

April 21, 2017

Recent DOJ Speeches Suggest Continuity in White-Collar Enforcement

Earlier this year, we [noted](#) that it was difficult, if not impossible, at that point to predict with confidence how the new administration might change white-collar criminal law enforcement priorities and practices. Three months later, however, some clearer signals are beginning to appear. In a pair of speeches delivered earlier this week, on [April 18](#) and [April 20](#), Acting Principal Deputy Assistant Attorney General Trevor McFadden, a Trump Administration appointee, gave strong indications that the Department of Justice will continue to engage in active white-collar criminal enforcement, without substantial changes in direction from the previous administration.

In these speeches, McFadden rejected what he called the “myth” that DOJ under Attorney General Sessions was not interested in prosecuting white-collar crime. McFadden emphasized that DOJ continues to “vigorously enforce” the Foreign Corrupt Practices Act, cited with approval a robust record of FCPA prosecutions in 2016, and praised the recent hiring of additional prosecutors in DOJ’s FCPA Unit, thereby suggesting that the new administration will maintain a significant commitment to FCPA enforcement. McFadden also extolled two recent corporate resolutions, reached during the Obama Administration, that required public companies to admit criminal misconduct, retain independent monitors, and pay hundreds of millions of dollars in penalties. And McFadden emphasized AG Sessions’s commitment to individual accountability for corporate misconduct, echoing the core theme of the [September 2015 memo](#) issued by former Deputy Attorney General Sally Yates.

To be sure, in both speeches, McFadden emphasized that DOJ’s goal is not to maximize punishment but to encourage voluntary compliance with the law. He argued that the best way to meet that goal was by working with companies and providing transparency in enforcement policy, as exemplified by the [recently extended](#) FCPA Pilot Program. McFadden further indicated that DOJ would continue to give weight to self-disclosure, cooperation, and remedial efforts in assessing corporate liability.

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These speeches are consistent with earlier signs, including [confirmation hearing statements](#) by AG Sessions, that the new administration may maintain DOJ's active approach to FCPA and white-collar enforcement, though perhaps with an enhanced emphasis on voluntary compliance. In keeping with these recent signals, we strongly encourage companies to continue focusing on periodically assessing and, when appropriate, enhancing their compliance programs to ensure that the right tone is set at the top, that strong policies and programs are in place to identify problems, that training and monitoring are effective, and that when compliance issues surface, they are properly investigated and promptly remediated.

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