

# Making Compliance Your New Year's Resolution

## WRITTEN BY

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As we begin a new year, it is the perfect time for companies subject to any government agreement to renew their focus on compliance. These binding resolutions require ongoing diligence to avoid civil and potentially criminal penalties as you remain a subject to ongoing government scrutiny — even after a resolution.

Violating the terms of non-prosecution agreements, deferred prosecution agreements, assurances of discontinuance, consent judgments, or any other government agreement can result in renewed investigations, increased fines, or additional legal penalties.

On January 7, 2021, the Department of Justice (DOJ) filed a criminal information charging Boeing with one count of conspiracy to defraud the U.S. in violation of 18 U.S.C. § 371 in connection with the Federal Aviation Administration's Aircraft Evaluation Group's evaluation of the Boeing 737 Max Airplane Maneuvering Characteristics Augmentation System. See Government Status Report & Proposed Plea Agreement at 4, *United States v. Boeing Co.*, No. 4:21-cr-00005-O (N.D. Tex. July 24, 2024), ECF 221. The same day, Boeing entered into a deferred prosecution agreement (DPA) with the U.S. Attorney's Office for the Northern District of Texas (USAO) and the DOJ, Criminal Division, Fraud Section, to, among other things, pay a \$243.6 million penalty and "implement a compliance and ethics program designed, implemented, and enforced to prevent and detect violations of the U.S. fraud laws throughout its operations." *Id.* In exchange for Boeing's compliance with the terms of the DPA, the U.S. agreed to dismiss the charges after the three-year DPA expired. The DPA provided, however, that if the U.S. determined during the six-month period following the end of the term of the DPA that Boeing had breached the DPA during the DPA term, the U.S. could pursue remedies for the breach, including by prosecuting Boeing for any federal criminal violation of which the DOJ and the USAO have knowledge, including, but not limited to, the charges in the information. *Id.* at Attachment A-1-2.

Boeing took significant steps to comply with the DPA, including, but not limited to, appointing its first chief compliance officer and increasing the "independence, capability, and effectiveness of its compliance program" and its annual compliance risk management process. *Id.* at 10. Boeing also implemented policies and procedures to manage and coordinate communications with its regulators.

Despite Boeing's efforts, the government determined that Boeing did not comply with the terms of the DPA and did not have a centralized compliance function. The government determined that Boeing failed to "sufficiently extend its anti-fraud ethics and compliance program over its quality and manufacturing process." *Id.* at 11. The government declared a breach of the DPA on May 14, 2024 — on the eve of the expiration of the six-month monitoring period following the three-year DPA. *Id.* at Attachment A-1-4.

In July 2024, the parties submitted a plea agreement to the court, which included at least a three-year independent

compliance monitor, a \$455 million investment into Boeing's compliance program, and a \$487.2 million criminal monetary fine. *Id.* at 8. The District Court rejected the parties' plea agreement in December 2024 because it was too lenient and did not provide the court enough control over the independent monitorship, as well as a host of other reasons. *United States v. Boeing Co.*, No. 4:21-cr-00005-O (N.D. Tex. Dec. 5, 2024), ECF 282. Following the court's rejection, on January 4, 2025, it ordered the parties to continue to meet and confer and provide the court with an update on how they plan to proceed in this matter by no later than February 16, 2025.

Both Boeing's and the government's actions throughout this saga highlight the importance of maintaining a culture of compliance within day-to-day business operations as well as on a global scale in relation to all government agreements.

Following violations of government agreements, courts lack both sympathy and patience for companies. Courts seek to enforce harsh punishments to prevent a company's further violations and to deter other companies subject to similar agreements.

Independent corporate monitorships can pose a significant burden on businesses as companies attempt to comply with the monitorship and proceed with daily business operations. Compliance with an independent monitor requires clear communication and direct partnership between the monitor and the business leaders.

Achieve your compliance New Year's resolution by ensuring that your team is thoroughly reviewing the terms of any agreement entered into with governmental authorities. Common obligations include specific reporting requirements, adherence to operational restrictions, and independent monitorship. Maintain and enhance your compliance programs to prevent corruption and minimize the possibility of False Claims Act and Foreign Corrupt Practice Act violations.

For more guidance on compliance strategies, please contact Troutman Pepper Locke.

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