

DOJ Open-Case Quotas: Enforcement Expectations and Takeaways

WRITTEN BY

Ryan DiSantis | Lawrence J. Cameron | Edward M. Nogay | Jessica McClellan

KEY POINTS

- DOJ has reportedly directed all 93 U.S. Attorneys' Offices to maintain a minimum of 25 open matters per prosecutor, a metrics-driven mandate that has drawn criticism as unworkable for complex white-collar and national security cases.
 - The quota could incentivize earlier and more aggressive initiation of investigations, increasing the likelihood of grand jury subpoenas, whistleblower referrals, and informal government outreach across regulated industries.
 - Prosecutors may delay — or decline to communicate — declinations to keep matters open and meet the numerical threshold, extending uncertainty for companies under investigation.
 - Regulated industries, including health care, financial services, and government contracting, face heightened parallel civil and criminal investigation risk, including increased scrutiny of False Claims Act qui tam matters for potential criminal referral.
 - Companies should act now — strengthening compliance programs, establishing protocols for responding to legal process, and engaging experienced outside counsel before the government makes contact.
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OVERVIEW

The Department of Justice (DOJ) has reportedly begun requiring all federal prosecutors to maintain a minimum of 25 open cases or matters at any given time, with DOJ leadership actively monitoring case management databases to identify and potentially transfer “disengaged” prosecutors who fall below that target. [Bloomberg Law reported](#) that all 93 U.S. Attorneys' Offices received news of the new standard in recent weeks.

Although no formal policy has been reduced to writing, this approach clearly incentivizes federal prosecutors to act aggressively and move quickly to initiate investigations. Such pressure to open matters to meet statistical targets has drawn criticism as being “unworkable” for prosecutors focused on long-lasting and complex white-collar fraud, corruption, and national security matters. The 25-matter requirement may also have the effect of slowing down the speed at which prosecutors complete certain investigations. Specifically, prosecutors who handle fewer but more complex investigations may consider their caseloads when assessing when to finish up an investigation — particularly one that ends in a declination.

The new policy has caused widespread concern regarding its application across districts and practice areas that differ substantially in case volume, complexity, and subject matter. While obvious questions around exemptions, enforcement mechanisms, and what constitutes an “open matter” remain, the purported one-size-fits-all mandate clearly represents a sharp break from prior practice.

KEY LEGAL AND ENFORCEMENT IMPLICATIONS

- **Motivation to open investigations earlier.** This means more preliminary inquiries, grand jury subpoenas, informal outreach, and agency referrals. Companies may see whistleblower allegations or regulator referrals to DOJ getting more attention from federal prosecutors responsible for criminal enforcement.
- **Potential for delay and incentive not to communicate a declination.** Prosecutors who handle complex white-collar investigations may take longer to complete investigations that are not likely to result in charges or a civil enforcement action. Additionally, prosecutors may be even less willing to communicate the fact of a declination to targets to keep matters open longer and meet the numerical requirement.
- **Accelerated charging decisions.** Depending on how DOJ defines this requirement, to meet it prosecutors may look for ready-to-litigate referrals and investigations and aggressively charge alleged conduct on an accelerated timeframe. This could result in errors, oversight, and misunderstandings from the urgent pressure and expedited approach imposed on prosecutors to open new cases.
- **Increased attention on matters typically handled through civil enforcement.** Regulated industries should prepare for an increase in the frequency of parallel civil and criminal investigations and related grand jury subpoenas as criminal Assistant U.S. Attorneys (AUSAs) attempt to meet the new requirement.
 - As an example, nearly all whistleblower lawsuits filed under the *qui tam* provisions of the False Claims Act are reviewed for potential criminal investigation.
 - For DOJ attorneys who focus on these types of complex long-term white-collar investigations, reflexively opening parallel criminal investigations for more *qui tam* matters could be a clear path toward meeting this mandate.

TAKEAWAYS

Individuals and companies, particularly those in health care, government contracting, financial services, and other regulated industries, should anticipate a near-term uptick in criminal enforcement activity, including increased issuance of grand jury subpoenas and other legal process, accelerated charging decisions, broad investigative inquiries, and heightened scrutiny of corporate conduct. For companies, appropriately managing responses to different requests from DOJ's civil and criminal divisions will be critical, particularly if there is less than ideal coordination between the two sides when the criminal investigation was initiated hastily to meet a quota. Companies should act now to shore up compliance programs and protocols for responding to legal process, and should consider their standard for when to engage experienced outside counsel for prompt internal review and corrective action.

As discussed in our [prior alert](#), when credible issues surface, businesses should evaluate early voluntary self-disclosure to DOJ as a means of framing the facts favorably and preserving cooperation credit before the government initiates contact. Finally, given the likelihood of faster, more metrics-driven initiation of investigations, companies should expect more subpoenas, civil investigative demands, and informal requests, as well as potentially longer timelines for decisions once these investigations are completed.

For questions related to criminal enforcement trends, compliance program design, or responding to DOJ investigations, please contact our [White Collar Litigation + Investigations](#) Practice Group.

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