



WHAT IS A WHITE COLLAR INVESTIGATION?

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White collar investigations generally focus on financial or regulatory issues, including insider trading, embezzlement, healthcare fraud, and environmental compliance. This article provides a high-level overview of the general aspects of white collar investigations led by federal authorities.

What Is an Inquiry Letter?

One way a white collar investigation can be initiated is via an inquiry letter, which is a formal request from a government agency—such as the FBI, U.S. Attorney's Office, and/or other federal regulatory agency—seeking information on specific issues or potential misconduct. Typically sent at the early stages of an investigation, an inquiry letter serves as a way for authorities to gather basic information before deciding whether further legal action is needed. Although receiving an inquiry letter might indicate that you or your business is under investigation, it does not necessarily imply criminal liability.

To protect your rights, it is important to seek the advice of a white collar attorney before responding to an inquiry letter, which might involve providing records, documents, and/or a written statement. It is especially important to seek the advice of an attorney in these situations because of the serious consequences that can result from ignoring or not properly responding to an

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inquiry letter, including but not limited to triggering a more thorough or invasive investigation and possibly criminal prosecution.

How Does the Government Bring Criminal Charges?

In white collar cases, criminal charges generally begin with an indictment—a formal accusation stating that an individual or business has committed a crime.¹ Indictments are issued by a grand jury and are a necessary step before bringing a criminal charge to trial. In federal cases, indictments are mandatory for all felonies.²

Criminal charges can also be brought “by information”, which allows prosecutors to file charges directly with the court without the need for a grand jury.³ This procedure is more commonly used when the defendant waives their right to a grand jury or the offense is less serious, i.e., a misdemeanor.⁴

¹ See 18 U.S.C. § 3332(a) (stating that “[i]t shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district”).

² See Fed. R. Crim. P. Rule 7(a)(1) (requiring prosecution by indictment for felonies, excluding criminal contempt); see *also* U.S. CONST., 5th AMENDMENT (stating that “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury”).

³ See Fed. R. Crim. P. Rule 7(b) (allowing prosecution by information if the defendant, after being advised of the charges and their rights, waives indictment in open court).

⁴ *Id.*

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What Is a Subpoena?

A subpoena is a legal order that requires individuals or organizations to appear at a proceeding or court to provide testimony.⁵ Subpoenas are often issued in cases involving fraud, embezzlement, or corporate malfeasance. The government can also issue a “subpoena duces tecum,” which orders the production of documents or records. It is important to promptly seek the advice of an attorney if you are issued a subpoena.

What Is a Plea Deal?

In lieu of going to trial and having the criminal charges resolved by a jury, the government may offer the defendant a plea bargain.

A plea bargain is an arrangement wherein a defendant accepts to enter a plea of guilty to a criminal charge in exchange for a more predictable outcome, usually a reduced sentence or lesser charges, is known as a plea deal or plea agreement. Whether the federal prosecutor is willing to offer such an agreement often depends on factors such as the strength of the evidence, the seriousness of the offense, and the defendant’s willingness to cooperate with ongoing investigations or testify against others involved.

⁵ See Fed. R. Crim. P. 17 (establishing procedures for the issuing and serving of subpoenas).



When considering whether to offer a defendant a plea bargain, according to federal guidelines,⁶ the attorney for the government should weigh all relevant considerations, including:

- The defendant's willingness to cooperate in the investigation or prosecution of others;
- The defendant's history with respect to criminal activity;
- The nature and seriousness of the offense or offenses charged;
- The defendant's remorse or contrition and his/her willingness to assume responsibility for his/her conduct;
- The desirability of prompt and certain disposition of the case;
- The likelihood of obtaining a conviction at trial;
- The probable effect on witnesses;
- The probable sentence or other consequences if the defendant is convicted;
- The public interest in having the case tried rather than disposed of by a guilty plea;
- The expense of trial and appeal;
- The need to avoid delay in the disposition of other pending cases; and
- The effect upon the victim's right to restitution.

⁶ See U.S. Dept. of Justice, Justice Manual § 9-27.420 (explaining the various factors the government attorney must consider when determining whether to offer a plea agreement).

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What Is Sentencing?

Sentencing is the procedure by which a court determines the appropriate punishment for someone convicted of a crime. In white-collar cases, this might occur following a trial or as part of a plea bargain. An individual found guilty of an offense may be sentenced to a term of probation, a fine, or a term of imprisonment.⁷

Federal courts follow guidelines established by the United States Sentencing Commission, particularly the Federal Sentencing Guidelines. These guidelines outline how the court shall determine the kinds of sentence and the guideline range as set forth in the guidelines.⁸

When sentencing follows a plea bargain, the process may differ slightly. This may result to reduced sentencing ranges, lower offense levels, or specified sentencing outcomes, depending on the terms agreed upon by both parties. If both parties agree on a specific sentence or sentencing range, the court is often bound by that agreement once the plea is accepted,⁹ ensuring that the specified conditions are followed.

⁷ See 18 U.S.C. § 3551(b) (stating that an individual found guilty of an offense shall be sentenced to probation, a fine, or imprisonment).

⁸ See 18 U.S.C. § 3553(a)(4) (stating “in determining the particular sentence to be imposed”, the court shall consider various factors, including the kind of sentence and the sentencing ranges set by the Sentencing Commission guidelines).

⁹ See Fed. R. Crim. P. 11(c)(1)(C) (specifying that if both agree on a specific sentence or sentencing range, this binds the court once the court accepts the plea agreement).

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White collar investigations can be complicated and result in severe financial and personal consequences. To protect your rights in such situations, it is important to seek the advice of an experienced defense attorney.

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