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US Justice Department makes clear its standards for corporate misconduct responsibility and self-reporting

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In November 2018, officials with the U.S. Department of Justice (DOJ) clarified revisions to certain procedures in the Justice Manual, including the extent to which the DOJ will pursue and prosecute individuals in Foreign Corrupt Practices Act (FCPA) enforcement actions and announced the creation of a new task force. They also stressed the importance of self-reporting with FCPA, cybertheft and fraud cases, and maintaining a robust and effective compliance program.

The first case deals with the issue of individual culpability and prosecutorial discretion. In 2015, Former Deputy Attorney General Sally Yates issued a memo, [the Yates memo](#), which placed the individual at the center of FCPA investigations, and ordered prosecuting attorneys to focus on finding the individuals “substantially involved” in the case, as well as any individuals that may have been involved. The memo also tasked corporations with providing complete information regarding individuals possibly involved in the case as a prerequisite for receiving credit for cooperation from the DOJ. Below are the six major points of the memo:

- “In order to qualify for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct;
- “Criminal and civil corporate investigations should focus on individuals from the inception of the investigation;
- “Criminal and civil attorneys handling corporate investigations should be in routine communication with one another;
- “Absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation;
- “Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should memorialize any declinations as to individuals in such cases; and
- “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.”

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