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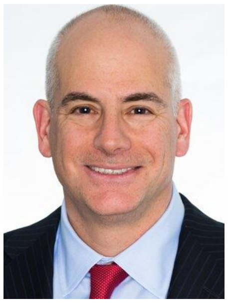
# The Case For Compliance During The Trump Administration

By **David Resnicoff and Andrew Patton** (February 19, 2025, 4:32 PM EST)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Within 12 hours of taking her oath of office, Attorney General Pam Bondi issued 14 directives to U.S. Department of Justice employees through official memoranda addressing investigative priorities, resource allocation and principles for prosecutorial decision-making.

Though the dust is far from settled, and there is surely more guidance to come, it is clear from the memoranda that at least some of the DOJ's chief priorities will be immigration-related crimes; international terrorism; drug cartels and related violence; and even enforcement against private entities supporting diversity, equity and inclusion initiatives.

Bondi outlines in her memorandum on the "Total Elimination of Cartels and Transnational Criminal Organizations" that she plans to tackle these initiatives by shifting resources and "removing bureaucratic impediments to aggressive prosecutions."

At the same time, the Bondi memoranda indicate the administration's intention to deemphasize corporate enforcement and transnational corruption.

One memorandum disbands the National Security Division's Corporate Enforcement Unit, which was formed to specifically focus on corporate activities that may pose a threat to national security.

The DOJ's kleptocracy task forces and initiatives, which focused on enforcing sanctions on Russian oligarchs, were also disbanded.

Another memorandum shifts the focus of the DOJ's Foreign Corrupt Practices Act Unit from the statute's plain and traditional focus on bribery of foreign officials related to commercial business activity, to bribery related to trafficking in narcotics, firearms and human beings.

Underscoring the rapidly evolving nature of this area, on Feb. 10, President Donald Trump signed Executive Order No. 14209 on FCPA enforcement, directing the DOJ to pause all enforcement actions concerning the FCPA, pending new enforcement guidelines.

In doing so, the president stated a need to "save our country" and "restore American competitiveness," which has been "harmed by FCPA overenforcement because [U.S. companies] are prohibited from engaging in practices common among international competitors, creating an uneven playing field."

Of course, the extent to which this apparent direction plays out remains to be seen. But it is not unthinkable that, in the coming days and weeks, we will see similar adjustments to resources and priorities in a host of corporate enforcement programs, such as healthcare fraud, False Claims Act enforcement, export controls and sanctions, and environmental enforcement, to name a few.

We may also see substantial revisions, and even repeal, of DOJ guidance and policies on a wide range of issues of interest to business entities, including the expectations for corporate compliance programs, the DOJ and U.S. Securities and Exchange Commission's "FCPA Resource Guide," and DOJ self-disclosure programs.

This relative deemphasis on corporate enforcement may also be broader than the DOJ alone. For example, on Feb. 1, the president removed the director of the Consumer Financial Protection Bureau and appointed U.S. Department of the Treasury Secretary Scott Bessent as acting director.

Bessent then ordered the CFPB staff to halt all rulemaking, litigation, enforcement and communications without the approval of the acting director.

Since then, the CFPB's acting director position has shifted once again to Office of Management and Budget Director Russell Vought, who has ordered CFBP personnel to stop all supervisory activities.

At the SEC, the commission is reported to have instructed Division of Enforcement attorneys that approval from the agency's commissioners is required for all formal orders of investigation.

It is quite possible that we will see further retrenchment at other federal departments and agencies charged with criminal and civil investigations or enforcement authority that affect business entities.

All of this signals a likely substantial change of direction for federal corporate prosecutions, with corresponding changes to the resources and focus of the white collar defense bar.

There is another important ramification of this shifting ground that should be considered by all in-house compliance leaders: the inevitable sense of company directors and C-suite executives that, with enforcement apparently on the wane, the time is ripe to pare back on compliance initiatives, budgets and even head count.

Business leadership may perceive the enforcement pendulum swinging back and react accordingly. Midlevel managers, especially in sales and marketing departments, may hear this change in tone as reflecting a higher risk appetite by their own leadership that could influence their day-to-day decisions and result in compliance failures small and large.

This instinct by executives is natural, and not unfamiliar to compliance professionals who have served during other presidential transitions, particularly from Democrat to Republican administrations in less volatile times. Yet, as always, this instinct is misplaced.

We suggest that there are compelling reasons for companies to at least stay the course on their compliance programs and, if anything, enhance their programs during the current administration. Those reasons include the following.

**1. It is too early to understand the significance of these initiatives.**

The changes set forth in Bondi's memoranda "will be implemented for a period of 90 days, and renewed or made permanent thereafter as deemed appropriate by the Office of the Attorney General and the Office of the Deputy Attorney General."

Executive Order No. 14209 called for Bondi to issue new guidance on the FCPA, and the contours of that guidance remain to be seen.

Beyond this uncertainty, it will take time to understand the extent to which these initiatives shift the focus of enforcement actions. To alter a company's compliance program on the basis of incomplete information creates an inherent and unnecessary risk of misidentifying the key issues associated with a rapidly evolving enforcement landscape.

**2. Strong cases will still be prosecuted.**

Even with the change in priorities and resources at the DOJ, we can expect the professionals at the DOJ and the multiple U.S. attorney's offices across the country to still prosecute strong and worthy corporate cases. The statutes and regulations that provide for civil and criminal liability for corporate misconduct have not yet been repealed.

There are many corporate cases in the pipeline, and new corporate cases will emerge that would be attractive to prosecute for any administration. This is especially true for cases involving the administration's priorities, such as evasion of customs duties through diversion or transshipment, and violation of export controls or sanctions regulations.

Cases involving corporate fraud on government programs especially should be aligned with the administration's stated goals in addressing fraud in public spending, and will likely be pursued.

Because these regulatory regimes are so complex, the only way companies can ensure compliance is by maintaining robust programs that address the many requirements.

**3. Historical and current conduct is prosecutable well into the future.**

Even if federal corporate enforcement turns out to be less aggressive during this administration, the limitations period for relevant civil and criminal statutes will run well past the administration's termination.

Most statutes of limitations are at least five years, running from the date of the completion of the crime, or, in the case of a conspiracy charged under Title 18 of the U.S. Code, Section 371, from the date of the last overt act of the conspiracy.

For example, the statute of limitations for the FCPA's criminal antibribery provisions is five years,[1] and six years for the criminal accounting and internal controls provisions.[2]

The limitations period for civil securities fraud cases is five years,[3] and 10 years for violations requiring scienter.[4]

The False Claims Act provides that a civil action may be brought six years after the date the violation is committed, or three years from "the date when facts material to the right of action are known or reasonably should have been known" to the government.[5]

This renders relevant conduct that occurred at least over the past year, and conduct occurring during this administration, subject to investigation and prosecution after this administration has run its course.

Whether the next administration is Democrat or Republican, the probability of an eventual return to aggressive prosecution, which has been the historical norm, is relatively high.

**4. State attorneys general are active.**

State attorneys general have considerable power to investigate and prosecute corporate misconduct, and there is already buzz about state AGs stepping in to fill any void.

The majority of states have their own False Claims Acts and anti-fraud statutes.[6] Watch for state AGs to become even more active on corporate investigations and prosecutions.

**5. Other important enforcement authorities and stakeholder expectations matter.**

The compliance imperative that has arisen in the past 25 years is driven by more than just the U.S. DOJ. The U.S. sentencing guidelines still incentivize the establishment of effective compliance programs. Other departments and agencies of the federal government have their own civil enforcement authority and compliance expectations, such as the SEC, the U.S. Department of Health and Human Services' Office of Inspector General, and the U.S. Department of Commerce's Bureau of Industry and Security.

In some industries, such as the pharmaceutical, medical device and medical technology industries, industry associations have their own expectations for compliance programs for their members.[7]

Multinational companies can expect continued foreign enforcement of civil and criminal laws governing business conduct, especially in the fields of bribery and corruption.

The U.K. Bribery Act, for example, provides for strict liability offenses for the failure to prevent bribery, but also provides a full defense for any commercial organization that can show bribery occurred while it "had in place adequate procedures" to prevent bribery.[8]

Companies will be well advised to adhere to the expectations of enforcement authorities and stakeholders beyond the DOJ, as appropriate, in shaping their compliance program.

**6. Compliance failures risk more than prosecution.**

Most serious compliance failures are not just an issue of corporate enforcement and punishment. They are organizational failures that affect business entities' very brand, as well as all of their stakeholders, including customers, investors, employees and the communities where businesses operate.

That is the enduring lesson of the Enron Corp., MCI WorldCom and Tyco International cases, and many other compliance failures since.

There are plenty of good business reasons to avoid systemic compliance failures beyond avoiding prosecution.

**7. Strong compliance is good business.**

High-performing and sustainable businesses tend to have strong compliance cultures and controls. Diminishing compliance programs just because the enforcers appear to have other enforcement priorities at the moment sends the exact wrong message for companies that are trying to create strong and enduring businesses.

**Conclusion**

However this administration's focus on corporate enforcement plays out, we suggest that compliance leaders be prepared to urge their business leadership to remain committed to building and maintaining robust compliance programs tailored to their businesses and risks.

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[1] 18 U.S.C. § 3282.

[2] 18 U.S.C. § 3301.

[3] 28 U.S.C. § 2462.

[4] 18 U.S.C. § 3293(2).

[5] 31 U.S.C. § 3731(b).

[6] E.g., CA Bus & Prof Code § 650(h); N.Y. Soc. Serv. Law § 366-d; 815 ILCS 505/2.

[7] See e.g., AdvaMed Code of Ethics; PhRMA Code on Interactions with Healthcare Professionals.

[8] U.K. Bribery Act, Section 7.