

An Important First Step: The DOJ’s New Response to White-Collar Crime By Tarig Elwasila, J.D. Candidate 2017 | September 14, 2015

Last week, the Justice Department [announced](#) new policies for prosecuting corporate employees. This was in response to criticism the DOJ received for failing to indict enough bankers in the wake of the recent financial crisis. Indicting these individuals can be very difficult and many of the challenges facing prosecutors still remain despite the new policies outlined. “White-collar cases are hard to prove, because they’re very complex and if you don’t have direct evidence of fraud, there’s room for arguments on both sides,” said David O’Neill, former acting head of the criminal division of the Justice Department in Washington.

The financial system is also growing increasingly more complex and global, which adds further strain on the DOJ—an organization with the majority of its limited resources [allocated](#) for fighting terrorism instead of white collar crime.

Sally Q. Yates, the deputy attorney general and author of the new guidelines, emphasized the importance of one of the key new policies: full and complete disclosure. Under the new rules, bankers and other corporate employees will have less breathing room in establishing their lack of involvement and no one will be rewarded for disclosing anything other than the complete truth. This means that companies will feel added pressure [to reveal names during investigations](#). Now individuals may worry about having their own reputations and interests harmed during discovery, which could prove to be a powerful deterrent.

However, the insulation that executives often enjoy from low level misconduct can make it difficult to find a smoking gun witness. Corporate cases are often built from internal investigations conducted by private lawyers hired by the companies themselves. Another problem is extradition and international law. For example, two traders from JP Morgan involved in a \$6 billion loss never saw the inside of a courtroom because they were overseas. Accordingly, Yates prefers to see these policy guidelines as a “first step” rather than as a complete solution. “The fact that this policy may lead to more indictments doesn’t mean that it will result in more convictions or jail time,” Yates said.