Proskauer

Return to Civil and Criminal Collaboration in White Collar under Biden Administration

The Capital Commitment Blog on **May 11, 2021**

Under the Biden Administration, we expect the Department of Justice to reinvigorate the policies aimed at increasing coordination between the criminal and civil divisions. In a 2015 Memorandum – the "Yates Memo" – former Deputy Attorney General Sally Yates pushed for "early and regular communication" between civil and criminal division attorneys in their pursuit of corporate investigations. Current conditions, including the government's COVID-19 response under the Coronavirus Aid, Relief, and Economic Security Act and additional pandemic relief packages, have set the stage for renewed focus on this collaborative policy outlined by Yates. In the private funds space, this strategy could create a potential multi-pronged risk to portfolio companies—and their private equity owners and creditors—who have received funding from federal relief programs.

In 2021, we expect these federal relief program investigations to move beyond the low hanging fruit of brazen criminal fraud, into areas with more difficult proof issues, including those posed by ambiguous or shifting program requirements, especially as they relate to eligibility. Even in the absence of adequate proof of criminal intent, some circumstances may be ripe for False Claims Act and other civil fraud enforcement alternatives where the government faces a lower evidentiary burden to establish financial liability, both as to corporate recipients and derivatively to their private equity backers.

Read more of our Top Ten Regulatory and Litigation Risks for Private Funds in 2021.

Related Professionals

- **Margaret A. Dale**
  Partner
- **Mike Hackett**

Partner

- **Timothy W. Mungovan**
  Chairman of the Firm
- **Dorothy Murray**
  Partner
- **Joshua M. Newville**
  Partner
- **Todd J. Ohlms**
  Partner
- **Seetha Ramachandran**
  Partner
- **Ana Vermal**
  Partner
- **Jonathan M. Weiss**
  Partner
- **James Anderson**
  Partner
- **William D. Dalsen**
  Partner
- **Adam L. Deming**
  Senior Counsel
- **Hena V. Balan**
  Associate