

Key Considerations After DOJ Announces Shifting Enforcement Priorities

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On February 5, U.S. Attorney General (AG) Pam Bondi issued 14 memoranda to Department of Justice (DOJ) employees framing the DOJ's current policies and enforcement priorities. These shifting enforcement priorities are aligned with the flurry of executive orders signed by President Donald J. Trump in recent weeks.

For example, consistent with Trump's [executive order](#) calling for the total elimination of certain designated cartels and transnational criminal organizations (TCOs), the DOJ's shifting priorities include a "fundamental change in mindset and approach" with a focus on enforcement priorities and resources on eliminating the threats of cartels and TCOs. Additionally, following Trump's [executive order](#) requiring agencies to encourage the end of diversity, equity, and inclusion (DEI) and diversity, equity, inclusion, and accessibility (DEIA) programs, the DOJ's priorities also now focus on enforcement efforts to end such programs in both the private sector and educational institutions. Other areas with a change in focus include increased immigration enforcement and limited environmental enforcement priorities.

This alert summarizes the DOJ's key changes in priorities and discusses considerations for companies during this evolving time.

Pause and Shifting Focus of FCPA Enforcement

As we recently explained in detail [here](#), Bondi [directed the DOJ](#) to shift focus of U.S. Foreign Corrupt Practices Act (FCPA) investigations to prioritize those related to cartels and other TCOs, and "away from investigations and cases that do not involve such a connection." The memorandum also suspended the requirement for U.S. attorneys' offices to obtain approval from the Criminal Division to initiate cases related to TCOs under the Foreign Extortion Prevention Act (FEPA). Five days after Bondi's memorandum, Trump signed an [executive order](#) directing Bondi to pause the initiation of new investigations and enforcement actions, and review pre-existing and in-process actions, until the DOJ issues revised FCPA enforcement guidance, "that promotes American competitiveness and efficient use of federal law enforcement resources." This anticipated revised enforcement guidance will set the stage for the direction of FCPA enforcement moving forward. Keep in mind, the U.S. Securities and Exchange Commission (SEC) has its own enforcement authority under the FCPA, with both agencies often bringing parallel enforcement actions for FCPA violations.

Ending Diversity, Equity, Inclusion, and Accessibility Programs

In another [memorandum](#), Bondi announced that the DOJ's Civil Rights Division will gear enforcement efforts

toward the elimination of DEI and DEIA programs in the private sector and in educational institutions that receive federal funds, on the asserted basis that such programs involve illegal race or sex-based discrimination. To further these enforcement efforts, by March 1, Bondi directed the DOJ's Civil Rights Division and Office of Legal Policy to jointly submit a report containing recommendations for enforcing federal civil rights laws to end DEIA in the private sector. Consistent with Trump's [executive order](#), the report must, among other things, identify "key sectors of concern" and the "most egregious . . . practitioners in each sector." The report must also include a specific plan to deter DEIA programs in the private sector, including proposals for both criminal investigations and up to nine potential civil compliance investigations of publicly traded corporations, large nonprofit corporations or associations, foundations with assets of \$500 million or more, state and local bar and medical associations, and institutions of higher education with endowments over \$1 billion. In addition, the memorandum signals that the DOJ's Civil Rights Division will investigate and pursue enforcement actions against educational institutions with DEIA programs that receive federal funds.

The [DOJ will also end](#) its internal DEIA policies and practices. Bondi rescinded all DOJ materials that encouraged or permitted race or sex-based preferences as a method of compliance with federal civil rights laws and plans to issue updated guidance on employment, procurement, contracting, and other DOJ decisions. Bondi directed all DOJ components to thoroughly evaluate, among other things, consent decrees, settlement agreements, and litigation positions that might favor DEIA efforts.

Increased Enforcement of Federal Immigration Laws

The [DOJ's charging priorities](#) aim to use all available criminal statutes to enforce federal immigration laws and prioritize pursuing charges relating to criminal immigration-related violations. This includes not only charges related to illegal entry, but also charges for unlawful employment or other efforts that aid in violations of federal immigration law. The DOJ will similarly [pursue enforcement actions](#) against state and local jurisdictions and officials that fail to comply with federal immigration laws and directives or facilitate violations of federal immigration laws.

Limiting Prosecutions Under the Foreign Agents Registration Act and Environmental Laws

Bondi [instructed](#) that prosecutions under the Foreign Agents Registration Act (FARA) and related laws are to "be limited to instances of alleged conduct similar to more traditional espionage by foreign government actors." Bondi disbanded the Foreign Influence Task Force and National Security Division's Corporate Enforcement Unit. For now, the Counterintelligence and Export Control Section, including the FARA Unit, is directed to focus on civil enforcement, regulatory initiatives, and public guidance.

Bondi also [rescinded](#) prior DOJ guidance that prioritized enforcement of certain environmental laws and focused on environmental justice.

New Priorities For Money Laundering Investigations and Asset Forfeiture

Bondi also [directed](#) the DOJ Criminal Division's Money Laundering and Asset Recovery Section to "prioritize investigations, prosecutions, and asset forfeiture actions that target activities of cartels and TCOs." Calling for the dissolution of the Russia-focused Task Force KleptoCapture and the Criminal Division's Kleptocracy Asset

Recovery Initiative, resources previously devoted to those Russia-focused efforts are to be “committed to the total elimination of cartels and TCOs.” The U.S. Department of Treasury Financial Crimes Enforcement Network (FinCEN) and other financial regulators have enforcement authority with respect to financial institutions’ compliance with Bank Secrecy Act (BSA) and anti-money laundering requirements.

Key Considerations for Companies

While much of the DOJ’s guidance is still forthcoming, companies should start evaluating their existing compliance programs and policies and procedures with an eye toward DOJ’s new priorities.

- With respect to FCPA enforcement, companies should consider the detailed implications and guidance provided [here](#), and continue to uphold strong anti-bribery and anti-corruption policies.
- As Bondi is already considering potential criminal and civil enforcement actions related to DEIA policies, companies must begin reviewing their DEIA policies and programs to ensure they are consistent with federal law and DOJ guidance and that any certifications made to the government about their DEIA policies are accurate.
- Companies under a consent decree or settlement agreement should review closely to determine if any requirements might be DEIA focused and consider how the DOJ’s new policies might affect those requirements.
- It is imperative that companies examine their hiring and employment policies and practices to ensure compliance with all federal immigration laws, including Form I-9 policies and necessary recordkeeping policies.
- As the DOJ focuses its efforts on eliminating cartels and TCOs, companies that operate in areas with the strong presence of cartels or TCOs, particularly Mexico and Latin America, must examine and be cautious with their interactions and business practices in those countries. These companies should examine and ensure they have strong compliance programs in place to avoid the risk of investigation and enforcement. With the new administration’s focus on eliminating cartels and TCOs, financial institutions should also ensure they maintain robust and effective anti-money laundering programs.

Troutman Pepper Locke is monitoring the administration and the DOJ’s evolving priorities and guidance closely. If you have questions on how these priorities impact your business or wish to begin evaluating your existing compliance programs and policies and procedures, please do not hesitate to contact a member of our White Collar Litigation and Government Investigations team.

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