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Commercial Real Estate Developers Have New Incentives to Report Potential Criminal Activity

Commercial real estate developers and their business partners may face increased scrutiny from the U.S. Department of Justice (DOJ) as federal prosecutors turn their attention to building cases that focus on the administration's regulatory priorities, such as foreign criminals who use American businesses to further their activities. For example, foreign investment in commercial real estate may be increasingly examined for the possibility that funds originated with sanctioned individuals or in sanctioned countries, particularly from countries like Iran. Prosecutors may also be interested in funds derived from illegal activities—especially narcotics cartels and foreign terrorist organizations—and laundered through a development project. Commercial real estate developers involved in construction projects must consider the risks of tariff evasion charges if a project may have used building materials originally sourced from a country with higher tariffs and mislabeled to reduce tariff costs. Developers may also face a greater chance of immigration-related action—including criminal investigations—if they do not take appropriate steps to review the work eligibility of their employees and contractors. Also, as in any administration, DOJ may investigate a developer's relationships with public officials if they have any appearance of bribery, or another form of corruption.

A developer concerned that it may have engaged in criminal activity—even inadvertently—should consider hiring outside counsel to conduct a thorough internal investigation. Such investigations have taken on new importance because DOJ has created enhanced incentives for companies to voluntarily report potential wrongdoing, including strong new possibilities of a declination of criminal charges, while also providing new financial encouragement for employees and other whistleblowers to come forward. In

effect, a company that may have committed criminal conduct can find itself in a “race to DOJ” with whistleblowers over potential wrongdoing.

DOJ’s new enforcement landscape

On May 12, 2025, DOJ’s Criminal Division Head Matthew R. Galeotti announced an overhaul of the division’s approach to white-collar enforcement. An accompanying memo emphasized three core tenets:

1. **Focus**, meaning targeting high-impact crimes;
2. **Fairness**, by ensuring individualized, proportionate enforcement; and
3. **Efficiency**, consisting of streamlining investigations to reduce their impact on corporations, stakeholders, investors, and financial institutions.

The memo also outlined 10 “high-impact areas” of focus for white-collar crime investigations and prosecutions:

1. Waste, fraud, and abuse, including healthcare fraud and federal program and procurement fraud;
2. Trade and customs fraud (such as tariff evasion);
3. Fraud perpetrated through variable interest entities (VIEs), which are typically Chinese-affiliated companies listed on U.S. exchanges, including market manipulation schemes;
4. Fraud “that victimizes U.S. investors, individuals, and markets,” such as Ponzi schemes, and fraud that threatens consumer health and safety;
5. Conduct that threatens U.S. national security, including threats to the financial system;
6. Material support by corporations to foreign terrorist organizations, such as recently designated cartels and transnational criminal organizations (TCOs);
7. Complex money laundering;
8. Violations of the Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act (FDCA);
9. Bribery and associated money laundering impacting U.S. national interests, undermining U.S. national security, harming the competitiveness of U.S. businesses, and/or enriching foreign corrupt officials; and

10. Specific crimes involving digital assets, particularly crimes that victimize investors and consumers and willful violations that facilitate significant criminal activity.

Several of these areas of focus may be relevant to commercial real estate developers, whose operations often intersect with government programs, international trade, and large-scale procurement. DOJ's new guidance largely aligns with prior announcements and executive orders from the second Trump administration, such as the president's "America First" Trade Policy and Attorney General Pam Bondi's February 5, 2025 memo prioritizing enforcement against cartels and TCOs.

Mr. Galeotti stated that DOJ's goal is to prosecute "the most egregious white-collar crime" while also "recognizing that law-abiding companies are key to a prosperous America." To that end, DOJ has expanded its self-reporting mechanisms to incentivize corporate compliance.

The new corporate voluntary disclosure system

Through the May 12 memo, the Criminal Division revised its Corporate Enforcement and Voluntary Disclosure Policy to streamline the process of voluntarily reporting misconduct. DOJ now offers three clear paths to resolution, depending on a company's actions and the severity of the misconduct:

1. **Declinations:** The Criminal Division will decline to prosecute a company if it voluntarily self-discloses misconduct before it is otherwise known to the government; fully cooperates with the division's investigation; timely and appropriately remediates the misconduct, including by implementing an effective compliance and ethics program; and if there are no aggravating circumstances, such as pervasive or particularly serious misconduct, significant harm, or recent similar violations. Even if aggravating circumstances exist, a declination may still be possible if the company's cooperation and remediation outweigh the severity of the misconduct.
2. **Non-prosecution agreements (NPAs):** In this "Near Miss" category, if a company does not qualify for a declination, such as because DOJ was already aware of its misconduct, but fully cooperates, timely and appropriately remediates, and has no particularly egregious or multiple aggravating circumstances, the company will receive an NPA. These agreements last fewer than three years, do not require an independent compliance monitor, and involve fines reduced by 75% off the low end of the U.S. Sentencing Guidelines (USSG) range.
3. **Other resolutions:** If a company does not qualify for a declination or NPA (for example, if it did not self-report, cooperate, or remediate), DOJ may still offer a resolution, such as a guilty plea, with fine reductions of up to 50% off the low end of the USSG range.

Additional features of the new system include a strong emphasis on individual accountability, prosecuting executives and employees responsible for wrongdoing (as opposed to the company itself),

and a requirement that prosecutors tailor each corporate resolution to the specific facts of the case. Remediation periods and compliance monitorships are generally limited to three years and are imposed only when necessary.

The DOJ Corporate Whistleblower Awards Pilot Program

The Criminal Division also made changes to its Corporate Whistleblower Awards Pilot Program. This three-year initiative is designed to fill gaps left by existing whistleblower programs, like those run by the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) or the reporting incentivized under the False Claims Act. Employees, vendors, and even competitors now have a direct financial incentive to report corporate misconduct to DOJ.

Only individuals are eligible to be whistleblowers. To qualify for an award, whistleblowers must voluntarily provide information that is original (not public), comes from their own knowledge or analysis, and is not already known to DOJ. The program covers a broad range of corporate crimes, including financial institution violations; bribery and corruption; healthcare fraud; trade, tariff, and customs fraud; procurement fraud; and offenses related to sanctions, terrorism, cartels, and TCOs.

The Pilot Program Guidance highlights that if DOJ obtains a successful forfeiture of assets exceeding \$1 million because of the tip, the whistleblower may receive up to 30% of the first \$100 million in net proceeds forfeited, and up to 5% of net proceeds forfeited between \$100 million and \$500 million.

There are important exclusions. For example, an individual may not receive an award for the same original information reported to the Corporate Whistleblower Awards Pilot Program and another government whistleblower program, such as the SEC's program. Similarly, statutory whistleblowers, such as *qui tam* relators under the False Claims Act, cannot also receive an award for reporting through the program.

Importantly, DOJ provides strong anti-retaliation protections—retaliation against whistleblowers can negatively impact a company's cooperation credit in any enforcement action. Whistleblowers are not required to report internally first, though internal reporting may factor into DOJ's awards calculation. Tips must be submitted in writing and under oath. Anonymous submissions are allowed only through an attorney.

Recommendations: how to mitigate risk

The disruption caused by federal criminal scrutiny cannot be overstated. Commercial real estate developers are strongly encouraged to take proactive steps to ensure they have strong internal guidance and compliance programs in place.

The Criminal Division's expanded whistleblower and self-reporting programs add new dimensions to corporate compliance. Real estate companies must keep in mind that individual whistleblowers can receive substantial sums for reporting violations, while the corporation itself can greatly reduce a potential penalty if it self-reports. However, the information is most valuable if it is original. Companies therefore need to have robust internal procedures and transparent workstreams to avoid finding themselves in a "race to DOJ" with their own employees over potential wrongdoing. Several practical steps are outlined below.

Confirm that personnel responsible for compliance understand key DOJ risk areas, including procurement, customs, and anti-bribery laws, and are trained to recognize and address these risks in daily operations.

Review internal procedures for vendor selection, bidding, and procurement to ensure processes are transparent and designed to detect and prevent fraud.

Ensure the company maintains accurate and complete documentation for all government contracts, cross-border transactions, and claims for incentives (such as tax credits or government funding).

Routinely review and update written policies and procedures so that reporting of suspected misconduct is confidential and compliance requirements are clearly communicated to employees and third parties.

Provide regular training for employees, contractors, and key business partners on compliance obligations and internal reporting channels.

Establish clear protocols for responding to government inquiries, subpoenas, or other investigative requests, and ensure that all potentially responsive records are maintained and accessible.

Evaluate and document the compliance practices of contractors, suppliers, and other third parties involved in critical business activities, with particular attention to supply chain transparency and due diligence.

Conclusion

DOJ's renewed focus combined with expanded whistleblower incentive means commercial real estate companies must elevate their compliance efforts and be prepared for more aggressive enforcement. By taking steps now to review and enhance compliance programs, strengthen internal controls, and encourage a culture of transparency and ethical conduct, companies can mitigate risk and position themselves for a more favorable outcome should an investigation arise.