

Assistant Attorney General for the Criminal Division of the US Department of Justice, Lanny Breuer gave the final day's keynote speech at the Compliance Week 2010 Conference. Many of his remarks were directed at the ethics and compliance professionals who attended the event. He confirmed that the Obama Administration is committed to combating financial fraud, particularly in the area of overseas bribery and corruption as prohibited by the Foreign Corrupt Practices Act (FCPA). He used a quote from Attorney General Holder in emphasizing this point, that bribery "is a scourge on civil society".

He stated that tools which had been previously used to combat organized crime would now be employed in the fight against white collar crime, including both wiretaps and sting operations, as was used against the gun manufacturing industry in the operations which culminated in the arrests of 22 individuals in Las Vegas in January of this year. He also discussed that many foreign governments had entered into collaboration agreements to facilitate cross-border investigations and enforcement actions.

Breuer stated that one of the goals of the Department of Justice (DOJ) is to "charge individuals" as a strategy to deter corporate conduct. Further, holding individuals accountable is essential and will also deter illegal corporate conduct which results in violations of the FCPA. One of the more startling statistics cited by Breuer was the number of individual prosecutions pursued by the DOJ in the years 2004-2009. Since 2004, 84 individuals have been charged with FCPA violations. However, 46 of those individuals were charged in 2009 so over 50% were charged last year. Indeed there have already been 22 individuals charged this year thanks to the gun manufacturing industry sting, so the facts would seem to bear out his statements. (For prior post on gun industry sting case, see here).

After emphasizing that the DOJ will continue to hold individuals accountable under the FCPA, Breuer turned to what he considered to be key elements of a compliance program. He began by listing a couple of references as benchmarks, they were the US Sentencing Guidelines and the OECD Good Practice Guidance for Anti-Bribery Compliance Programs. He then delineated the following elements: Tone at the Top; a compliance program which not only punishes compliance violations but also rewards good ethical behavior in a corporation; a strong whistle-blower program (and protection) through a hotline or other appropriate mechanism; and significant, and direct, reporting by the compliance officer to the Board. He also stated that the DOJ wants to know about not only your company but also the companies which you may be doing business with; both the form of third party foreign business partners and customers. He concluded by emphasizing that an effective compliance program is not static but dynamic, subject to periodic reviews and appraisals by outside experts.

Breuer stressed the importance of coming to the DOJ rather than the DOJ coming to you when a potential FCPA violation was discovered. The benefits to a company can be significant if the company comes forward AND fully cooperates with the DOJ. Breuer

stated that if a company does so it will receive meaningful credit. He cited two examples where the penalty assessed was significantly less than the range suggested under the US Sentencing Guidelines. First, the Siemens' case, the fine, which could have been levied, based upon the conduct, was between \$1.35BN to \$2.75BN, however the final fine levied by the DOJ was \$450MM (the total fine paid to the US and German governments was \$1.6BN). Second was the fine paid by Helmerich and Paine, that of \$1MM, this was 1/3 of the total fine which could have been levied based upon the US Sentencing Guidelines.

Lastly, Breuer noted that it is his position that a company should come to the DOJ when it initially discovers a potential FCPA violation, rather than doing so after it conducts an investigation. This should be done for a couple of reasons. Initially Breuer remarked that the DOJ can provide guidance on the issues that it wants investigated by the company. This may prevent the company from investigating an issue that the DOJ does not deem necessary. Conversely the DOJ may suggest areas which it wants investigated that the company may not have considered. More importantly, such early notification allows the company involved to have a constructive dialogue with the DOJ and allows the DOJ to become a partner with the company in the investigative and remediation process.

Breuer took several questions from the audience. One of his more interesting responses was regarding facilitation payments and whether the US was moving towards the OECD/UK Bribery Act model of not allowing such payments. He responded that it was a question which needed consideration as compliance standards are evolving on a world wide basis. However, as of this date, Breuer was not aware of any proposed change in the FCPA on this issue but that it may be visited in the not too distant future. (For a comparison of the FCPA and Bribery Act, see [here](#)).

The talk and Q&A by Breuer was well received by the audience and provided concrete guidance in several areas relating to FCPA compliance policies and issues. The full text of Breuer's speech is available [here](#).