

Assistant Attorney General Caldwell Provides Guidance on Corporate Compliance Programs

November 05, 2015 | Blog | By Bridget Rohde

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In her year and a half as Assistant Attorney General in charge of the Criminal Division, Leslie R. Caldwell has repeatedly emphasized the importance of a company having a compliance program fine-tuned to its specific risks to prevent fraud and corruption and to best position the company in the event that misconduct nonetheless occurs.

On November 2, 2015, AAG Caldwell [spoke extensively on this topic](#) at the SIFMA conference in New York. She stated that when DOJ prosecutors are considering whether to charge a corporation criminally, they "look closely at whether compliance programs are simply 'paper programs' or whether the institution and its culture actually support compliance. [They] look at pre-existing programs, as well as remedial measures a company took after discovering misconduct – including efforts to implement or improve a compliance program."

On November 3, the Criminal Division added a resource for evaluating compliance programs with the hiring of Hui Chen as Compliance Counsel for the Fraud Section. AAG Caldwell addressed this addition in her remarks at the SIFMA conference, noting that DOJ wanted "the benefit of the expertise of someone with significant high-level compliance experience across a variety of industries." (Ms. Chen reportedly was head of anti-bribery and corruption at Standard Chartered and an Assistant General Counsel at Pfizer focusing on compliance before that). In the context of making charging decisions, Compliance Counsel "will help [DOJ] assess a company's program, as well as test the validity of its claims about its program, such as whether the program truly is thoughtfully designed and sufficiently resourced to address the company's compliance risks, or essentially window dressing." Additionally, Compliance Counsel "will help guide Fraud Section prosecutors when they are seeking remedial compliance measures as part of a resolution with a company." The idea is to require an effective program without being unduly burdensome.

AAG Caldwell specifically addressed speculation in the legal community that the hiring of compliance counsel was a precursor to a compliance defense. She said it is not and that review of a company's compliance program will remain one of the several factors considered when DOJ considers whether to charge a company.

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