

JUSTICE DEPARTMENT POLICY CHANGE TARGETS CORPORATE EXECUTIVES

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In a memo dated Sept. 9, 2015, the Justice Department announced that it will take the fight against corporate wrongdoing directly into the boardrooms and offices of businesses. Long stung by criticism that it has coddled corporate executives, the department's new policies evidence a change in direction, one aimed squarely at individuals involved in corporate fraud and misconduct. The memo, authored by Deputy Attorney General Sally Yates, applies this "new" guidance to both criminal and civil matters. In doing so, the department focuses on the notion that ["one of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing."](#) In making this policy adjustment, the memo identifies four principal goals: (1) deterring future illegal activity; (2) incentivizing change in corporate behavior; (3) ensuring the proper parties are held responsible for their actions; and (4) promoting public confidence in the justice system. While the policy shift is noteworthy in its determination to target individual wrongdoers, it will also have a significant impact upon corporations themselves. Specifically, the memo reflects six (6) steps designed to enhance the Department's pursuit of individual wrongdoers that will impact their respective companies. These new steps include:

1. To be eligible for any corporate credit, corporations must provide the department with all relevant facts about individuals involved in corporate misconduct.
2. Both criminal and civil corporate investigations will 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, no corporate resolution will provide protection from criminal or civil liability for any individuals.
5. Corporate cases should not be resolved without a clear plan to resolve related individual cases prior to expiration of the statute of limitations and declinations regarding individuals in such cases must be memorialized.
6. Civil attorneys should consistently focus on individuals along with companies, evaluating whether to bring suit against an individual based upon considerations beyond that individual's ability to pay.

During the Obama administration, the Justice Department has been repeatedly criticized for treating corporate executives too leniently. While prosecutors have collected billions of dollars in fines from large banks, no top Wall Street executives went to prison. This only served to emphasize the

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disparity between how prosecutors treated the so-called white-collar corporate individuals from more “typical” targets of criminal conduct. In a speech given at New York University on Thursday, Yates addressed this disparity in reflecting on the new policy as follows: **“Crime is crime. And it is our obligation at the Justice Department to ensure that we are holding lawbreakers accountable regardless of whether they commit their crimes on the street corner or in the boardroom.”** Signaling the intent to increase individual white collar prosecutions, Yates, a career prosecutor, has firmly entrenched herself as focusing department resources in this area and now addressing individual liability to a much more significant degree. Will this new policy mean corporate America should prepare for federal agents knocking down their doors and raiding their offices? That may or may not be the reality. Only time will tell. That said, the Yates memo signals a clear and meaningful shift in department policy towards individual corporate wrongdoers. Whether it be for political reasons or a more virtuous decision to pursue targets who are the ones allegedly committing corporate crime, the signal is clear. Corporations may begin facing increased pressure to disclose the individual actors involved in “corporate” misconduct. Individuals within the corporate hierarchy may be subject to greater scrutiny while facing a greater risk of both civil and criminal liability. Negotiations to resolve corporate based investigations will become more tedious; will present more hoops to jump through and more difficult decisions for corporate clients, their Boards of Directors and their executives.