

Justice Department Revises Charging Guidelines for Prosecuting Corporate Fraud

NEW YORK – Deputy Attorney General Mark R. Filip announced today that the Department of Justice is revising its corporate charging guidelines for federal prosecutors throughout the country.

The new guidance revises the Department's Principles of Federal Prosecution of Business Organizations, which govern how all federal prosecutors investigate, charge, and prosecute corporate crimes. The new guidelines address issues that have been of great interest to prosecutors and corporations alike, particularly in the area of cooperation credit.

First, the revised guidelines state that credit for cooperation will not depend on the corporation's waiver of attorney-client privilege or work product protection, but rather on the disclosure of relevant facts. Corporations that disclose relevant facts may receive due credit for cooperation, regardless of whether they waive attorney-client privilege or work product protection in the process. Corporations that do not disclose relevant facts typically may not receive such credit, like any other defendant.

While prior guidance had allowed federal prosecutors to request, under special conditions, the disclosure of non-factual attorney-client privileged communications and work product -- which the old guidelines designated "Category II" information -- the new guidance forbids it, with two exceptions well established in existing law.

"The changes that the Department announces today are in keeping with the long-standing tradition of refining the Department's policy guidance in light of lessons learned from our prosecutions, as well as comments from others in the criminal justice system, the judiciary, and the broader legal community," said Deputy Attorney General Filip.

The new Principles introduce changes beyond the question of attorney-client privilege and work product waivers. They instruct prosecutors not to consider a corporation's advancement of attorneys' fees to employees when evaluating cooperativeness. They also make clear that the mere participation in a joint defense agreement will not render a corporation ineligible for cooperation credit. In addition, the new guidance provides that prosecutors may not consider whether a corporation has sanctioned or retained culpable employees in evaluating whether to assign cooperation credit to the corporation.

The revisions and policy changes announced today will be committed for the first time to the United States Attorneys Manual, which is binding on all federal prosecutors within the Department of Justice. The revised Principles will be effective immediately.

The changes announced today were made after careful review within the Department of Justice, and after consultation with several organizations and individuals who expressed an interest in the issues presented. In this regard, Filip noted, "the Department is very grateful for the opportunity to engage in extended and thoughtful dialogue with Senate Judiciary Committee Chairman Patrick Leahy, Sen. Arlen Specter, and other members of Congress, along with representatives of various groups, reflecting a diverse array of voices - including, for example, the criminal defense bar, the civil liberties community, the business community, and former Department of Justice officials."

For more information about the Department's Principles of Federal Prosecution of Business Organizations, please visit <http://www.usdoj.gov>.