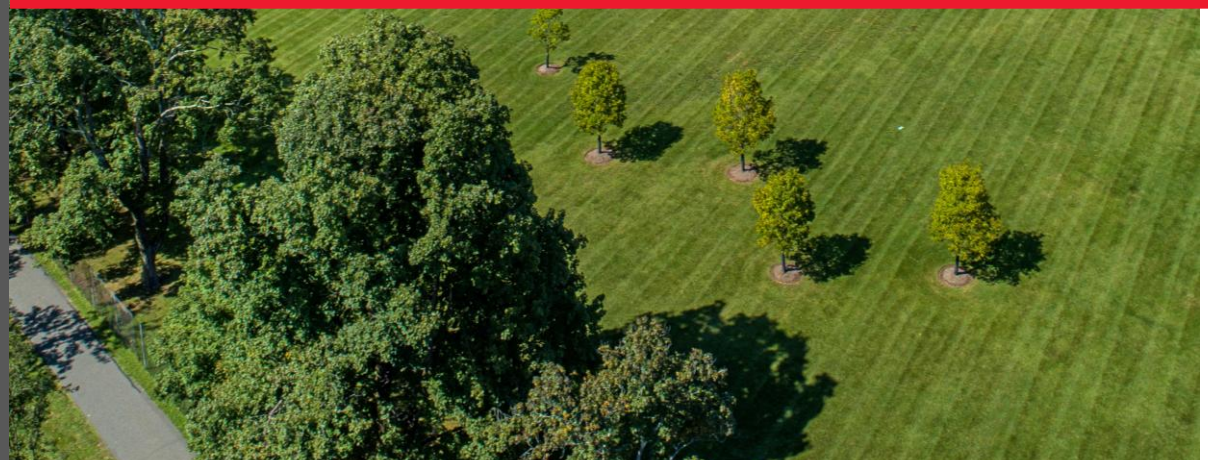
FINANCIAL INVESTIGATIONS

Current Trends, Implications and Practical Considerations

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Trends, Implications & Practical Considerations

- DOJ Corporate Enforcement 26-12
- Parallels Between DOJ Initiatives & Regulatory Enforcement
- Review of TD Bank & Bank of America

DOJ Corporate Enforcement Trends

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DOJ Corporate Enforcement Directive

On October 1, 2026, AAG Colin McDonald, citing "rampant and ongoing fraud," published a five-page directive on DOJ's enforcement priorities relative to corporate fraud.



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DOJ Directive 26-12

- McDonald stated that prosecutors will "take an aggressive, all-tools approach to investigating and prosecuting our health care, government, tax, and trade fraud priorities."
- At the same time, he noted that "the Department must protect law-abiding companies and appropriately credit those that demonstrate a willingness to disclose misconduct, cooperate and remediate.

Corporate Enforcement Section

- The directive also noted:
  - "[t]he Corporate Enforcement Section will have primary responsibility for evaluating a company's compliance with the terms of any corporate criminal resolution," *and*
  - Fraud Division prosecutors were to report all their investigations to the Chief of the Enforcement Section as well as notify the Chief of any new corporate investigations as well as all major developments.

Enforcement priorities



1. Fraud schemes involving health care industry including health care fraud, distribution of controlled substances and violations of the Federal Food and Cosmetics Act
2. Fraud involving the public trust of financial integrity of Americans and markets related to procurement, government contracts and other government functions.
3. Fraud involving significant evasion of internal and external revenue; and
4. Fraud involving tariff evasion, importation of goods or services, or forced labor.

Ten Factors

1. Knowledge of or involvement in fraud scheme by corporate management;
2. Efforts to conceal fraud from government agencies or auditors or otherwise impede or obstruct a government functions or oversight;
3. Conduct that furthers the scheme for three years or more;
4. Actions that threaten safety or security of Americans/military readiness;
5. Conduct causing substantial financial hardship to taxpayer funded programs or government functions;
6. Conduct affecting multiple taxpayer funded programs or government functions;
7. Conduct affecting three federal districts or more;
8. Conducting resulting in harm to 25 or more victims or in $25 million in loss;
9. Conduct involving exfiltration of dollars to support foreign adversaries; and
10. Conduct involving immigration offenses.

Whistleblower Incentives



- Acknowledging that the best information often comes from insiders, the Directive requires DOJ leadership, in conjunction with law enforcement, to construct and implement policies and programs that will incentivize people to come forward with credible information on fraud they become aware of.

Voluntary Self-Disclosure



- Perhaps the reverse of the whistleblower is self disclosure.
- The DOJ will reward companies that come in and self-disclose fraudulent activities that their companies have been involved with.

1. The disclosure must be made in good faith and before the threat of disclosure or a government investigation.
2. The Company must fully cooperate, remediate, and have no aggravating circumstances, such as recidivism.
3. There is a presumption that the DOJ will decline prosecution if appropriate, and if disgorgement, forfeiture, and restitution are paid.

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Takeaways for Companies

1. Prepare for data-driven, multi-agency investigations;
2. Assess and strengthen compliance programs;
3. Reinforce internal whistleblowing programs and reporting channels;
4. Make quick decisions;
5. Evaluate voluntary self-disclosure;
6. Prepare for increased scrutiny of government contractors.

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DOJ Corporate Enforcement and the Regulatory Mirror

Key Take Aways

1 THE DIRECTIVE

- Corporate Enforcement Policy (CEP), March 10, 2026 began the foundational criminal corporate rulebook
- October 1, 2026 Directive 26-12 is a targeted operational directive that puts CEP within priority areas

2 REGULATORY PARALLELS

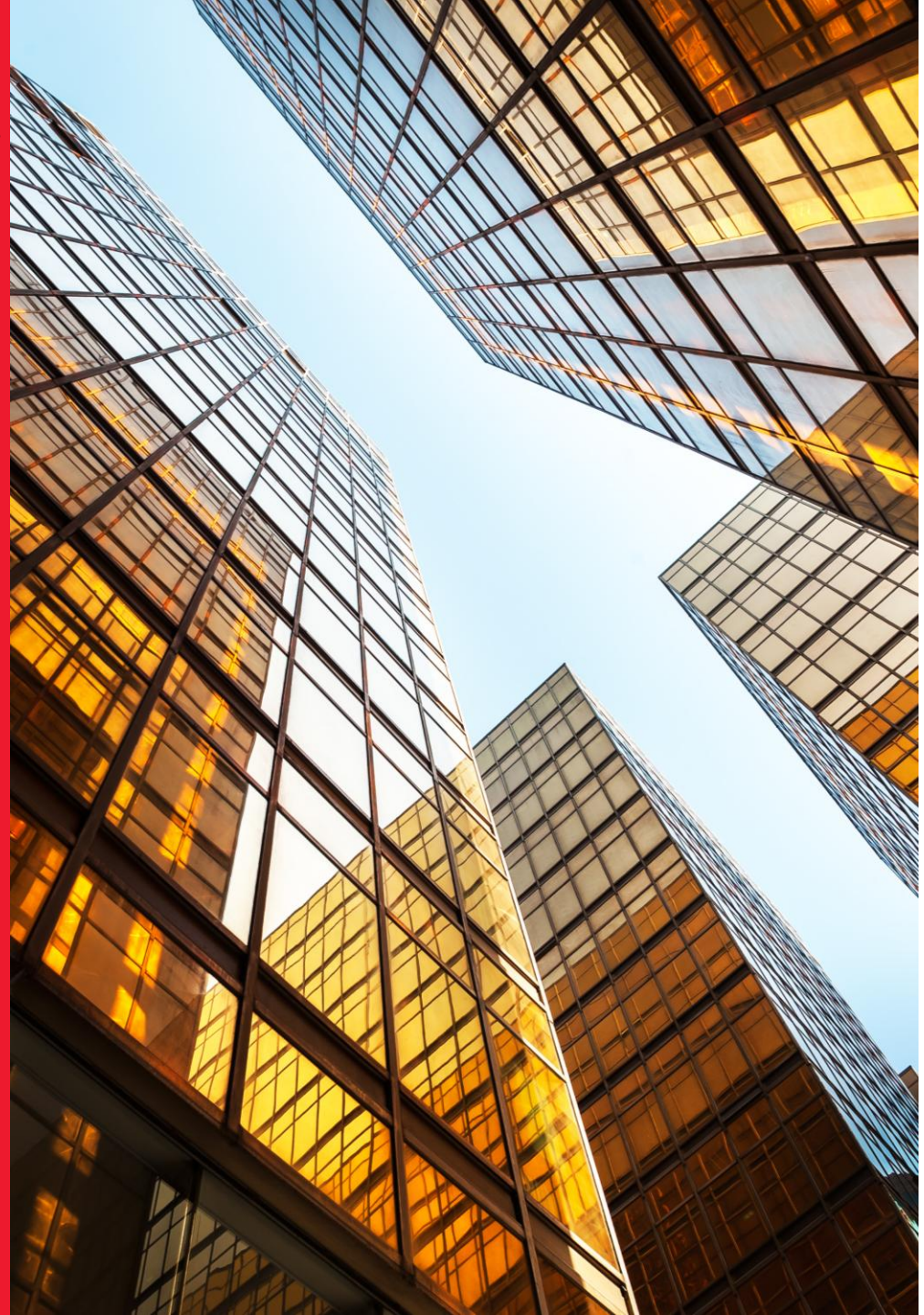
- SEC, CFTC, OCC, FDIC, the Fed and FinCEN have moved in the same direction
- Shared themes: predictable credit, focus on material harm, less process enforcement
- BUT! Banks are NOT relieved of core BSA obligations.
  - No formal declination policy however FinCEN geared towards proportional enforcement
  - Focus on "significant or systemic maintenance failures"

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Regulatory Parallels

How have regulators moved alongside DOJ initiatives?

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Banking & AML Regulators

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Banking & AML Regulators Narrowed the Standard

OCC

- Reputation risk removed from examinations
- Final rule with FDIC (effective Nov. 2, 2026): "unsafe or unsound" means likely material financial harm
- Revised enforcement PPM and first published MRA policy

FDIC

- Co-issued the unsafe-or-unsound rule
- Ended Matters Requiring Board Attention after Aug. 31, 2026
- Lookback closed legacy findings below the new MRA standard

Federal Reserve

- Reputational risk dropped from exams (June 2025)
- Supervisory operating principles focus findings on material financial risk
- Proposal to codify reputation-risk removal (Feb. 2026)

FinCEN & Treasury

- April 2026 proposal redefines an "effective" AML/CFT program
- Bank enforcement limited to "significant or systemic" failures
- Examiners not to second-guess reasonable risk decisions

Other Federal Regulators and State Enforcers

SEC

- Feb. 2026 Enforcement Manual: Wells process reform and fixed timelines
- Cooperation framework with a zero-penalty outcome

CFTC

- Staff Letter 26-15 (May 2026): declination path for self-reporting
- Penalty reductions of up to 75%

CFPB

- Enforcement sharply curtailed; dozens of cases dismissed
- Focus on "actual fraud" with measurable harm

OFAC

- Consolidated Penalty Framework - establishing a set of standard sanctions penalty regulations applicable to transactions regulated pursuant to various components
- Joint coordination with OCC/FinCEN

States

- New York Dept of Financial Services (NYDFS) issued enforcement actions against Swedish banks: Swedbank $50M (lack of candor) and SEB $33M (2026)
- Manhattan DA corporate crime task force
- State AGs picking up dropped CFPB cases

Parallels Concerning Government Credit and Interest Focus

Theme	DOJ Provision	Regulatory Analogue	Divergence
Self-disclosure and credit	Declination "will" follow self-disclosure, cooperation and remediation; near-miss NPA	CFTC declination path; SEC zero-penalty cooperation; FinCEN and OFAC guidelines credit self-disclosure	Banking agencies have no formal declination; ***Filing a SAR is mandatory disclosure***
Cooperation and remediation	50–75% or up to 50% reductions; agreements explain the credit given	SEC Cooperation Committee; CFTC up to 75%; FinCEN penalty factors	Only the CFTC publishes percentages
Focus on harm	26-12 priorities and factors; cartels, sanctions and trade fraud	OCC/FDIC "material financial harm"; FinCEN "significant or systemic"; CFPB "actual fraud"	BSA/AML is treated as national-security harm, so record penalties persist
Montitorship changes		Independent consultants and lookbacks instead of monitors; MRA closures	TD monitorship continues; FinCEN still mandates independent reviews
Transparency	Layered approvals; prompt notice of eligibility	SEC Wells timelines; published OCC policies; FDIC appeals reform	Bank supervision stays confidential, limiting public precedent

Parallels Concerning People and Process

Theme	DOJ provision	Regulatory analogue	Where they diverge
Individual accountability	Stated aim to hold individual wrongdoers accountable	SEC charging executives without charging the company	TD and Bank of America orders name no senior executives; TD prosecutions reached branch-level insiders
Reducing exposure	Credit for disclosures to other agencies; coordination policy	FinCEN credited the OCC's $750M; single coordinated Treasury announcement	No DOJ role in Bank of America; states such as NYDFS can still act alone
Whistleblowers	Corporate whistleblower pilot; 26-12 directs new fraud incentives	FinCEN BSA and sanctions program; SEC and CFTC programs	Internal reports now start a tighter clock to reach DOJ
Reduced burden and tailoring	Guard against overbroad corporate enforcement	OCC/FDIC tailoring; FinCEN effectiveness rule; reputation-risk removal	Debanking scrutiny creates new, politically charged exposure

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What does this mean for in-house counsel and priorities?

1. **Map the disclosure decision early**
   Regulator disclosure = credit, DOJ the declination path requires disclosure to the Department.

2. **Build the near-miss record**
   Document root cause, remediation, discipline and clawbacks as they happen.

3. **Treat an internal whistleblower report as a running clock**
   The 120-day safe harbor is gone.

4. **Prepare for de-confliction**
   SARs and account exits are obligations and give DOJ notice when they could tip off subjects.

5. **Expect individuals to be the target**
   Plan Upjohn practice accordingly.

Special Considerations for Community/Regional Banks & Fintechs

1. **Use the OCC/FDIC rule**
   Challenge MRAs not tied to material financial risk, starting at the exam exit meeting.

2. **Do not read deregulation as BSA relief**
   FinCEN's proposal protects programs that are properly established; design failures stay exposed.

3. **Align risk assessments to national priorities**
   Cartels, fentanyl, Chinese money laundering networks, the southwest border and sanctions evasion.

4. **Fintech, BaaS and stablecoin partners are in scope**
   The stablecoin-issuer AML proposal and Fraud Division priorities point at new payment rails.

5. **Watch state exposure**
   States like NY/NJ will act where feds don't

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TD Bank and Bank of America

Overarching Ideas to Keep in Mind

- Deregulatory reforms cut process findings, reputation risk and MRAs untied to financial risk
- They do not reach program design failures, late SARs or unremediated orders
- Cooperation credit is earned on the record, not assumed

TD Bank October 2024 Global Resolution

TERMS

- TD Bank, N.A. pleaded guilty to conspiracy to fail to maintain an AML program, file accurate CTRs, and launder money
- Holding company pleaded guilty to causing the program failure
- Three-year DOJ monitorship and five years' probation; four-year FinCEN monitorship
- OCC asset cap near $434B with no end date; limits on new products
- No self-disclosure credit; 20% reduction for partial cooperation and remediation

$3.09B

Total Penalties = DOJ, FinCEN, OCC Federal Reserve

$1.89B	$1.3B	$450M	$123.5M
DOJ fine and forfeiture	FinCEN	OCC	Federal Reserve

Bank of America October 2025 Action

Findings

- Bank admitted it willfully violated the BSA, in the civil sense
- AML program, foreign correspondent due diligence and SAR filing failures, 2018 to 2025
- More than $5B in suspicious activity reported late; over $1B tied to priority risks
- Detection "effectively outsourced" to law enforcement inquiries and other banks
- Still failing to escalate alerts a year after the OCC's December 2024 order

$1.21B

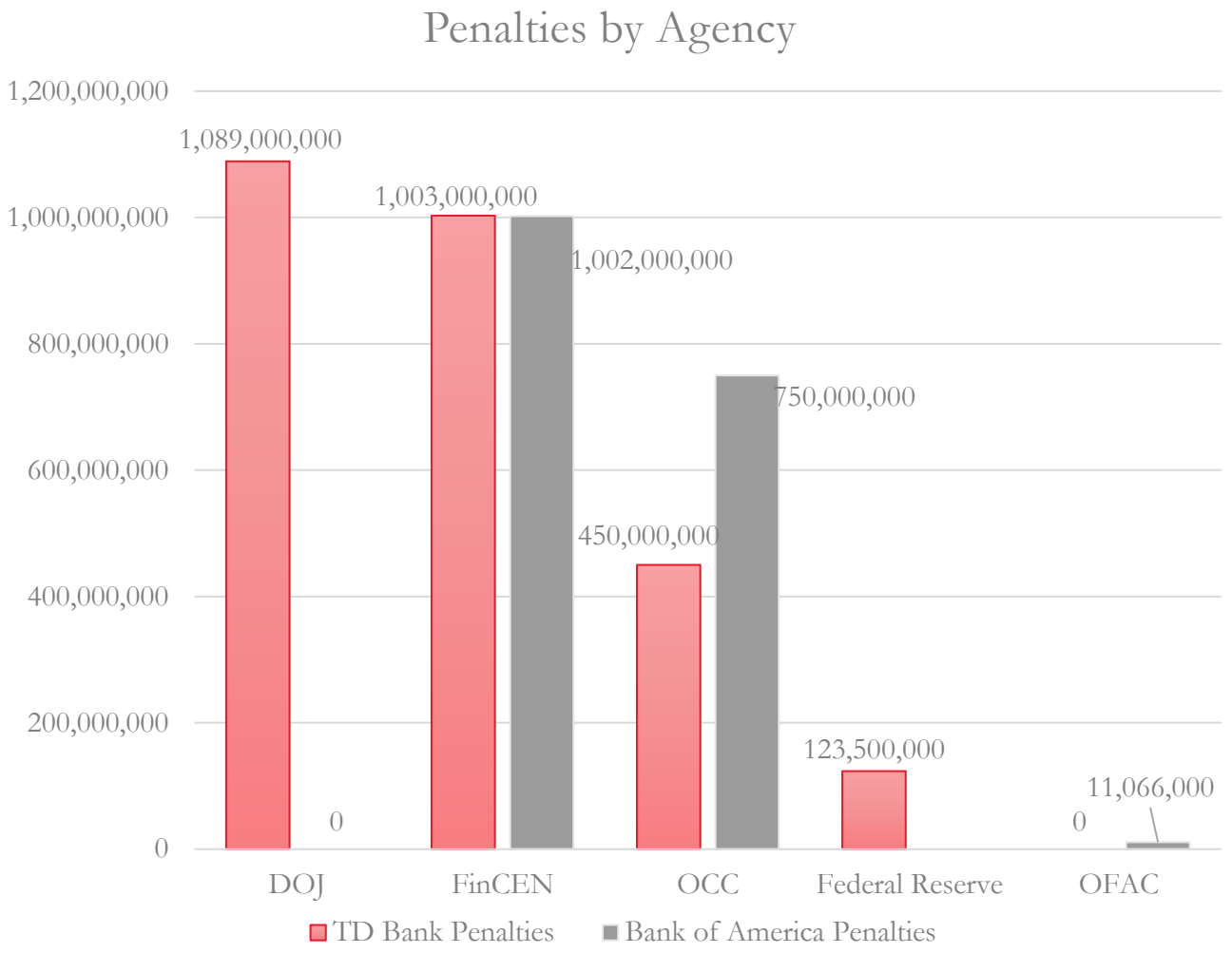
Civil penalties = FinCEN, OCC OFAC (no DOJ charges)

$1.2B	$750M	$11.66M
FinCEN, credits OCC	OCC, a record	OFAC

Comparison of Penalties

What do these numbers suggest?

- DOJ is the largest piece of TD and absent from Bank of America
- The OCC's Bank of America penalty exceeds TD's
- FinCEN's two penalties are close in size



Comparison of Consequences

Dimension	TD Bank (Oct. 10, 2024)	Bank of America (Oct. 13, 2026)
Growth restriction	Asset cap near $434B; new product approvals	None
Monitor or consultant	Guidepost Monitor: three years for DOJ, four for FinCEN	Third-party lookback and independent reviews; no monitor
Individuals	More than two dozen charged; insider prosecutions continued in 2025–2026	N/A as of now
Credit	No self-disclosure credit; 20% reduction for partial cooperation and remediation	OFAC gave no mitigation; bank cites remediation spending
Timing	Final months of the Biden administration	Trump administration, under the 2026 CEP and narrower supervision



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