

# DOJ to Devote Substantial Resources to Investigating and Prosecuting Corporate Crime, Emphasizing Importance of Effective Compliance Programs

Article By:

Julian L. André

Justin P. Murphy

Sarah E. Walters

Edward B. Diskant

Paul M. Thompson

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In March 3, 2022, speeches at the American Bar Association's Annual National Institute on White Collar Crime (ABA White Collar Institute), [US Attorney General \(AG\) Merrick Garland](#) and [US Assistant Attorney General for the Criminal Division \(AAG\) Kenneth Polite Jr.](#) addressed the US Department of Justice's (DOJ) increased commitment to investigating and prosecuting corporate crime.

As a testament to their commitment to these resource-intensive cases, AG Garland discussed plans to hire 120 new prosecutors and 900 new FBI agents; this announcement represents a substantial surge in resources. AG Garland and AAG Polite also addressed specific ways they intend to increase enforcement efforts, including through the expanded use of data analytics. Finally, in addition to outlining substantive enforcement priorities, AG Garland and AAG Polite emphasized DOJ's focus on individual accountability, with AG Garland reiterating that DOJ's primary goal is "obtaining individual convictions rather than accepting big-dollar corporate dispositions."

As AG Garland warned, DOJ's white-collar enforcement efforts will further "accelerate as we come out of the pandemic" and DOJ's interest in corporate crime is clearly "waxing again." Companies must therefore take proactive steps to prepare for this increased enforcement activity.

## IN-DEPTH

### ***Substantial Additional Resources for Corporate Crime Enforcement***

In 2021, DOJ charged 5,521 individuals with "white collar" crimes, which represented a 10%

increase over 2020. During his speech, AG Garland announced that DOJ will be devoting even more resources toward its corporate crime enforcement efforts going forward. Specifically, DOJ will seek funding to hire 120 new prosecutors and 900 new FBI agents, all of whom would focus on white-collar crime. If DOJ obtains such funding, those new prosecutors and agents could supercharge DOJ's enforcement efforts. For example, 120 prosecutors is more prosecutors than there are in many US Attorneys' Offices (including in the [District of Massachusetts](#), a district that is already active in corporate enforcement, particularly in the resource-intensive healthcare space). Adding 900 new FBI agents—a number that is similarly larger than many existing FBI field offices—could allow DOJ to pursue thousands of new corporate criminal investigations.

### ***Expanded Use of Data Analytics***

For the past two years, DOJ and other federal agencies have increasingly [relied on sophisticated data analytics tools to identify and prosecute corporate crime](#). AG Garland specifically identified data analytics as another “force-multiplier” for DOJ. DOJ's use of data analytics will undoubtedly expand going forward. Among other things, AG Garland announced that a new squad of FBI agents has been embedded within the Criminal Division's Fraud Section to “further strengthen [DOJ's] ability to bring data-driven corporate crime cases nationwide.” As DOJ increasingly relies on “big data,” including vast amounts of data from other state and federal agencies, companies must ensure that they are proactively using data analytics to further their own internal compliance efforts.

### ***DOJ's Priority Enforcement Areas***

AG Garland and AAG Polite mentioned several of DOJ's specific white-collar criminal enforcement priorities during their remarks. In addition to traditional areas such as healthcare fraud, securities fraud and Foreign Corrupt Practices Act violations, companies should expect increased DOJ scrutiny in the following areas:

- **Antitrust:** AG Garland highlighted DOJ's active investigations and prosecutions of alleged criminal antitrust violations and collusive activity in government procurement. DOJ's Antitrust Division ended the last fiscal year with 146 open grand jury investigations—the most in 30 years—and is trying or preparing to try 18 indicted cases against 10 companies and 42 individuals. AG Garland previously noted that “reinvigorating Antitrust enforcement” was a top priority for DOJ, and he requested a [budget increase of 9% for the Antitrust Division](#) (more than \$200 million). Such significant additional resources will bolster the Antitrust Division's aggressive pursuit of alleged violations in their current priority areas: government procurement, labor markets, consumer products and the healthcare industry. In addition, during separate remarks at the ABA White Collar Institute, Richard Powers, the Deputy Assistant Attorney General for Criminal Enforcement in the Antitrust Division, noted that the Division is also prepared to criminally charge individual executives for violations of Section 2 of the Sherman Act (the provision prohibiting market monopolization). Charging Section 2 cases criminally is an exceedingly aggressive and controversial approach, and it something that the Division has not done in decades.
- **COVID-19 Fraud:** AG Garland reiterated DOJ's commitment to pursuing fraudulent conduct in connection with the COVID-19 pandemic. As [President Biden recently announced](#), AG Garland will be “naming a chief prosecutor to lead specialized teams dedicated to combatting pandemic fraud.” The chief prosecutor will “build on” the work of the COVID-19 Fraud Enforcement Task Force announced in May 2021. Additional pandemic-related prosecutions

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and investigations will likely continue for years to come and may increase in scope and complexity.

- **Cryptocurrency:** AAG Polite specifically mentioned the “emerging cryptocurrency space” as an area in which individual victims are particularly vulnerable to being “exploited by other market participants.” AAG Polite referenced the recent indictment of the founder of cryptocurrency platform BitConnect in connection with an [alleged \\$2.4 billion Ponzi scheme](#). His remarks follow increased cryptocurrency enforcement and regulatory activity from the US Securities and Exchange Commission (SEC), the Financial Crimes Enforcement Network (FinCEN), the Internal Revenue Service (IRS) and other federal agencies during the past year, and they demonstrate that cryptocurrency remains squarely in the DOJ’s crosshairs.

### ***DOJ’s Renewed Focus on Individual Accountability***

The remarks of AG Garland and AAG Polite focused heavily on DOJ’s efforts to ensure that individuals are held accountable for corporate crime. AG Garland stated that DOJ’s “first priority in corporate criminal cases is to prosecute the individuals who commit and profit from corporate malfeasances.” AG Polite in turn noted that DOJ “prioritize[s] prosecution of individuals responsible for corporate crimes to the fullest extent of the law.”

Although “individual accountability” has long been at the core of DOJ’s Principles of Federal Prosecution, AG Garland and AAG Polite’s statements were noteworthy since prosecutions of individuals for corporate crime had waned during the past administration. AG Garland recognized that “obtaining individual convictions rather than accepting big-dollar corporate dispositions is a difficult and resource-intensive road,” but committed to marshalling the resources necessary for DOJ to pursue such prosecutions successfully.

AG Garland and AAG Polite also reemphasized DOJ’s requirement that, to be eligible for cooperation credit, companies must provide DOJ “with all non-privileged information” about “all individuals involved in or responsible the misconduct at issue,” regardless of “their position, status or seniority.” [First announced by Deputy Attorney General \(DAG\) Lisa Monaco last fall](#), AG Garland described this requirement and defense lawyers as a “force multiplier” for DOJ. DOJ now expects companies and their defense lawyers to “come clean about everyone involved in the misconduct, at every level.” This is a change from the previous administration, which required only that companies make disclosures regarding those individuals the companies deem to have had “substantial” involvement in the misconduct.

## **KEY TAKEAWAYS**

With a surge of DOJ resources focused on corporate crime (and AG Garland’s clear commitment to enforcement in that area), the importance of an effective corporate compliance plan cannot be overstated. In fall 2021, DAG Monaco reiterated the import of self-monitoring, a trend that has been gaining momentum at DOJ since it first issued comprehensive compliance guidance in 2017. AAG Polite reiterated the same on March 3, 2022, providing additional insight into what DOJ will be looking for when evaluating corporate compliance programs:

- DOJ wants 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.”

- When misconduct takes place, DOJ will be evaluating whether your company has in place “a system that immediately detects, remediates, disciplines, and then adapts to ensure that others do not follow suit.”
- Even when a CEO is not involved in wrongdoing, DOJ expects corporations to “examine whether a change in leadership is necessary” and analyze whether current leadership “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.”

*Benton Curtis also contributed to this article.*

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National Law Review, Volume XII, Number 67

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