

DOJ: Companies, Serve Up Your Executives!

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On September 9, 2015, the Department of Justice (“DOJ”) issued an internal memorandum regarding individual accountability for corporate wrongdoing. The memo, authored by Deputy Attorney General Sally Quillian Yates, is aimed at leveraging DOJ “resources to identify culpable individuals at all levels in corporate cases.” The memo is the product of a working group of senior DOJ attorneys in response to criticism of the DOJ in the wake of the financial crisis that, despite record-setting fines and even guilty pleas from corporate entities, there was a dearth of prosecutions against individual employees for the crimes committed by their financial institution employers. The memo is the first major policy announcement by Attorney General Loretta Lynch, who took office in April. The memo enumerates six key steps “to strengthen [the DOJ’s] pursuit of individual corporate wrongdoing”:

1. To qualify for any cooperation credit, corporations must provide the DOJ all relevant facts relating to the individuals responsible for the misconduct;
2. Criminal and civil corporate investigations should focus on individuals from the inception of the investigation;
3. Criminal and civil attorneys handling corporate investigations should be in routine communication with one another;
4. Absent extraordinary circumstances or approved DOJ policy, the DOJ will not release individuals from civil or criminal liability when resolving a matter with a corporation;
5. DOJ attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases; and
6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual’s ability to pay.

Because corporations already face significant pressure to identify wrongdoing in order to earn cooperation credit, the extent to which the new policy will impact companies cooperating with DOJ investigations remains to be seen. At a minimum, the new policies may draw out the process of reaching a corporate resolution given that building cases against individuals, who are more likely to go to trial than corporations, often takes significantly longer. Further, the focus on individual prosecutions could have significant financial consequences for corporations with indemnification obligations to current and former employees under investigation.

For the DOJ memo in its entirety, click [here](#).