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AAG Caldwell Dispels Rumors of “Yates Certification” Requirement



On March 3, 2016, DOJ Criminal Division's Assistant Attorney General Leslie Caldwell addressed recent media reports claiming that companies under investigation by DOJ will soon need to certify their full disclosure of certain documents as a prerequisite to obtaining a settlement agreement with the Department.

Caldwell addressed—and dismissed—the rumored certification requirement while speaking on a panel at the American Bar Association's 30th Annual National Institute on White Collar Crime in San Diego. As [previously reported](#), last September, the DOJ issued a memorandum (the "Yates Memo") directing all U.S. Attorneys to place greater emphasis on prosecuting individuals responsible for illegal corporate conduct. The Yates Memo sets out a series of guidelines intended to address the challenges prosecutors face when seeking to charge individuals in cases of corporate wrongdoing. One of these guidelines specifies that, in order to qualify for *any* cooperation credit, companies under investigation by the DOJ must now disclose to the Department all relevant facts relating to individuals responsible for the alleged misconduct. In early February 2016, certain media sources reported that an unnamed DOJ spokesman said the DOJ Fraud section would soon require companies seeking a settlement agreement to certify, as a prerequisite to settlement, that they have disclosed all information about potentially culpable individuals. As described, this so-called "Yates certification requirement" would have taken the Yates Memo's guidance one step further—instead of requiring companies to provide the Department with information on culpable employees as a prerequisite to being considered for *cooperation credit*, the Department would now require companies to *certify* complete disclosure as a prerequisite to finalizing a *settlement agreement*. Reports of the certification requirement raised a litany of unanswered questions, including: (a) what form the certification would take, (b) when the certification requirement would take effect, and (c) how a certification requirement would impact the scope and structure—and consequently, costs—of company-driven internal investigations. Seemingly rendering these questions moot, Caldwell publicly refuted the media claims, denying that any certification requirement is in the works. Caldwell's brief and unequivocal dismissal of the article suggests that a "Yates certification" requirement is not likely to materialize.

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