



10 THINGS YOU NEED TO KNOW ABOUT DOJ'S FOCUS ON PROSECUTING WHITE COLLAR CRIME

On March 3, 2022, Attorney General Merrick B. Garland and Assistant Attorney General Kenneth A. Polite, Jr. spoke at the ABA Institute on White Collar Crime about the Department of Justice's ("DOJ") new approach to prosecuting white collar crime. Their speeches are available [here](#) and [here](#). Here's what you need to know:

1. **The DOJ is looking to prosecute individuals – not just corporations – for misconduct.** AG Garland said DOJ's "first priority" in corporate criminal cases is to "prosecute individuals who commit and profit from corporate malfeasance." DOJ is emphasizing their top goal will be to prosecute individuals, rather than simply reaching a resolution with the corporate entity. Indeed, as discussed below, businesses will be required to share all non-privileged information about individuals involved in the criminal conduct to obtain cooperation credit.
2. **The DOJ is committed to strengthening enforcement in the cryptocurrency space.** In October 2021, DOJ [announced](#) it was creating a National Cryptocurrency Enforcement Team ("NCET") focused on illegal activity by cryptocurrency exchanges and infrastructure providers that enable money laundering. This February, DOJ [announced](#) the FBI is creating a specialized team focused on cryptocurrency that it will use to seize and track illicit funds. Also in February, the DOJ [announced](#) that it has appointed a veteran cybercrime prosecutor from the SDNY to lead the NCET. Moreover, President Biden signed an [executive order](#) on cryptocurrency this week that will direct several federal agencies to investigate and develop policies and regulations on digital currencies.
3. **Businesses will have to be forthcoming about individuals to obtain cooperation credit.** AG Garland said that to be eligible for cooperation credit, "companies must provide the Justice Department with all non-privileged information about individuals involved in or responsible for the misconduct at issue." This applies to "all individuals, regardless of their position, status, or seniority, and regardless of whether a company deems their involvement as 'substantial.'" AAG Polite similarly said that "when allegations of wrongdoing surface, to receive any credit for cooperation, a corporation must notify the department of all relevant, non-privileged facts and evidence about the misconduct and all of the individuals involved."
4. **DOJ may demand resignations and leadership changes after misconduct surfaces, even if leadership was not involved in the misconduct.** AAG Polite said that "even if there is not any evidence that a CEO personally committed a crime, upon discovery of a crime, a corporation should examine whether a change in leadership is necessary, not for change's sake, but because [the CEO] modeled poor ethical behavior for the workforce, or fostered a climate in which subordinates committed wrongdoing with intent to benefit the company, or permitted weak internal controls that allowed the crimes of individuals to go undetected."

5. **DOJ wants companies to make strong investments in compliance.** AAG Polite explained, “I want to know whether you are doing everything you can to ensure that when that individual employee is facing a singular ethical challenge, he has been informed, trained and empowered to choose right over wrong. Or, if he makes the wrong choice, you have a system that immediately detects, remediates, disciplines, and then adapts to ensure that others do not follow suit.”
6. **The DOJ will aggressively prosecute violations of Russian sanctions.** AG Garland said he is creating an “interagency taskforce to hold accountable Russian oligarchs and others who seek to evade U.S. sanctions or otherwise profit from corrupt conduct.” AG Garland vowed to “leave no stone unturned in our efforts to investigate, arrest, and prosecute those whose criminal acts enable the Russian government to continue its unjust war against Ukraine.”
7. **The DOJ is also focused on pandemic fraud.** AG Garland announced that the DOJ will soon name a chief prosecutor to lead specialized teams dedicated to combatting pandemic fraud. This will build on the existing work of the COVID-19 Fraud Enforcement Task Force that DOJ [established](#) last May, which includes nearly 30 agencies that administer and oversee pandemic relief funding.
8. **The DOJ plans to extend its reach by partnering with other U.S. and foreign agencies.** AG Garland said that examples include the interagency task forces on Russia sanctions and pandemic-related fraud discussed earlier. This will complement the work of a transatlantic task force [announced](#) by President Biden and European leaders on February 26 to ensure the effective implementation of financial sanctions. He added that DOJ is “working more closely than ever with Inspectors General across the federal government” to identify perpetrators of government-program fraud. According to AG Garland, DOJ will also continue to work with the SEC, CFTC, state, local, and foreign enforcement agencies on a wide range of corporate criminal investigations.
9. **The DOJ will leverage the power of AI and Big Data to catch white collar criminals.** AG Garland stated that DOJ is “using big data – our own, and the data of other departments and agencies – to identify payment anomalies that are indicative of fraud.” AG Garland said this constitutes an “enormous expansion” of the data analytic work DOJ has previously done. In particular, he has provided the Criminal Division’s Fraud Section with a new, embedded squad of FBI agents to further strengthen DOJ’s ability to bring data-driven corporate crime cases nationwide.
10. **AG Garland expects that DOJ’s “enforcement activity will only accelerate as we come out of the pandemic.”** This despite the fact that 2021 was one of the busiest trial years on record for the DOJ Criminal Division’s Fraud Section.

With the looming threat of increased and aggressive federal enforcement on the horizon, businesses in all industries should re-evaluate and invest in their financial crime compliance programs to ensure they meet DOJ’s current standards. Businesses should also prepare for more investigations and consider how they will handle surprise visits and raids from law enforcement agents.

To discuss this matter, please contact the following McGonigle's team of former federal prosecutors and enforcement attorneys:



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