

DOJ's Initiatives for Ramping Up White Collar Enforcement Reveal Focal Points for Reducing Corporate Risk

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On March 3, 2022, U.S. Attorney General (AG) Merrick B. Garland announced several significant initiatives aimed at strengthening the ability of the Department of Justice (DOJ) to combat corporate crime.^[1] First, President Biden's Fiscal Year 2022 (FY22) budget seeks to increase monies allocated to the DOJ and the Federal Bureau of Investigation (FBI) by more than \$350 million to support white collar criminal enforcement efforts. In particular, the FY22 budget contemplates the allocation of \$36.5 million, which will allow for the hiring of 120 attorneys across all U.S. Attorneys' Offices and "bolster efforts to combat pandemic-related fraud."^[2] The budget also seeks approximately \$325 million to fund more than 900 FBI agents to support the FBI's White Collar Crime Program.

^[3] Additionally, AG Garland announced that the DOJ will focus on strengthening its existing resources by utilizing what he described as "force-multipliers," including data analytics and partnering with "every level of government and around the world."^[4]

These increased resources will enable the DOJ to carry out what AG Garland described as the DOJ's "first priority in corporate criminal cases, [which] is to prosecute the individuals who commit and profit from corporate malfeasance."^[5] He specified that the prospect of personal liability is the best deterrent to corporate crime and that holding individuals accountable is essential to Americans' trust in the rule of law.

On that same day, Kenneth A. Polite, Assistant Attorney General (AAG) for the Criminal Division, announced various initiatives aimed at ensuring that the consideration of victims "be at the center of [the DOJ's] white-collar cases," noting that it is important to focus on the damage caused by "financial, corporate and greed-driven crimes, where victims can at times be difficult to identify and their injuries hard to calculate."^[6] The initiatives include the reconvening of the Crime Victims Working Group, tasked with, among other things, proposing revisions to the DOJ's policy manual regarding the fulfillment of its obligations to crime victims. AAG Polite is also adding a Victim Coordinator to his Front Office, who will be responsible for addressing crime victim issues.

And one week later, Deputy Attorney General (DAG) Lisa Monaco announced the launching of a new phase in the DOJ's efforts to combat pandemic-related fraud, which was described as a "top priority" of the current administration.^[7] This new phase includes the appointment of Associate Deputy Attorney General Kevin Chambers as Director of COVID-19 Fraud Enforcement, and a "focus on the leveraging of new tools" in the fight.^[8] DAG Monaco

also highlighted the importance of victims' interests, commending the COVID-19 Fraud Enforcement Task Force's pursuit of "justice on behalf of fraud victims."¹⁰⁰

Relatedly, several state attorneys general are also mobilizing the tools in their arsenals to prosecute pandemic-related fraud by using state consumer protection laws. For example, the state attorney general offices of Washington and Minnesota recently filed consumer protection lawsuits against a company that managed COVID-19 testing sites for allegedly engaging in deceptive and fraudulent practices.¹⁰¹ These cases and other steps taken by state attorneys general demonstrate that they, too, are devoting significant resources to investigations and prosecutions of corporate crime and pandemic-related fraud.

TAKEAWAYS:

- **DOJ's prioritization of prosecuting individuals engaged in white collar crime will translate into high government expectations for company disclosures regarding individual wrongdoers.** DOJ has made clear that its "first priority" in prosecuting corporate criminal cases is to hold individuals accountable. Accordingly, it is likely that the government will rigorously enforce its earlier pronouncements that to "be eligible for any cooperation credit, companies must provide the [DOJ] with *all* non-privileged information about individuals involved in or responsible for the misconduct at issue."¹⁰² Thus, companies seeking credit for cooperating with the government should be well-prepared to disclose information and respond to extensive government inquiries regarding the individuals who engaged in the corporate malfeasance or were otherwise responsible for it.
- **DOJ's greater focus on white collar crime's impact on victims requires a similar focus by companies.** In view of the DOJ's mandate that prosecutors consider victims at every stage of a white collar matter, companies should be prepared to address victim issues in connection with efforts to secure leniency from the government. This means that when conducting internal investigations, companies should strive to identify victims and assess the nature and extent of damages suffered by victims. In addition, companies should ensure that remediation efforts include providing appropriate relief to victims.
- **While many of the pandemic-relief programs are winding down, pandemic-related investigations and prosecutions will be ramping up.** Indeed, the various white collar enforcement initiatives recently announced are expected to strengthen and expand the government's ability to identify and prosecute companies and individuals who exploited government programs intended to help those suffering as a result of the pandemic and to recover stolen funds using both criminal and civil enforcement tools, including the False Claims Act (FCA). This is consistent with earlier DOJ announcements that the FCA "will play a significant role" in addressing pandemic-related fraud and encouraging whistleblowers to come forward.¹⁰³ Given that FCA complaints remain under seal while the government investigates, it is likely that over the coming year, we will see more FCA matters being litigated by the government and/or relators as pending FCA complaints are unsealed.
- **The significant enforcement initiatives announced by the government should be met with equally significant compliance initiatives by companies.** Given the expected rise in heavily resourced investigatory and enforcement activity to combat corporate crime, including pandemic-related fraud, companies should take proactive steps now to ensure robust and effective compliance programs. Specifically, companies should (1) assess risks specific to their business and implement compliance measures designed to address those risks; (2) properly resource and monitor their compliance programs through increased staffing, funding, and training; and (3) ensure that compliance departments have the appropriate degree of independence and authority to investigate alleged wrongdoing, identify individual wrongdoers, assess victim impact, and implement appropriate remediation measures. Companies should take heed of recent DOJ pronouncements regarding expectations for compliance programs.¹⁰⁴ Taking these steps now will not only go a long way toward preventing wrongdoing in the first place but will also place the company in the best position to defend against the increasing number of government investigations and prosecutions expected, and secure leniency from the government and favorable resolutions.

If you have additional questions or need further assistance, please reach out to the authors of this article, **Suzanne Jaffe Bloom** (Co-Chair, White Collar, Regulatory Defense & Investigations), **Cristina Calvar** (Partner, White Collar,

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^[1] Press Release, DOJ, Attorney General Merrick B. Garland Delivers Remarks to the ABA Institute on White Collar Crime (Mar. 3, 2022), *available at* <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-aba-institute-white-collar-crime>.

^[2] *Id.*

^[3] *Id.*

^[4] *Id.*

^[5] *Id.*

^[6] Press Release, DOJ, Assistant Attorney General Kenneth A. Polite Jr. Delivers Justice Department Keynote at the ABA Institute on White Collar Crime, (Mar. 3, 2022), *available at* <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-justice-department-keynote-aba>.

^[7] Press Release, DOJ, Deputy Attorney General Lisa O. Monaco Delivers Remarks at COVID-19 Fraud Enforcement Task Force Roundtable (Mar. 10, 2022), *available at* <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-remarks-covid-19-fraud-enforcement-task>.

^[8] *Id.*

^[9] *Id.*

^[10] Press Release, Washington State Office of the Attorney General, Attorney General Ellison files lawsuit against COVID-19 testing sites, lab for deceiving consumers (Jan. 19, 2022), *available at* https://www.ag.state.wn.us/Office/Communications/2022/01/19_CenterForCovidControl.asp.

^[11] See *supra* note 1.

^[12] Press Release, DOJ, Acting Assistant Attorney General Brian M. Boynton Delivers Remarks at the Federal Bar Association Qui Tam Conference (Feb. 17, 2021), *available at* <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-brian-m-boynton-delivers-remarks-federal-bar>.

^[13] See Memorandum from the DOJ Criminal Division on the Evaluation of Corporate Compliance Program, DOJ, *available at* <https://www.justice.gov/criminal-fraud/page/file/937501/download> (last updated June 2020); Press Release, DOJ, Criminal Division Announces Publication of Guidance on Evaluating Corporate Compliance Programs (Apr. 30, 2019), *available at* <https://www.justice.gov/opa/pr/criminal-division-announces-publication-guidance-evaluating-corporate-compliance-programs>.

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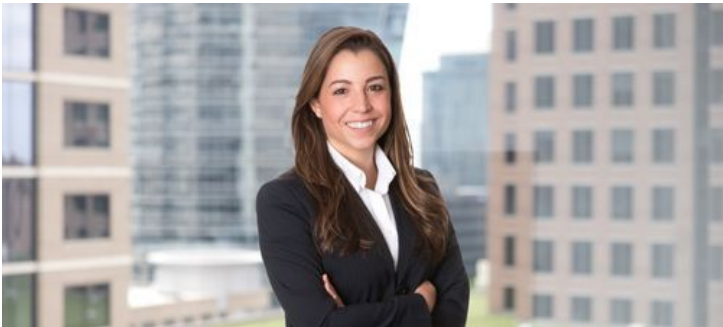
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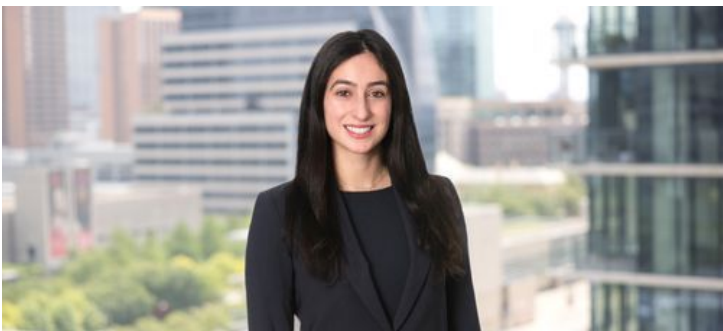
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