of self-disclosure as part of the corporate criminal process. The Justice Department has revised the Corporate Enforcement Policy to more clearly articulate when a self-disclosure will lead to a declination, and it announced that a "near-miss" self-disclosure - a disclosure that does not meet all of the requirements - will still, in most cases, be subject to a 3-year non-prosecution agreement. Corporations with effective compliance programs will be in the best position to detect potentially wrongful conduct and, where appropriate, disclose and receive a declination. Corporate compliance programs must expand to include the Trump Administration's new enforcement priorities. The Criminal Division's Corporate Whistleblower Awards Pilot Program will continue under the new administration, but new subject areas will now be subject to a monetary award under the new program. These subject areas include violations of immigration law, procurement fraud, money laundering, corporate sanctions, and tariff and customs fraud. Individual accountability for criminal conduct is the Justice Department's top priority Employees, executives, and other individuals within an organization who commit crimes will be the top enforcement priority for the Criminal Division. Robust training and controls to prevent and detect potential wrongdoing will be important for corporations to avoid prosecution of the corporation and its officers and employees.

On May 12, 2025, Assistant Attorney General Matthew R. Galeotti, head of the U.S. Department of Justice's Criminal Division, issued a new policy memorandum entitled "*Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime*." The new policy outlines certain changes in enforcement priorities, but other areas of emphasis will be familiar to compliance officers and legal departments, including the importance of self-disclosure and prosecution of individual wrongdoers.

The Memo emphasizes three foundational principles that will form the basis of DOJ enforcement over the next four years: focus on high-impact threats, fairness in the treatment of both individuals and corporations, and efficiency in investigative practices. It signals the DOJ's intent to pursue more targeted and streamlined enforcement while encouraging good corporate citizenship and reducing unnecessary burdens on legitimate businesses.

According to the Memo, the DOJ will concentrate its enforcement resources on white-collar offenses that present the greatest risk to U.S. interests.[1] This includes fraud against federally funded programs such as Medicare, Medicaid, and defense contracts, as well as trade and customs

violations, particularly those involving tariff evasion. Investor fraud and market manipulation-especially misconduct tied to Chinese-linked Variable Interest Entities (VIEs)-will receive increased attention, as will digital asset-related offenses that harm consumers or facilitate broader criminal conduct. Sanctions evasion and financial transactions that support cartels, terrorist organizations, or hostile nation-states are now central enforcement targets, along with complex money laundering schemes involving the drug trade and foreign actors. Corporate conduct that undermines U.S. national security through bribery or corruption also falls within the priority scope. This last area of focus is particularly noteworthy in light of Executive Order 14209, which temporarily paused enforcement of the Foreign Corrupt Practices Act. Although many had speculated that the Executive Order would end FCPA enforcement during President Trump's term, the Memo suggests that the focus of FCPA enforcement will shift to prosecuting corruption that harms U.S. national interests.

Continued Emphasis on Compliance and Self-Disclosure

Importantly for corporations, the DOJ has reiterated and expanded its commitment to incentivizing self-disclosure and cooperation. In addition to the Memo, the DOJ on May 12 announced revisions to the Criminal Division's Corporate Enforcement and Voluntary Self-Disclosure Policy ("CEP"). Companies that voluntarily report misconduct, cooperate fully with investigations, and undertake meaningful remediation may receive substantial benefits, including reduced penalties, shorter settlement terms, and, in many cases, declinations. The Criminal Division will decline to prosecute a company for criminal conduct when it:

- Voluntarily self-disclosed misconduct to the Criminal Division
- Fully cooperated with the Criminal Division's investigation
- Timely and appropriately remediated the misconduct
- There are no aggravating circumstances, which include the nature or seriousness of the offense, severity of harm caused by the misconduct, or a criminal adjudication or resolution within the last five years based on the same misconduct.

Even if companies have aggravating circumstances, prosecutors must consider additional factors in determining if they should charge the company. These include whether the company reported the conduct, its willingness to cooperate, and any remedial action already taken. If those are present, the company may receive a non-prosecution agreement.

Prosecutors are also being instructed to regularly reassess existing corporate resolutions and may terminate them early when companies have demonstrated compliance, lowered risk profiles, and sustained internal reforms.

The policy clarifies that not all corporate misconduct requires criminal charges. For the first time, the CEP has introduced a new concept of a "near-miss" self-disclosure, which is a self-disclosure that nearly, but does not entirely, meets the definition of a self-disclosure under the CEP. In a "near-miss" scenario, if the company has self-disclosed in good faith, cooperated, and remediated the misconduct, in most circumstances the government will resolve the matter with a

non-prosecution agreement in duration of three years or less, no monitor, and a 75% reduction off the low-end of the sentencing guidelines.

In other instances, prosecutors are expected to evaluate a company's actions holistically, taking into account whether the conduct was self-reported, the company's response, the level of senior management involvement, and whether the company has implemented effective compliance controls. The DOJ intends to provide more transparency and consistency around these evaluations, and corporate resolutions-whether in the form of guilty pleas, deferred prosecution agreements, or non-prosecution agreements-should generally be limited to three years, except in rare and extraordinary circumstances.

To reduce unnecessary burdens on compliant businesses, the DOJ is taking steps to streamline investigations and eliminate prolonged uncertainty. Prosecutors are now required to move swiftly in their charging decisions and avoid allowing cases to remain open without progress. Internal systems are being implemented to track and close investigations in a timely and disciplined manner. In addition, the DOJ will limit the use of independent compliance monitors to situations where they are clearly necessary. When a monitor is imposed, the scope of the mandate must be narrowly tailored to address the specific risks involved and avoid unnecessary disruption or cost to the business.

Expansion of the Corporate Whistleblower Pilot Program

The DOJ is also expanding the Corporate Whistleblower Awards Pilot Program (the "Whistleblower Program") by adding categories of misconduct for which tips are eligible for monetary awards if they result in forfeiture. The Plan instructs prosecutors to seize assets, particularly those related to culpable conduct from senior-level personnel, and use those assets to compensate victims. Now, Section II.3 of the Whistleblower Program includes violations by corporations related to:

- International cartels and transnational criminal organizations, including money laundering, narcotics, and other violations
- Federal immigration law
- Material support of terrorism
- Corporate sanctions offenses
- Trade, tariff, and customs fraud
- Corporate procurement fraud

This aligns with the Trump Administration's messaging about its policy and enforcement priorities. Non-US companies could face heightened scrutiny and criminal investigations into conduct that was not previously considered a significant enforcement risk. We also anticipate a surge of whistleblower complaints related to these areas that were not previously included in the Whistleblower Program.

Under the new policy guidance, compliance continues to occupy center stage in corporate criminal investigations. Organizations that detect and self-disclose criminal wrongdoing will presumptively receive a declination and, in most other circumstances, a non-prosecution agreement. We recommend that business units take the time to review their current compliance procedures and

reporting protocols. Companies should be prepared for timely engagement with enforcement authorities if necessary and have a clear focus on transparency, cooperation, and remediation.

[1] Specifically, the Memo listed ten subject areas that will receive priority in investigation and prosecution:

- Fraud and abuse in government programs
- Trade and customs fraud, including circumventing tariffs;
- Fraud perpetrated through variable interest entities, particularly Chinese-affiliated companies;
- Fraud that victimizes American individuals and markets;
- Conduct that threatens national security and the US financial system;
- Material support to foreign terrorist organizations, cartels, and other transnational criminal organizations;
- Complex money laundering, particularly by Chinese organizations;
- Violations of the Controlled Substances Act and the Food, Drug and Cosmetics Act, particularly violations used to create counterfeit pills and distribution of opioids;
- Bribery and money laundering, particularly those that harm the competitiveness of US businesses;
- Crimes involving digital assets including cartels, transnational criminal organizations, “hostile” nation-states, and foreign terrorist organizations.

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