Davis Polk

DOJ announces guidance on corporate enforcement

May 16, 2025 | Client Update | 8-minute read

The Department of Justice Criminal Division announced a series of policy changes on white-collar enforcement, covering enforcement priorities, the path to a declination, limitations on monitors and an updated whistleblower policy. The announcements signal the Trump administration will continue corporate enforcement, particularly in the administration's high-priority areas, with a revised approach that will likely be favorable to the corporate community.

On May 12, 2025, Matthew R. Galeotti, Head of the Department of Justice (DOJ) Criminal Division, and functionally the acting Assistant Attorney General of the Division, announced key changes to DOJ's corporate enforcement policies under the new administration. Galeotti documented these initiatives in a memo and delivered a speech in Washington, D.C., summarizing the changes.

In his remarks, Galeotti stated that prior corporate enforcement actions created "too high a cost for businesses and American enterprise." As a result, Galeotti's directives focused on four key areas: (1) prioritizing cases that involve core areas of concern for the Trump administration; (2) revisions to the Corporate Enforcement Policy to emphasize the importance of self-disclosure; (3) changes to DOJ's monitorship policy to limit the scope and terms of monitors and their cost; and (4) updates to DOJ's whistleblower program to reward tips involving certain Trump administration priorities.

In outlining the key priorities of corporate enforcement, the memo covered a number of traditional areas of enforcement—such as healthcare fraud, procurement fraud, and fraud on the financial markets—while also highlighting key areas of focus of the administration, including crimes that implicate national security, transnational criminal organizations (TCOs) and cartels, and trade and customs fraud. The list also included a more targeted band of foreign corruption, consistent with President Trump's Executive Order on the Foreign Corrupt Practices Act (FCPA).

The announcement makes clear that DOJ will take an enforcement approach that is more favorable to the corporate community, while not giving a pass to corporate wrongdoers. To the contrary, Galeotti made clear that the goal of these policy revisions is to incentivize companies "to come forward, come clean, reform, and cooperate with the government in efficient investigations and prosecutions of the most culpable actors," but that "the Criminal Division will hold accountable those that choose a different path, those that enable criminals."

Several notable headlines from the revised guidance include:

- DOJ instructed the Criminal Division to focus on a number of traditional areas of white-collar enforcement, as well as key areas of priority for the Trump administration, including (1) matters involving national security—such as those related to trade, foreign terrorist organizations, and cartels; (2) the opioid crisis; and (3) government fraud and waste.
- DOJ simplified its Corporate Enforcement Policy and now mandates declinations and non-prosecution agreements (NPAs) if companies voluntarily disclose, cooperate, and remediate, and increased benefits for companies that have "near-miss" voluntary disclosures.
- DOJ confirmed that it is reviewing all existing agreements with corporations and monitorships to see if they should be terminated early.

Copyright 2025 Davis Polk & Wardwell LLP

- DOJ criticized “unrestrained monitors,” updated guidance for when a monitor is appropriate, and imposed guardrails on monitor costs.
- DOJ updated its whistleblower policy to include tips related to Trump administration priorities.
- DOJ is aiming for shorter, more efficient investigations, as well as a continued focus on prosecuting individuals.

Areas of focus

In his memo, Galeotti instructs Criminal Division lawyers to prioritize corporate enforcement in areas that have been a focus of Executive Orders and DOJ guidance under the current administration, including (1) matters involving national security—such as those related to trade, foreign terrorist organizations, and cartels; (2) the opioid crisis; and (3) government fraud and waste.

The memo lists the following categories as high priorities:

1. Waste, fraud, and abuse;
2. Trade and customs fraud, including tariff evasion;
3. Fraud perpetrated through variable interest entities (VIEs);
4. Fraud that victimizes U.S. investors, individuals, and markets;
5. Conduct that threatens U.S. national security, including sanctions violations or enabling transactions by cartels, hostile nation-states, and/or foreign terrorist organizations;
6. Material support by corporations to foreign terrorist organizations;
7. Complex money laundering, including Chinese Money Laundering Organizations and other organizations involved in manufacturing of illegal drugs;
8. Violations of the Controlled Substances Act and the Food, Drug, and Cosmetic Act (FDCA);
9. Bribery and associated money laundering that impact U.S. national interests; and
10. Crimes involving digital assets.

Although some of the key priorities include traditional areas of enforcement that have cut across administrations, the memo also highlights a number of areas that have been a particular focus of this administration. For example, the memo specifically highlights the importance of implementing the administration’s Executive Order designating cartels as foreign terrorist organizations and Attorney General Bondi’s memo on the total elimination of cartels and TCOs, which we previously summarized.

Likewise, the memo emphasizes the importance of combatting “[t]rade and customs fraud, including tariff evasion,” and that such actions “circumvent the rules and regulations that protect American consumers and undermine the administration’s efforts to create jobs and increase investment in the United States.” Given the administration’s approach on tariffs, this may end up being a significant area of enforcement.

The priorities also include bribery, but the memo makes a point that such cases will focus on “[b]ribery and associated money laundering that impact U.S. national interests, undermine U.S. national security, harm the competitiveness of U.S. businesses, and enrich foreign corrupt officials,” consistent with the administration’s February 2025 FCPA Executive Order. Since the release of the Executive Order, a number of cases have been closed while others are proceeding.

Also of note, the priorities include violations of the Controlled Substances Act and the FDCA, violations that had previously been investigated by the Civil Division’s Consumer Protection Branch (CPB). In March 2025, Deputy Attorney General Todd Blanche proposed moving CPB to the Criminal Division.

Updates to the Corporate Enforcement Policy

Among the most important policy changes, Galeotti updated and simplified DOJ’s Corporate Enforcement Policy (CEP), a policy that was initially formalized in the first Trump administration, to further encourage self-disclosure of corporate misconduct. The new policy includes a simple-to-follow flow chart for ease of reference.

Significantly, the memo summarizing the changes indicates that DOJ is reviewing “all existing agreements with companies to determine if they should be terminated early.” The memo states that DOJ would consider, among other factors, the duration of the resolution agreement, the company’s risk profile, its remediation and compliance program, and whether the company self-reported.

Copyright 2025 Davis Polk & Wardwell LLP

The revisions to the CEP itself simplify the policy and highlight the benefits of self-disclosure, building on incentives established by prior iterations of the CEP, including those revised under prior administrations. Under DOJ's prior policy, self-reporting could create a *presumption* of a declination, but the new policy requires a declination if a company voluntarily self-discloses, fully cooperates, and timely and appropriately remediates, in the absence of aggravating circumstances, such as egregious or pervasive misconduct within the company.

The revisions eliminate the burdensome requirements imposed by the last administration to achieve a declination when aggravating circumstances are present (which required "immediate" disclosure, "extraordinary" cooperation and remediation, and an effective preexisting compliance program at the time of the misconduct). Instead, under the revised CEP, "prosecutors retain the discretion to nonetheless recommend a CEP declination based on weighing the severity of those circumstances and the company's cooperation and remediation."

Another notable revision establishes a specific approach for "near miss" voluntary self-disclosures, for example where DOJ was already aware of the misconduct, but the company otherwise meets the CEP requirements. In such circumstances, the Criminal Division *shall* provide an NPA, shall not impose a monitor, shall provide a 75% reduction of the fine, and can limit the term of the NPA to less than three years.

Updates to monitor policy

In his speech, Galeotti lamented "unrestrained monitors." He remarked that "the value monitors add is often outweighed by the costs they impose" and that "you can expect to see fewer of them going forward." With these concerns in mind, Galeotti issued an updated memo summarizing DOJ's policy for monitorships.

In determining whether to impose a monitor, the memo simplified prior DOJ guidance (which included ten factors), and instead requires that prosecutors consider four factors: (1) the nature and seriousness of the conduct and the risk that it will happen again, with a focus on harms to Americans and American business; (2) the availability of other effective independent government oversight—i.e., regulator oversight; (3) the efficacy of the company's compliance program and culture of compliance at the time of the resolution; and (4) the maturity of the company's controls and ability of the company to test and update its compliance program.

The memo also adds requirements to minimize the cost of monitorships, including a cap on the monitor's hourly rates, budgets for all workplans, which the monitor may not exceed without DOJ permission, and at least biannual meetings between DOJ, the monitor, and the company.

Galeotti wrote in his summary memo that DOJ is reviewing each existing monitorship to determine if it is still necessary, and a number of monitorships have already been terminated early.

Updates to Corporate Whistleblower Awards Pilot Program

Under the Corporate Whistleblower Awards Pilot Program, DOJ rewards whistleblowers for reporting certain misconduct to DOJ. Under the new version of the policy, whistleblowers may be eligible for an award if they report misconduct in four new areas, which involve priorities for the Trump administration: (1) procurement and federal program fraud; (2) trade, tariff, and customs fraud; (3) violations of federal immigration law; and (4) violations involving sanctions, material support of foreign terrorist organizations, or those that facilitate cartels and TCOs, including money laundering, narcotics, and Controlled Substances Act violations.

It is also noteworthy, however, that the Criminal Division appears to be continuing the pilot program, as this was not a certainty.

We will continue to monitor how DOJ implements these policies.

Key takeaways

The DOJ Criminal Division appears to be signaling that it will continue to prosecute corporate criminal activity. The fact that it intends to continue utilizing the Corporate Whistleblower Pilot Program is a signal that the Criminal Division will utilize both a "carrot" and "stick" approach for corporate enforcement.

Copyright 2025 Davis Polk & Wardwell LLP

At the same time, the policy revisions also make clear that DOJ is placing great emphasis on the “carrot” as to corporate actors to better reward companies that engage in good corporate behavior, including providing a more certain path to a declination in the absence of aggravating circumstances, decreasing the obstacles to securing a declination when aggravating circumstances exist, and increasing the benefits for companies that have “near-miss” voluntary disclosures.

The DOJ Criminal Division will also be decreasing, likely significantly, the imposition of monitorships, a trend that we expect will happen Department-wide. Monitorships have long been subject to criticism for the considerable burdens and costs they inflict on companies, and DOJ appears intent on addressing these concerns through the frequency of their use as well as measures to reduce the costs when they are imposed.

These policy developments certainly signal a more favorable approach for companies, but clients are encouraged to continue devoting resources to their compliance programs, and take note of the increased number of areas on which the Criminal Division intends to focus its resources.

Copyright 2025 Davis Polk & Wardwell LLP

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Greg D. Andres
+1 212 450 4724
greg.andres@davispolk.com

Sidney Bashago
+1 212 450 4826
sidney.bashago@davispolk.com

Martine M. Beamon
+1 212 450 4262
martine.beamon@davispolk.com

Robert A. Cohen
+1 202 962 7047
robert.cohen@davispolk.com

Daniel S. Kahn
+1 202 962 7140
daniel.kahn@davispolk.com

Neil H. MacBride
+1 202 962 7035
neil.macbride@davispolk.com

Tatiana R. Martins
+1 212 450 4085
tatiana.martins@davispolk.com

Fiona R. Moran
+1 202 962 7137
fiona.moran@davispolk.com

Paul J. Nathanson
+1 202 962 7055
+1 212 450 3133
paul.nathanson@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

Copyright 2025 Davis Polk & Wardwell LLP