

# CLIENT ALERTS

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## Responding to the Government's Increased Emphasis on Compliance

1.29.2016

**A Changing Landscape:** The federal government has made clear that its expectations for effective business ethics and compliance programs have changed. A 2014 speech by a senior Justice Department official (Antitrust Division Deputy Attorney General Brent Snyder), "Compliance is a Culture, Not Just a Policy," emphasized compliance programs must be proactive. "Proactive" means regular monitoring and auditing for at-risk activities. Assistant Attorney General Leslie Caldwell's November 2015 remarks to the SIFMA Compliance and Legal Society reinforced the high priority the Justice Department places on compliance, including the decision to implement this policy change via the recent appointment of a full time "compliance counsel expert" that reports to the head of the Fraud Section. This consulting expert, Hui Chen, previously served as Global Head for Anti-Bribery and Corruption at Standard Chartered Bank. The Justice Department is reportedly adding several prosecutors to the unit dedicated to FCPA investigations. Further, the U.S. Attorney Manual provisions regarding corporate liability specify consideration of corporate compliance programs in all potential corporate prosecutions. USAM 9-28.800 (Corporate Compliance Programs).

**How Do We Respond?** For companies, this raises important questions: Are our current policies and practices doing the job? How can we evaluate that? If we need to make changes, what do we need to do, and how should we do it? Ultimately, every company should position itself to show that its compliance program works, with documentation of how the company accomplished that.

Companies that do not ask or answer these questions will be subject to increasing risk. In the compliance area, particularly antitrust and foreign corrupt practices, the failure to implement and maintain an effective compliance program can mean millions of dollars in fines and a host of negative collateral

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consequences that may be highly disruptive to the company. Collateral consequences may include civil claims, debarment from government-related work, and outside compliance monitoring, among other things. Conversely, as the United States Sentencing Guidelines expressly provide, a healthy and current compliance program can significantly limit the impact of an investigation. USSG 8B2.1(b)(5) and 8C2.5(f) (“effective compliance and ethics program” that includes “monitoring and auditing to detect criminal conduct” can support a significant reduction in fines).

Maintaining an effective and current compliance program can avoid investigations or significantly limit their impact. Our goal is to provide companies with a risk assessment tailored to the company’s business; deliver policies and procedures designed to address the company’s risk profile; and develop a management strategy to help companies implement the compliance program in a meaningful way.

**Compliance Audits:** One of the key features of an effective compliance program is periodic reassessment of the company’s risk profile and program. Butzel Long can provide an independent and objective view of a company’s risks and advise companies on how to limit those risks. We conduct compliance audits by finding a mutually agreeable fixed fee that includes review of written materials, limited interviews, and recommendations for improving the compliance program.

Our compliance counseling includes:

- A risk assessment that targets the areas of greatest risk for a company’s business, whether that means geographical areas that have historical challenges, particular lines of business, accounting practices, and business relationships that may create regulatory risk;
- An evaluation of upper and middle management’s role in administering and supporting business ethics and compliance – evaluating the ‘tone from the top’ regarding attitudes and resources dedicated to compliance;
- A review of the company’s policies and practices, such as:
  - written policies, procedures, and training materials;
  - reporting avenues for compliance challenges such as anonymous hotlines or published whistleblower policies;
  - internal handling of compliance challenges, including stated disciplinary consequences for compliance program violations;
  - how the company addresses relationships with business partners, affiliates, and subsidiaries who may be beyond the company’s full control regarding compliance;
  - contacts with competitors that can lead to antitrust compliance issues; and,
  - recommendations for improvements to the program.

**Related Services:** Our strong government investigations background makes Butzel Long well-suited to conduct internal investigations of any compliance challenge. In addition, our expertise in particular industries and areas of the law allows us to put together a team particularly well-suited to your

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company's needs.

For example, any company with government contracts also routinely faces regulatory requirements from the Federal Acquisition Regulations (FAR). Butzel Long has the skill and expertise to advise you on FAR compliance.

Health care regulations often require annual audits and training. If your company must comply with HIPAA, the Telephone Consumer Protection Act (TCPA), and/or Affordable Health Care (ACA)-related mandates, Butzel Long has extensive expertise in these compliance areas.

We also offer a wide range of counseling related to construction, telecommunications, cybersecurity employment, and immigration law (I-9 compliance). We can provide both "independent" investigations and advice on compliance.

**Standard Approach, Standard Pricing:** We offer compliance counseling as a fixed fee service based on the size and complexity of your company's issues. Please reach out to your attorney at Butzel Long for more information, or any of the attorneys listed below.

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