

# New Department of Justice Memo to Increase Prosecutions of White Collar Executives and Other Employees

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New policy changes

implemented by the Department of Justice have potentially significant implications for companies and individuals facing DOJ investigations. The new policy may create additional obstacles for companies attempting to resolve cases with the DOJ. It places increased pressure on companies to develop and present evidence of wrongdoing by senior executives and other employees in order to get credit for cooperation. The new policy also puts additional pressure on prosecutors to charge individuals and thereby increase the exposure of senior corporate executives to government scrutiny. The key policy changes outlined in the [DOJ memo](#) are as follows:

1. To be eligible for any cooperation credit, corporations must provide to the Department all relevant facts about the individuals involved in corporate misconduct. This is the most significant aspect of the new policy for corporations and their attorneys.

2. Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation. Prosecutors are instructed to prioritize cases against individuals early on in an investigation.
3. Criminal and civil attorneys handling corporate investigations should be in routine communication with one another. Civil and criminal attorneys are to communicate early on in an investigation and should discuss civil referrals when a prosecutor decides not to pursue a criminal case due to challenges in showing criminal intent or otherwise meeting burdens of proof.
4. Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals. Under the new policy, DOJ attorneys may not agree to a corporate resolution that includes an agreement to dismiss charges against, or immunity for, individual officers or employees.
5. Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires and declinations as to individuals in such cases must be memorialized.
6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether it brings suit against an individual based on considerations beyond that individual's ability to pay.

Implications of the new policy:

- This policy incentivizes corporations to provide the government with information about individuals who engage in misconduct and reinforces that corporations and their boards must carry out thorough investigations when they become aware of misconduct and especially when the misconduct rises into the ranks of management.
- The new DOJ policy requires a clear plan to resolve related individual cases before the statute of limitations expires and declinations as to individuals in such cases must be memorialized. This appears to be a clear message that individual prosecutions are now a priority and that corporate prosecutions may no longer be the primary focus of the DOJ but prosecutions against individuals may be.

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