

ALERT

DOJ Creates New Enforcement & Affirmative Litigation Branch Within Civil Division

October 8, 2025

On Thursday September 25, the U.S. Department of Justice (DOJ) announced the creation of a new Enforcement & Affirmative Litigation Branch within the Civil Division. According to the DOJ press release, DOJ's affirmative litigation will be consolidated into this Branch. The new Branch will be divided into two sections:

- **Enforcement Section:** This section will bring cases to guard consumers under statutes such as the Controlled Substances Act; Federal Food, Drug, and Cosmetic Act; Consumer Product Safety Act; Federal Trade Commission Act; Children's Online Privacy Protection Act; and Restore Online Shoppers' Confidence Act.
- **Affirmative Litigation Section:** This section will pursue litigation against state, local, or private actors that "interfere with or obstruct federal policies, ensuring nationwide compliance with the U.S. Constitution and federal law."

What does this mean, and how does it change DOJ's offices that covered these areas before this announcement?

- **Enforcement Section:** It appears the Enforcement Section will undertake many enforcement responsibilities previously delegated to the Consumer Protection Branch (CPB). This announcement follows news reports from April 2025 indicating DOJ's intention to eliminate the CPB by September 30, 2025, by reassigning attorneys to other offices within DOJ.

The CPB was established in 1971 and tasked with safeguarding American's "health, safety, economic security, and identity integrity." While the Branch was housed within the

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Civil Division, it handled both criminal and civil enforcement. Statutes CPB enforced included those administered by the U.S. Food and Drug Administration (FDA), Federal Trade Commission (FTC), Consumer Product Safety Commission (CPSC), and National Highway Traffic Safety Administration (NHTSA). The DOJ press release does not mention whether the new Enforcement Section will have the authority to pursue both criminal and civil penalties as the CPB did.

The press release identified a few key areas that mirror frequent Trump Administration priorities. Specifically, the release noted that it will draw on DOJ's experience to protect consumers from unfair and deceptive trade practices by large technology companies, "defective consumer goods imported from China," and "false and misleading claims about drugs and dietary supplements manufactured by pharmaceutical companies." It also mentions that the new division will advance DOJ "enforcement priorities, including protecting women and children from pharmaceutical companies, health care providers, and medical associations profiting off of false and misleading claims related to so-called gender transition."

- **Affirmative Litigation Section:** The responsibility of the new Affirmative Litigation Section is less clear given the relative lack of detail provided in the press release. But it does note that the division will prioritize "ending sanctuary jurisdiction laws, policies, and practices that impede federal immigration enforcement and make Americans less safe in their communities."

The press release is otherwise silent on whether this office will be carrying out the responsibilities of an existing office or if this will be new work. Since the goal of DOJ's restructuring is to "consolidate the Civil Division's affirmative litigation work into a highly specialized branch," the new Affirmative Litigation Section could possibly absorb the Federal Programs Branch's affirmative litigation, which includes actions brought on behalf of federal agencies seeking to enforce statutory and regulatory programs.

DOJ recently published a request for information seeking comments related to state laws and regulations that place an undue burden on the national economy or interstate commerce. Given this Administration's focus on deregulation, the Affirmative Litigation Section may be tasked with pursuing legal actions against state laws and regulations identified in public comments related to the policy objectives the DOJ press release highlights as priorities.

Wiley's cross-disciplinary attorneys have extensive experience at multiple government agencies. Our Food & Drug and FTC and Consumer Protection practices are wired into Washington and available to answer questions about this new Branch.

Emma Howard, a Law Clerk at Wiley Rein LLP, contributed to this alert.