

Garland Vows DOJ Headcount Surge In White Collar Blitz

By Jack Queen

Law360 (March 3, 2022, 9:37 PM EST) -- The U.S. Department of Justice is planning a hiring spree to combat pandemic-related fraud and to redouble its efforts to prosecute white collar criminals, Attorney General Merrick Garland said Thursday, outlining the government's wider strategy for busting corporate malfeasance.

President Joe Biden's 2022 budget seeks \$36.5 million for hiring an additional 120 attorneys nationwide to go after pandemic relief fraudsters, Garland said. The budget request also requests \$325 million to fund more than 900 agents to support the FBI's white collar crime program, he said.

Garland's remarks at the American Bar Association's annual white collar crime conference came after Deputy Attorney General Lisa O. Monaco shook the white collar world last October by unveiling a raft of tougher corporate enforcement policies. The DOJ will build up its ranks and use every tool at its disposal to implement the changes, Garland said.

"As a defense attorney, prosecutor and judge, I have also seen the Justice Department's interest in prosecuting corporate crime wax and wane over time," he said via a livestream. "Today, it is waxing again."

Criminal Division chief Kenneth Polite also delivered remarks at the conference, saying his office is placing fresh emphasis on serving victims of white collar crime. The approach should be no different than in crimes of violence, he said.

"Do not forget the people. That's the call for all of us, whether you are in government or in private practice," Polite said.

Polite is adding a victim coordinator to his front office and directing top deputies to review how prosecutors can best serve the needs of victims, he said. The assistant attorney general also said companies will now be expected to more fully address victim issues when explaining to the government why they shouldn't be criminally charged during so-called Filip factors presentations.

Polite and Garland both emphasized that prosecuting individuals is the DOJ's top corporate enforcement priority. Those cases bolster public trust, maximize deterrence and prevent shareholders from bearing the price of wrongdoing, Garland said, though he acknowledged prosecuting individuals can be a heavy lift.

"Having tried and supervised corporate criminal cases, I know full well that obtaining individual convictions rather than accepting big-dollar corporate dispositions is a difficult and resource-intensive road for the Justice Department," he said. "Accordingly, the department is marshaling its resources to enable us to successfully take that road."

The surge in headcount would come on top of the 34 attorneys hired by the Criminal Division's Fraud Section last year, which recently posted major year-over-year increases in individual prosecutions and trial wins.

"That really shows that they mean business," Morrison & Foerster LLP partner and former Fraud Section official Brian K. Kidd told Law360, referring to the planned hiring figures. "White collar is very important to them, and they're going to do everything they can in that space. ... With these additions, the next couple of years are likely to see further increases across the board."

Garland notably highlighted the white collar work of the Antitrust Division and the Environment and Natural Resources Division, as well as U.S. attorney's offices around the country. That indicates corporate crime is now a departmentwide priority extending beyond the Fraud Section.

The Antitrust Division is currently working 18 criminal cases against 10 companies and 42 individuals, including eight current or former CEOs or company presidents, Garland said. The ENRD, meanwhile, has nearly a dozen pending cases against 34 people, including one current or former executive. U.S. attorney's offices charged more than 5,500 people with white collar crimes last year, a 10% increase from 2020, according to the DOJ.

"We expect that our enforcement activity will only accelerate as we come out of the pandemic," Garland said.

In addition to the planned headcount increases, the department will use what Garland described as "force multipliers" to root out misconduct. Those include partnerships with government agencies in the U.S. and abroad, data analytics and calling upon the defense bar to report individual wrongdoers more comprehensively.

Garland also announced that a new Russia sanctions task force unveiled Wednesday, dubbed KleptoCapture, will be headed up by Manhattan federal prosecutor and anti-corruption pro Andrew Adams. That outfit of more than a dozen attorneys aims to swiftly and aggressively enforce sanctions coordinated by world powers to punish the Kremlin for its recent invasion of Ukraine, complementing the work of a transatlantic task force unveiled by Biden and European leaders last month.

The DOJ is also undertaking an "enormous expansion" of its big data capabilities to identify payment anomalies and other clues of fraud, Garland said. That includes a new FBI data squad embedded in the Fraud Section to replicate the data analytics investigations pioneered by the section's Health Care Fraud unit.

The third pillar of Garland's strategy: requiring across-the-board reporting of individuals involved in misconduct in order for companies to receive cooperation credit. That policy, unveiled by Monaco last year, rolls back a more relaxed standard under the Trump administration that only required reporting of individuals "substantially" involved in wrongdoing.

"When we give a company the opportunity to come clean, it must come clean about everyone involved in the misconduct, at every level," Garland said.

--Editing by Andrew Cohen.

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