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DOJ Revises Yates Memo to Focus More on People With 'Significant Roles'

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The Department of Justice (DOJ) has revised the 2015 Yates memo, its policy of pursuing culpable individuals in corporate fraud cases, with a different spin for criminal and civil resolutions, Deputy Attorney General Rod Rosenstein said Nov. 29. Although the Yates memo, formally known as the Individual Accountability Policy, will live to see another day, prosecutors in criminal cases will focus on people with “substantial” involvement in the corporate fraud, and there will be more discretion in civil cases.

Organizations and the people who manage and oversee them shouldn't let their guard down. “Under our revised policy, pursuing individuals responsible for wrongdoing will be a top priority in every corporate investigation,” Rosenstein said at the American Conference Institute's 35th International Conference on the Foreign Corrupt Practices Act.

The Yates memo requires corporations to disclose “relevant facts about the individuals involved in corporate misconduct” if they want to get cooperation credit from DOJ when resolving fraud cases (*RMC 5/1/17, p. 1; 12/14/15, p. 1*). Culpable individuals won't be protected from liability in corporate resolutions of civil or criminal fraud cases “absent extraordinary circumstances,” according to the memo, which created the new policy in the Justice Manual (formerly known as the United States Attorneys' Manual). Since adoption of the Yates memo, numerous managers and executives have paid significant sums in connection with corporate fraud cases. For example, the former CEO of Tuomey Healthcare System settled a False Claims Act (FCA) case, paying \$1 million out of his own pocket for his role in the alleged sweetheart deals at the health system, which separately paid \$72.4 million when it lost two Stark-related FCA trials (*RMC 10/3/16, p. 1*).

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