

Emergency Envelope

A practical alert series from Robins Kaplan's former DOJ attorneys and investigations team.

Introducing Emergency Envelope



Clients rarely call when everything is going according to plan.

They call when a subpoena arrives. When a whistleblower complaint surfaces. When regulators ask questions. When a board needs answers. When a business issue suddenly becomes an enforcement issue.

Throughout our careers in government and private practice, we have seen organizations face these moments repeatedly. The facts vary, but the challenges are often the same: preserving evidence, understanding risk, making disclosure decisions, conducting investigations, and demonstrating meaningful remediation.

That is the idea behind Emergency Envelope.

This publication will provide practical observations on government investigations,

enforcement trends, internal investigations, compliance issues, and emerging risks affecting businesses and their leaders. Our goal is not to provide theoretical commentary. It is to share insights that help decision-makers respond effectively when the stakes are high.

As part of this launch, we are also pleased to introduce several former Department of Justice attorneys who recently joined Robins Kaplan. Together, they bring experience spanning federal investigations, False Claims Act matters, healthcare fraud, antitrust enforcement, complex trials, public corruption investigations, technology-related crimes, and civil rights enforcement.

Our first issue examines the Department of Justice's evolving corporate enforcement framework and what it means for companies evaluating self-disclosure, cooperation, remediation, and potential criminal exposure.

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We hope you find Emergency Envelope useful, and we look forward to sharing future issues with you.

B. Todd Jones

PARTNER

Former U.S. Attorney, District of Minnesota
Former Director, Bureau of Alcohol,
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Three Envelopes for the Current Enforcement Environment

A new CEO was hired to take over a struggling company. On his way out, the former CEO met with him privately and handed him three numbered envelopes.

“Open these only if you run into serious trouble,” he said.

Three months later, the company was not just missing its numbers - it had also received an internal hotline complaint, a document request from a regulator, and a wave of anxious questions from the board. The new CEO felt the pressure immediately. He closed his office door, opened the first envelope, and read the note inside.

It said: “Preserve everything.”

So, the CEO immediately issued a legal hold, halted routine deletion, secured devices, and brought in outside counsel and the compliance team. What had once been a business problem was now also an enforcement problem. Everyone suddenly understood that careless emails, missing texts, and late preservation decisions could make the facts look worse than they already were.

Another quarter passed. The facts were getting clearer, but so were the risks. There were questions about controls, incentive pressure, and whether managers had ignored red flags. The board wanted to know not just what happened, but when management learned of it and what it did next. The CEO opened the second envelope.

It said: “Tell the board early. Tell the government before someone else does.”

So, the CEO stopped managing the issue like a communications problem and started managing it like an enforcement matter. He briefed the board candidly, authorized an independent investigation, and weighed voluntary self-disclosure before a whistleblower, customer, competitor, or former employee got there first. He learned that in the current environment, delay is often its own fact pattern.

Three months later, the company had contained the immediate crisis, but the real test had arrived. Regulators wanted proof that the company could fix the underlying problem, not just explain it away. They wanted to see whether compensation, reporting lines, controls, and discipline matched management's promises. Before the next board meeting, the CEO opened the third envelope.

It said: “Remediate for real - and assume they will test it.”

So, the CEO changed incentives, strengthened reporting channels, disciplined the right people, upgraded controls, and made sure the company could demonstrate the changes with documents, training records, audit trails, and board minutes. He finally understood the real lesson: in today's enforcement environment, the issue is rarely just the misconduct. It is whether leadership preserved the facts, escalated quickly, and fixed the conditions that allowed the problem to happen in the first place.



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What the Three Envelopes Mean Today

ENVELOPE 1

Preserve documents and devices immediately; poor preservation can become a separate problem.

ENVELOPE 2

Escalate early to the board and evaluate self-disclosure before a whistleblower or regulator frames the narrative first.

ENVELOPE 3

Remediation must be real, documented, and testable - not just announced.



BOARD LESSON

The board expects speed, candor, evidence of oversight, and a credible plan for individual accountability and control enhancement.

About the DOJ Enforcement Team Behind This Issue

This first issue introduces Robins Kaplan's Emergency Envelope series and brings together former DOJ leaders with significant experience in federal investigations, corporate enforcement, civil fraud, internal investigations, and trial work.



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Brendan Johnson | Partner

Former U.S. Attorney for the District of South Dakota and chair of the DOJ's Native American Issues Subcommittee and a member of the Attorney General's Advisory Committee and the Justice Department's Terrorism/ National Security and Cybercrime Subcommittee. Brendan's practice spans wrongful death and catastrophic injury litigation, medical malpractice, significant contingency matters, financial fraud, shareholder disputes, class actions, government and internal investigations, and complex business litigation.



B. Todd Jones | Partner

Former U.S. Attorney for the District of Minnesota, first confirmed Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, and former Senior Vice President and Special Counsel for Conduct at the NFL. B. Todd advises clients facing government investigations, regulatory scrutiny, white collar risk, and high-profile litigation.



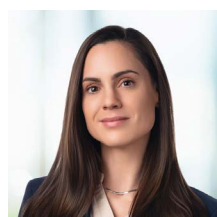
Tim Purdon | Partner

Former U.S. Attorney for the District of North Dakota and member of the Attorney General's Advisory Committee, a group that advised the Attorney General on criminal justice matters and served as chair of the DOJ's Native American Issues Subcommittee. Tim's current practice includes leading complex litigation for plaintiffs and defendants, including complex business disputes, medical malpractice, and personal injury claims.



Carla Baumel | Counsel

Former Assistant U.S. Attorney for the District of Minnesota and Assistant Attorney General for the Colorado Department of Law. Carla brings experience in antitrust enforcement, technology and life sciences disputes, organized-crime and AI-related investigations, complex RICO trials, and matters at the intersection of IP, competition, and government enforcement.



Lauren Roso | Counsel

Former Senior Litigation Counsel and Assistant U.S. Attorney for the District of Minnesota. Lauren prosecuted complex drug trafficking, money laundering, violent crime, and national security-related matters; secured multiple federal jury trial victories; argued before the Eighth Circuit; and brings experience in government enforcement, internal investigations, healthcare fraud, and sensitive federal matters.



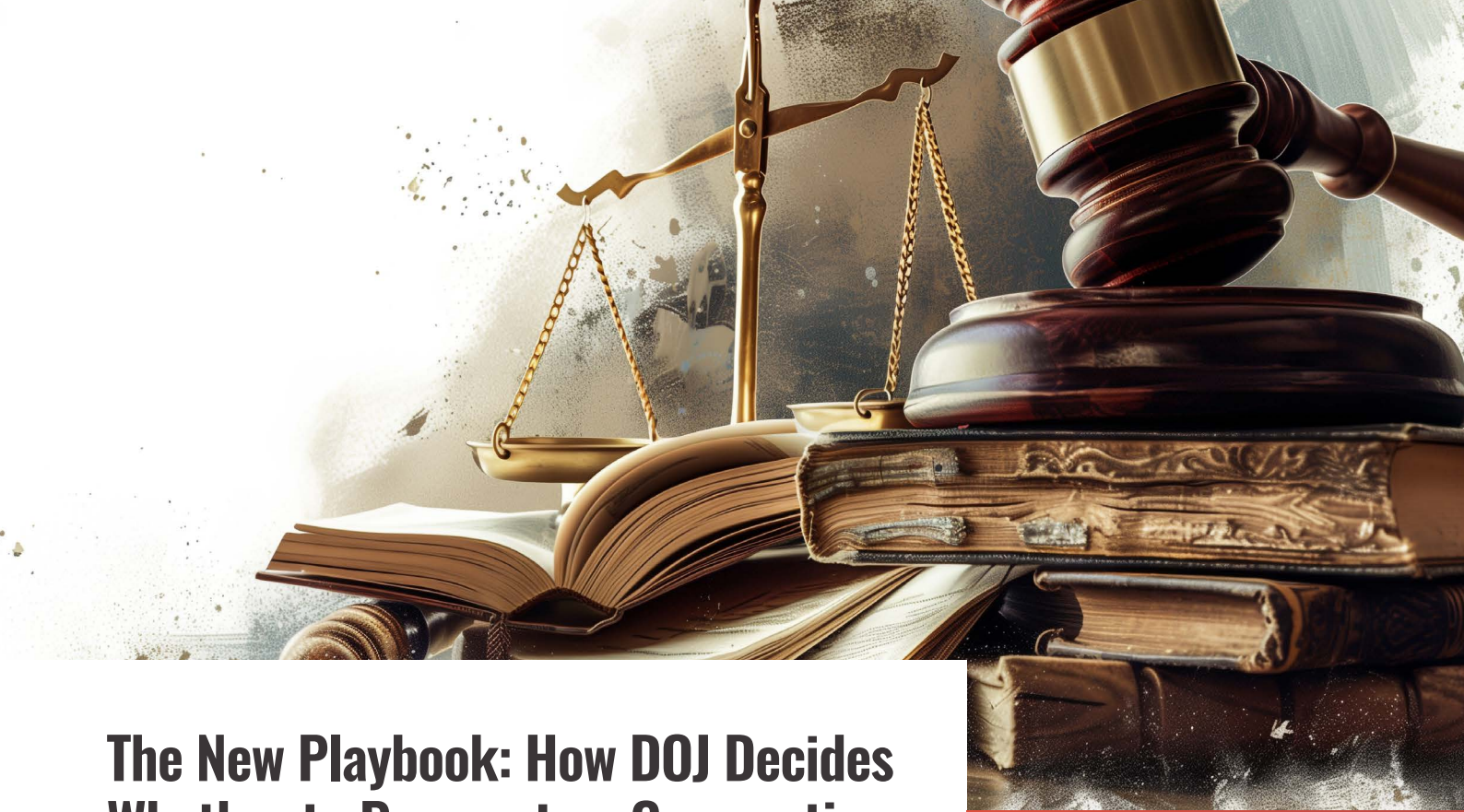
Bahram Samie | Counsel

Former Deputy Civil Chief of the U.S. Attorney's Office for the District of Minnesota. Bahram investigated and litigated matters involving the False Claims Act, Anti-Kickback Statute, government healthcare and procurement fraud, Controlled Substances Act enforcement, and civil rights investigations.



Allen Slaughter | Counsel

Former Deputy Chief of the Narcotics & Indian Country Section in the U.S. Attorney's Office for the District of Minnesota. Allen brings nearly 16 years of federal prosecutorial experience involving public corruption, health care fraud, bank fraud, controlled substances, firearms, and complex conspiracy cases.



The New Playbook: How DOJ Decides Whether to Prosecute a Corporation

The DOJ's 2025-2026 policy reset makes declinations more predictable, narrows the use of monitors, and sharpens enforcement around individual accountability, cartel and TCO exposure, government-program fraud, and national-security harms.

For companies confronting potential criminal misconduct, the question is no longer just whether the DOJ will investigate. The more important question is how prosecutors will decide whether the corporation itself should be charged, offered a negotiated resolution, or declined altogether. That decision has become far more structured over the past year as DOJ leadership has revised both its white-collar priorities and the incentives available to companies that self-report.

Read together, the DOJ's May 2025 White-Collar Enforcement Plan, June 2025 FCPA Guidelines, and March 2026 Department-wide Corporate Enforcement Policy form a single operating framework. They preserve the familiar Principles of Federal Prosecution of Business Organizations, but they make the practical consequences of self-disclosure, cooperation, remediation, and aggravating facts much easier to see. They also show where the Department intends to spend its time: on culpable individuals, high-impact frauds, and conduct that harms American taxpayers, markets, and national interests.

KEY DEVELOPMENTS IN THE CURRENT FRAMEWORK

Clearer Declination Path

Self-disclose, cooperate, remediate, and avoid aggravating factors

Individuals First

DOJ wants names, facts, and proof, not abstract corporate fault

Sharper Priorities

Government funds, cartel and TCO links, national security, and market harm

Leaner Resolutions

Shorter terms, fewer monitors, and faster charging decisions

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KEY TAKEAWAY

The Department of Justice has moved from a patchwork of component-specific corporate enforcement rules to a more uniform and predictable framework. The May 2025 White-Collar Enforcement Plan, the June 2025 FCPA Guidelines, and the March 2026 Department-wide Corporate Enforcement Policy together create a clearer path to declination for companies that move early, tell the facts fast, and remediate credibly. For boards, compliance leaders, and in-house counsel, the practical message is simple: disclosure decisions now have to be made faster and with more focus on evidence, accountable individuals, and measurable remediation.

Read together, the [DOJ's May 2025 White-Collar Enforcement Plan](#), [June 2025 FCPA Guidelines](#), and [March 2026 Department-wide Corporate Enforcement Policy](#) form a single operating framework.

A MORE PREDICTABLE ROUTE TO DECLINATION

The most important shift is the Department-wide Corporate Enforcement Policy announced in March 2026. It extends a single framework across DOJ criminal matters, with antitrust as the principal exception, and builds on the Criminal Division revisions released in May 2025. In practical terms, the policy gives companies a defined route to a declination if they timely and voluntarily self-disclose misconduct previously unknown to DOJ, fully cooperate, and timely and appropriately remediate, so long as aggravating circumstances are not present. That is a meaningful change from the older world in which counsel could point to favorable policy language but still faced greater uncertainty about whether the promise of leniency would actually materialize.

COOPERATION NOW MEANS HELPING DOJ BUILD INDIVIDUAL CASES

The Department has made clear that its first priority is to prosecute individual criminals. That theme runs through the May 2025 white-collar plan and becomes even more explicit in the June 2025 FCPA Guidelines, which instruct prosecutors to focus on cases in which individuals engaged in misconduct and not to attribute nonspecific malfeasance to corporate structures. For companies, that means maximum credit will turn less on broad statements about culture and more on whether the company can identify responsible actors, preserve and produce documents quickly, explain payment flows and third-party relationships, and support interviews with current and former employees. In other words, cooperation is no longer just a posture; it is an evidentiary contribution.

PRIORITY AREAS ARE NARROWER - AND MORE CONSEQUENTIAL

DOJ has also told companies where it intends to focus its resources. The May 2025 plan prioritizes high-impact matters such as health care and procurement fraud, trade and customs fraud including tariff evasion, fraud affecting U.S. investors and consumers, national-security-related misconduct, material support to foreign terrorist organizations, cartel and TCO-linked conduct, complex money laundering, certain food, drug, and controlled-substance matters, and digital-asset crimes that victimize investors or facilitate major criminal activity. The June 2025 FCPA Guidelines align with that approach by directing attention to bribery that harms specific U.S. companies or individuals, implicates key national-security interests, or connects to cartels, TCOs, money launderers, shell companies, or compromised state-owned entities.

RESOLUTION TERMS AND MONITORS ARE UNDER PRESSURE

The current framework is not only about whether a company receives a resolution; it is also about what that resolution looks like. DOJ has directed prosecutors to keep corporate resolution terms to

no more than three years except in exceedingly rare cases and has been reviewing existing agreements for early termination. It has also narrowed the expected use of independent compliance monitors. Under the Department-wide policy, a company that falls into the so-called near-miss category can still expect an NPA, a term of fewer than three years, no monitor, and a substantial fine reduction. That combination increases the premium on early advocacy because the quality of the disclosure, cooperation, and remediation can materially change both the form and burden of the outcome.

How Decision-Makers Are Evaluating These Cases

TIMING AND CREDIBILITY OF THE SELF-DISCLOSURE

Prosecutors will first ask whether the company truly came in voluntarily and quickly enough to matter. That inquiry turns on whether DOJ already knew of the conduct, whether the disclosure was made to an appropriate DOJ criminal component, what the company knew when it came forward, and whether it preserved evidence while starting a disciplined internal investigation. The strongest cases for leniency are not the ones with perfect facts; they are the ones in which the company can show that it moved before the government forced its hand.

QUALITY OF COOPERATION AND PROOF AGAINST INDIVIDUALS

The next lens is whether the company is giving DOJ usable facts. That includes timely production of non-privileged evidence, identification of key custodians and witnesses, clear explanations of accounting entries and payment channels, and a coherent narrative tying conduct to particular decision-makers. Under the new guidance, prosecutors are being pushed away from abstract theories of collective knowledge and toward cases with identifiable actors and concrete intent. Companies that can help translate a messy record into a persuasive individual-liability case will be better positioned to argue for leniency.

AGGRAVATING FACTS, HARM, AND COMPLIANCE MATURITY

Finally, DOJ will evaluate the facts that can move a company off the declination track: senior-management or board involvement, repeat misconduct, obstruction, significant or widespread harm, and a weak compliance environment. By contrast, a mature compliance program, prompt discipline, targeted control enhancements, and a realistic remediation plan can materially improve the company's position. In FCPA matters, prosecutors also will look closely at whether the conduct had a nexus to cartels or TCOs, harmed specific U.S. entities, implicated sensitive infrastructure or assets, or is the type of serious misconduct that local authorities are unlikely to police effectively.



What This Means for Counsel, Clients, and Compliance Leaders

ARGUMENTS / FACTS MORE LIKELY TO RESONATE

- ✓ Prompt disclosure, preserved evidence, and a credible internal-investigation timeline
- ✓ Specific proof tying misconduct to individuals, third parties, and concrete remediation steps

ARGUMENTS / FACTS LESS PERSUASIVE STANDING ALONE

- ✗ General claims of a strong culture without dates, documents, or accountable actors
- ✗ Partial cooperation, slow document production, or remediation launched only after DOJ pressure

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THE FOUNDATIONAL FRAMEWORK STILL MATTERS

The new policies do not displace the long-standing Principles of Federal Prosecution of Business Organizations. Prosecutors still must weigh the seriousness and pervasiveness of the conduct, the company's prior history, its compliance program, the adequacy of civil or regulatory alternatives, and the collateral consequences of a criminal charge. What has changed is that DOJ has made the incentives around self-disclosure, cooperation, remediation, and resolution structure more transparent. That transparency gives companies a stronger basis for early strategic decision-making, but it does not eliminate the need for fact-intensive advocacy.

A DECLINATION IS NOT THE SAME AS TOTAL PEACE

Even when a company secures the best available outcome from DOJ, exposure may remain. Civil, regulatory, and foreign authorities may still act, and aggravating circumstances can take a company out of guaranteed-declination territory even when the company has done many things right. In cross-border matters, DOJ also will consider whether a capable foreign authority is willing and able to investigate and prosecute the same conduct.

WHAT COMPANIES SHOULD BE DOING NOW

Build a pre-approved disclosure playbook so legal, compliance, and the board can assess self-reporting quickly after credible facts emerge.

Refresh risk assessments for government funding, procurement, tariff and customs activity, cartel and TCO exposure, state-owned-entity touchpoints, and other high-priority areas.

Stress-test document collection, data preservation, witness outreach, and third-party review so the company can support a fast and defensible internal investigation.

Document remediation in a way prosecutors can evaluate: discipline, control changes, governance updates, training, and proof that the compliance program is actually functioning.

BOTTOM LINE

DOJ's current corporate-enforcement framework is more predictable for companies that move early, tell the whole story, and help identify the responsible individuals. It is also less forgiving of delay, abstraction, and cosmetic remediation. The organizations best positioned for this environment will be those that treat incident response, disclosure analysis, and compliance remediation as integrated crisis functions before a problem becomes a federal case.



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About Robins Kaplan LLP

Robins Kaplan LLP represents companies, boards, and individuals in high-stakes government enforcement, internal investigations, white collar defense, and False Claims Act matters nationwide.

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