

ALERT

AG Bondi Refocuses DOJ Priorities in New Guidance Documents

February 7, 2025

On February 5, newly confirmed Attorney General Pam Bondi issued a series of guidance documents refocusing U.S. Department of Justice (DOJ) priorities for the new Administration. In addition to effectuating many of President Trump's Executive Orders, Attorney General Bondi reinstated prior Trump Administration guidance, established working groups and task forces, and reallocated Department resources.

Importantly, many Executive Orders impact enforcement priorities and DOJ components tasked with traditional white collar enforcement.

With more changes likely coming, companies should evaluate whether these policy changes could impact ongoing or future matters with the Department as well as existing compliance programs.

Focusing on Cartels and Transnational Criminal Organizations

Attorney General Bondi focused Foreign Corrupt Practices Act (FCPA) Unit and Money Laundering and Asset Recovery Section (MLARS) assets away from "traditional" enforcement areas towards combating cartels and transnational criminal organizations. The FCPA Unit will now prioritize investigating foreign bribery schemes that facilitate cartel activity and transnational criminal organizations. Previously, the FCPA Unit primarily pursued U.S.-based entities and persons that did business abroad, targeting those who used corrupt means to secure commercial advantages. In recent years, this has led to prosecutions of government contractors, telecommunication companies, oil and gas producers, and their executives. The FCPA Unit will now work with other Department components and U.S. Attorneys' Offices to investigate and prosecute organized crime and cartels engaged in bribery. Similarly, Attorney General Bondi directed MLARS to prioritize investigations, prosecutions, and asset forfeiture actions against cartels and those that help them.

Authors

The memorandum also suspended certain FCPA-related provisions of the Justice Manual, making prosecuting FCPA cases against cartels easier. Indeed, FCPA cases no longer need to be prosecuted by trial attorneys in the Fraud Section. And the Criminal Division no longer needs to greenlight FCPA investigations and prosecutions. These suspensions, however, only apply to FCPA matters associated with cartels and transnational criminal organizations, meaning U.S. Attorneys' Office will still not enforce the FCPA in "traditional" foreign bribery matters.

Taken together, the directive likely means enforcement actions in the FCPA and money laundering spaces will focus on Latin America and China, given the focus on combating cartels, human smuggling, and international crime organizations. Future enforcement will almost certainly target companies or financial institutions that assist these bad actors, including by laundering drug proceeds. That said, FCPA enforcement is unlikely to decline. Nothing in Attorney General Bondi's memorandum appears to impact current cases in the FCPA Unit's pipeline, and FCPA enforcement increased during President Trump's first administration.

Restricting FARA Enforcement

Attorney General Bondi also limited the reach of criminal prosecution under the Foreign Agents Registration Act (FARA). FARA requires that any persons engaged in political or quasi-political activities in the United States on behalf of foreign interests register their activities with DOJ absent an exemption to FARA registration. Criminal enforcement under FARA has increased significantly in recent years, addressing "willful" violations of the statute. Attorney General Bondi's memorandum limits FARA prosecutions to "instances of alleged conduct similar to more traditional espionage by foreign government actors." Although the memo limits criminal enforcement under FARA, civil enforcement will continue. To this end, the memo states that DOJ's Counterintelligence and Export Control Section, which houses the FARA Registration Unit, will now focus on "civil enforcement, regulatory initiatives, and public guidance."

Prioritizing DEI and DEIA Cases

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Practice Areas

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Foreign Agents Registration Act (FARA)
Government Contracts
Litigation
National Security
Oversight, Investigations & White Collar Enforcement
White Collar Defense & Government Investigations

To effectuate Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit Based Opportunity*, Attorney General Bondi issued a memorandum directing DOJ's Civil Rights Division to "investigate, eliminate, and penalize" DEI and DEIA policies that violate federal law. The memorandum also requests a report to suggest policies and practices for enforcing the Executive Order and identify targets for investigation by the Civil Rights Division. This directive indicates that DOJ will pursue private companies with questionable DEI or DEIA policies.

The memorandum did not clarify how DOJ will handle the Executive Order's False Claims Act (FCA) aspect. Under the order, agencies must include two provisions in every contract or grant award. The first requires the contractor to "certify" they do not "operate any programs promoting DEI that violate any applicable federal anti-discrimination laws." The second asks the contractor to confirm that the previous certification "is material to the government's payment decisions." This language mirrors the materiality element of the FCA and creates a heightened risk of exposure related to these certifications.

Enforcement of the Executive Order and related memorandum could hit colleges and universities the hardest. Attorney General Bondi's memorandum explicitly calls out colleges and universities, stating that "the Civil Rights Division will pursue actions[] regarding the measures and practices required to comply with *Students for Fair Admissions*," a 2023 Supreme Court decision that established a new standard for the constitutionality of affirmative action programs.

Rescinding Reliance on Agency Guidance Documents

Attorney General Bondi also rescinded Biden-era policy that allowed DOJ to use agency guidance in FCA and other enforcement actions when alleging that companies misrepresented their compliance with federal rules. This breathes new life into guidance issued under the prior Trump DOJ that eschewed criminal and civil enforcement actions based on noncompliance with informal agency guidance. Attorney General Bondi also commissioned a report "concerning strategies and measures that can be utilized to eliminate the illegal or improper use of guidance documents." Thus, we expect more from DOJ on this issue in the coming months.

Takeaways

As more senior DOJ positions are filled, we can expect additional guidance that will shape the Department in the second Trump Administration. For example, we expect updates to DOJ's Corporate Enforcement Policy and Evaluation of Corporate Compliance Programs. It also remains to be seen what DOJ will do with the recently implemented Whistleblower Pilot Program, which is still in its infancy. Any changes to these policies or programs could significantly impact current and future investigations.

In the meantime, companies should continue to build and stress-test effective compliance programs. Particular emphasis should be placed on business conducted in Latin America and China. Now is also a good time to review current affirmative action and DEI-related statements, policies, programs, procedures, and initiatives to ensure compliance with federal anti-discrimination laws and limit potential exposure to costly investigations and litigation. Despite changing priorities, compliance gaps pose risks under any administration. And statutes of limitation for many white collar offenses and the FCA will likely outlive current policies and guidance.

Wiley has a team of skilled practitioners with knowledge and experience in relevant areas (including White Collar Defense & Government Investigations, Litigation, Employment & Labor, National Security, and Government Contracts) to help private-sector businesses navigate changes to federal policies. Our team can guide those seeking advice regarding these updates and how they impact ongoing enforcement actions, future investigations, or corporate compliance programs.

To stay informed on all the Executive Orders and announcements from the Trump Administration, please visit our dedicated resource center below.

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