COZEN
O'CONNOR

DOJ Signals Increased Emphasis on Data Analytics to Prosecute FCPA Global Corruption

On November 29, 2023, Department of Justice (DOJ) policymakers announced explicitly that they are, for the first time, leveraging data analytics to help proactively identify and prosecute crimes in foreign corruption cases. Over the past nearly two decades, DOJ prosecutors and the law enforcement agencies they work with have used data analytics to identify health care fraud and, more recently, financial crimes. Now, the DOJ has stated that law enforcement officials will use those same techniques to identify likely violations of the Foreign Corrupt Practices Act (FCPA), the U.S. law that imposes criminal and civil penalties for bribing officials of foreign governments to seek business advantages.

During her keynote address[1] at the American Conference Institute's international conference on the FCPA, Acting Assistant Attorney General (AAG) for the Criminal Division Nicole Argentieri announced that the Fraud Section – the DOJ office with principal responsibility for investigating and prosecuting FCPA cases – has a new emphasis on using data analytics to proactively identify potential incidents of foreign bribery and initiate FCPA investigations. The acting AAG said cases are "just getting started."

Historically, as Acting AAG Argentieri alluded to in her speech, the DOJ Criminal Division has been reactive in generating FCPA investigations and prosecutions. In stressing how the department would use data analytics, the DOJ official stated that the FCPA Unit of the Criminal Division would no longer wait for companies to self-report, for employees to come forward independently, or for an anomalous event to kick start an investigation. DOJ's data analytics initiative will use public and non-public data to generate investigations and cases. Notably, in September 2022, the Fraud Section announced the hiring of Matt Galvin,[2] a former top compliance and ethics executive at the world's leading brewing company, to be compliance and data analytics counsel, signaling the added focus on data analytics that Acting AAG Argentieri referenced in her remarks.

The Criminal Division, especially the Fraud Section, has been increasingly using data analytics in its work. Specifically, working with the U.S. Department of Health and Human Services Office of Inspector General, the office has used data analytics to identify geographic areas and devices, pharmaceuticals, and services billed to the government without medical necessity or at inflated rates.[3] Based on this data, the Fraud Section has launched health care fraud strike forces in geographic areas with high fraud rates and enforcement task forces focused on services, devices, and drugs billed without medical necessity. In recent years, the Justice Department has worked with the Federal Bureau of Investigation, the U.S. Postal Inspection Service, and the Securities and Exchange Commission, using similar methods, to identify potential financial crimes, including securities and commodities fraud, insider trading schemes, and money laundering.

According to Acting AAG Argentieri, the new FCPA initiative has already generated one successful prosecution – *United States v. Arturo Carlos Murillo Prijic*, 21-cr-60340-PCH (S.D. Fla. Dec. 7, 2021) – a joint FCPA Unit prosecution with the U.S. Attorney's Office in the Southern District of Florida – of a former Bolivian minister of government for money laundering offenses related to a conspiracy to launder bribes he received in exchange for corruptly helping a U.S. company win a lucrative contract from the Bolivian government.[4]

Kurt K. Lunkenheimer

Member

kklunkenheimer@cozen.com
Phone: (305) 397-0824
Fax: (305) 720-2238

Nicole H. Sprinzen

**Vice Chair,
White Collar
Defense &
Investigations**

nsprinzen@cozen.com
Phone: (202) 471-3451
Fax: (202) 861-1905

Related Practice Areas
• White Collar Defense & Investigations

Given recent trends, it is not surprising that the Criminal Division is expanding the use of analytics to FCPA investigations. Acting AAG Argentieri stated during her keynote speech that companies should take note of these efforts in connection with a company's decision to self-disclose potential FCPA violations. In other words, given the clear and predictable benefits of self-disclosure by companies under formal DOJ policies,[5] knowing the likelihood that law enforcement will identify the crime themselves if it is not brought to their attention makes the decision to self-disclose potentially criminal violations even easier and weighs in favor of disclosure. This is especially relevant considering the DOJ did not state or indicate what public and non-public data it utilized to initiate these investigations and cases. Nonetheless, the decision to self-disclose remains difficult and highly risky, even if it may come with potential reward in the form of possible non-prosecution or at least reduced penalties.

---

[1] *See* U.S. Dep't of Justice Press Release, "Acting Assistant Attorney General Nicole M. Argentieri Delivers Keynote Address at the 40th International Conference on the Foreign Corrupt Practices Act" (Nov. 29, 2023), Office of Public Affairs | Acting Assistant Attorney General Nicole M. Argentieri Delivers Keynote Address at the 40th International Conference on the Foreign Corrupt Practices Act | United States Department of Justice.

[2] *See* U.S. Dep't of Justice Press Release, "Assistant Attorney General Kenneth A. Polite Delivers Remarks at the University of Texas Law School" (Sept. 16, 2022), Office of Public Affairs | Assistant Attorney General Kenneth A. Polite Delivers Remarks at the University of Texas Law School | United States Department of Justice.

[3] *See* Cozen O'Connor Client Alert, "Big Data, Big Recovery" The Emergence of Data Analytics in Healthcare FCA Enforcement" (Aug. 4, 2023), Cozen O'Connor: Big Data, Big Recovery: The Emergence of Data Analytics in Health Care FCA Enforcement [Alert].

[4] *See* U.S. Dep't of Justice Press Release, "Former Bolivian Minister of Government Sentenced for Bribery Conspiracy" (Jan. 4, 2023), Office of Public Affairs | Former Bolivian Minister of Government Sentenced for Bribery Conspiracy | United States Department of Justice.

[5] *See* U.S. Dep't of Justice "Corporate Enforcement Policy," Criminal Division | Corporate Enforcement Policy (justice.gov) and "FCPA Corporate Enforcement Policy," download (justice.gov). *See also* Cozen O'Connor Client Alert, "DOJ Offering Increased Reductions in Fines of Up to 75% to Incentivize Companies to Voluntarily report Misconduct" (Jan. 18, 2023), Cozen O'Connor: DOJ Offering Increased Reductions in Fines to Incentivize Companies to Voluntarily Report Misconduct [Alert].