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WHITE COLLAR DEFENSE & INVESTIGATIONS

DOJ's Top White Collar Enforcement Priorities: Four Key Areas of Focus for GCs

By Brittain Shaw

When the president paused Foreign Corrupt Practices Act (FCPA) enforcement earlier in the year, many thought that white collar enforcement would be less robust under this administration. But recent policy memoranda and guidance from the DOJ suggest otherwise. Rather, the DOJ has shifted its resources to focus on the investigation and prosecution of crimes that impact America's national security and competitiveness in the global marketplace. In addition, there will be aggressive enforcement of waste, fraud and abuse in federal contracting and federal programs. Given this, as we move through 2025 and into 2026, white collar enforcement could well be poised for a significant uptick over recent years. As such, it is critical that general counsels understand these new priorities and take the necessary steps to proactively manage risk, ensure compliance, and protect their organizations from potential investigations and enforcement actions.

Trade Crimes Take Center Stage

One of the most significant shifts in DOJ enforcement is the elevation of trade crimes as a top priority. The DOJ's 2025 White-Collar Enforcement Plan, announced in June, places "trade and customs fraud, including tariff evasion," just behind waste, fraud, and abuse of government programs. Companies involved in international trade, import/export, or those with complex supply chains should expect increased scrutiny. DOJ has clearly signaled that trade crimes will be a major enforcement area. Just last month, DOJ announced that its Major Frauds and Market Integrity Unit is being reorganized and expanded into a new unit, the Market, Government, and Consumer Fraud Unit. In addition, the DOJ's whistleblower program has been updated to specifically incentivize reporting of violations related to trade, tariff, and customs fraud, signaling a robust pipeline for new investigations. DOJ's Fraud Section is adept at using data to identify targets for investigation and has done so effectively for years in the health care fraud space. Now, we anticipate that DOJ will use data compiled by the Bureau of Industry and Security at the Commerce Department to identify subjects for investigation.

For more details on any of the topics covered in this *Business Law Update*, please contact the authors via the links at the end of each article or David R. Valz, editor-in-chief. For information on our Corporate Transactions & Securities practice, please contact Frank D. Chaiken, practice group leader.

In light of this sharpened focus on cross-border trade and the ongoing changes in tariffs and trade regulations, companies must ensure their compliance programs are up-to-date and calibrated to the unique risk profile of their operations. General counsels should work closely with compliance teams to review trade practices, monitor for potential red flags, and ensure that all documentation and reporting are accurate and complete.

National Security: Sanctions, Export Controls, Data Security

Sanctions and export control enforcement will be a top priority for DOJ. Earlier this year, Attorney General Bondi announced a number of changes to the National Security Division (NSD) to better align its resources to advance the administration's America First foreign policy and national security objectives. Even though the changes included disbanding NSD's Corporate Enforcement unit, companies should not take that to mean they will not be subject to heightened scrutiny. To the contrary, prosecution of sanctions evasion, export control violations and other national security-related crimes will be robust. Indeed, just last month, NSD announced nine different criminal matters, including one corporate charge, ranging from arrests for sanctions evasion, theft of trade secrets, and export control violations.

National security prosecutions will no longer just involve cross-border trade matters. Now, companies involved with bulk sensitive data collection also face the risk of investigation and prosecution. In April, the NSD also rolled out new export controls for data security, the Data Security Program, which took effect last month. The DSP is designed to prevent U.S. citizens' bulk sensitive personal data and U.S. government-related data from being accessed and exploited by specific countries of concern. The DSP is in effect now and businesses involved in the collection of bulk sensitive data on U.S. citizens or U.S. government-related information already need to be complying with the new rules, which includes having a compliance program in place covering these transactions. Failure to comply with this program could result in both civil and criminal penalties.

Government Contracting and Federal Program Fraud Remain Top Targets

The DOJ continues to prioritize the investigation and prosecution of waste, fraud, and abuse involving federal programs and procurement. This includes government contract fraud, health care fraud, misuse of federal funds, and procurement fraud that impacts the public fisc. Notably, DOJ and the Department of Health and Human Services (HHS) recently formed a False Claims Act Working Group, to facilitate better coordination of both civil and criminal False Claims Act cases.

For companies that contract with the federal government or participate in government programs such as Medicare or Medicaid, the risk of enforcement is particularly acute. The DOJ's whistleblower program also covers these areas, offering significant financial incentives for information that leads to successful enforcement actions. General counsels should ensure that their organizations have strong internal controls, regular audits, and clear reporting mechanisms to detect and prevent fraud or abuse of government funds.

International Supply Chain and Cross-Border Finance

Companies operating internationally or with foreign partners face unique challenges in 2025. In announcing the designation of the major cartels as Foreign Terrorist Organizations (FTO), the DOJ will be sharply focused on identifying any entities that support or enable these groups. DOJ's Money Laundering and Asset Recovery Section (MLARS) and its Narcotics and Dangerous Drugs Section (NDDS) are in the process of consolidating, meaning that companies with operations in cartel-influenced areas or other high-risk areas will be carefully monitored and scrutinized to determine if funding or services are being provided directly or indirectly to cartels. Similarly, financial institutions must become even more vigilant in anti-money laundering/know your customer compliance. In addition, FCPA enforcement, now un-paused, will prioritize prosecutions that involve cartels and Transnational Criminal Organizations (TCO).

To mitigate these risks, companies should update their FCPA and anti-bribery compliance programs and conduct a thorough supply and finance chain risk assessment. Payments to international partners must be carefully vetted to ensure they are for lawful purposes. General counsels should advise on due diligence procedures, monitor high-risk transactions, and ensure that compliance training is provided to all relevant employees.

Conclusion

The DOJ's 2025 enforcement priorities reflect a dynamic and increasingly aggressive approach to white collar crime. Trade crimes, government program fraud, and international supply chain risks are at the forefront, with strict expectations for corporate self-disclosure and cooperation. General counsels should prioritize regular reviews of compliance programs, conduct routine checks of critical systems, and foster a culture of transparency and accountability. By staying ahead of DOJ enforcement trends and requirements, companies can better protect themselves from becoming targets of investigation or enforcement action. For general counsels, the message is clear: proactive compliance, early engagement with experienced counsel, and a vigilant approach to risk management are essential to navigating the evolving enforcement landscape.

With any questions, please contact Brittain Shaw.

RECENT NEWS & ARTICLES

- Trade Secret Quarterly – September 2025
- Chemical Industry Regulatory Update – September 2025
- DOJ and DHS Launch Joint Trade Fraud Task Force: What Multinational Companies Need to Know
- FinCEN Issues Advisory and Financial Trend Analysis on Chinese Money Laundering Networks
- FAR 2.0: Key Revisions to Parts 12, 18, and 39
- Employment Legislation Outlook – September 2025
- New Ventures Update – August 2025
- Is Your Business Ready for the New Texas (Mini-TCPA) Telemarketing Law?
- Sixth Circuit Raises Bar for Employer Liability in Third-Party Harassment Cases
- The End of Throwaway Culture? Extended Producer Responsibility Takes Hold in the United States
- Court Holds that ESG Collusion May Violate Antitrust Laws and Denies Motion to Dismiss States' Suit
- D.C. Circuit Sides with EPA in Refrigerant Phasedown Allocation Rule Challenge
- Union Pacific and Norfolk Southern Announce Intent to Create First Transcontinental Railroad
- Mobility Matters Quarterly – July 2025
- FAR 2.0: Key Takeaways from FAR Parts 6 and 11 Overhaul
- White House Releases Sweeping AI Action Plan
- Ohio Opportunity Zone Tax Credits Doubled for 2026-2027
- Seventh Circuit Vacates STB's Reciprocal Switching Regulations

NEW VENTURES

Trust, but Verify: 506(c) Accreditation Is Now Slightly Easier

By Lindsay Karas Stencel and Jacob J. Denham

When raising capital, those seeking investment (referred to as issuers) have to verify if an investor is “accredited” according to the Securities and Exchange Commission’s definition. An accredited investor must satisfy the definition set forth in Regulation D section 501. Individuals qualify if they have income of $200,000 a year for the last two years with the reasonable expectation of the same for the current year in which the assessment is done, and $300,000 for couples filing jointly. Individuals also qualify if they have $1 million in net worth excluding their primary residence or if they hold a Series 7, 65 or 82 license in good standing. Entities qualify if they hold $5 million or more in investments, have $5 million or more in assets or if all of their investors are accredited. And, when making investments in private securities offerings, investors attest to their accreditation. However, simply taking that attestation or certification at face value does not absolve an issuer from their responsibility to use reasonable steps to verify accreditation.

In 506(c) offerings under Regulation D, the issuer may only sell private securities to those whose accredited status has been verified, a process for which the SEC will and has scrutinized issuers to ensure compliance. Failure to comply with the accreditation verification rules can lead to enforcement proceedings and suspension of the offering by the issuer.

The Securities and Exchange Commission’s longtime stance on verifying investor accreditation is similar to the maxim *Trust, but Verify*. Investment documents require investors to represent their accreditation status (trust). But, the SEC requires the issuer seeking investment to take steps to confirm such investor’s representation (but verify).

Why Does This Matter?

The cost of verification can be high, placing yet another ball into the fiscal juggling act that less wealthy entities are forced to play to procure funding. For individuals, this might include reviewing W-2s, tax returns, bank and brokerage statements, credit reports, and other financial statements. For entities, it could involve reviewing organizational documents, lists of equity owners, and financial statements. This requires those intaking this information to maintain sufficient cybersecurity protocols to maintain this level of information or requires issuers to engage third parties to verify the information provided, either of which increases costs and time, of which issuers frequently have little.

What Has Changed?

Recently, for certain groups seeking investment, the verification requirement has gotten slightly easier as a result of an SEC no action letter released on March 12, 2025.

Previously, any issuer offering securities under Regulation D Rule 506(c) could engage in general solicitation or advertising only if all purchasers of the securities met a threshold for investor accreditation. Keeping with the analogy of *but verify*, the rules required those offering securities to take reasonable steps to verify an investor’s accreditation status. As mentioned before, the costs of these reasonable steps may be fiscally and administratively high or even prohibitive.

The no action letter, while not removing the verification ball from the juggling act, makes the ball slower, softer, and easier to catch than before. Now, anyone offering securities under Regulation D Rule 506(c) can be concluded to have taken reasonable steps if the minimum investment by such investor is $200,000 if they are an individual and $1 million for a legal entity, and the investor represents that they are accredited.

The SEC's no action letter streamlines the verification process for certain issuers, which should lessen the fiscal burden and administrative burden on the issuers, allowing them to spend more time raising capital and less time verifying accreditation.

Please contact Lindsay Karas Stencel or Jacob Denham with any questions.

SECURITIES QUARTERLY UPDATE

Check out the latest edition of *Securities Quarterly Update*, our newsletter that provides updates and guidance on securities regulatory and compliance issues. In this edition, we review important disclosure considerations for quarterly reports, recent developments at the SEC, action items following annual shareholder meetings, and DEI and sustainability-related considerations.

INVESTMENT MANAGEMENT

House v. NCAA Settlement Calls Private Equity Off the Bench

By Imani Tibbs Boone and Mark R. Butscha, Jr.

This year, private equity firms are suiting up for college game day and the landmark *House v. NCAA* settlement (the "*House* Settlement") is making it possible.

Overview: *House v. NCAA* Settlement

On June 6, 2025, Judge Claudia Wilken of the Northern District of California approved the $2.8 billion settlement in the *House v. NCAA* class action antitrust lawsuit, marking a historic shift for collegiate athletics. Effective as of July 1, 2025, the *House* Settlement allows NCAA Division I (Division I) programs to directly compensate athletes for the commercial use of their name, image, and likeness (NIL).[1]

House was originally filed in 2020 by former Division I college athletes against the NCAA and its Power Five conferences (collectively, the "Consolidated *House* Defendants"), seeking retroactive damages and an injunction to prevent anticompetitive restrictions on NIL compensation. Judge Wilken certified *House* as a class action lawsuit in 2023, ultimately consolidating *House* with *Hubbard v. NCAA* and *Carter v. NCAA* in 2024.[2,3] The class members of each suit agreed to settle their claims pursuant to a comprehensive, 10-year agreement, with damages to be distributed amongst three separate damages classes and one injunctive relief class.[4,5]

As to each damages class, the settlement agreement requires the Consolidated *House* Defendants to pay $2.8 billion in back damages to class members who competed between 2016 and 2024 but did not receive NIL compensation.

Conversely, under the injunctive relief provisions of the settlement agreement:

- Division I schools who opted in to the *House* settlement before June 30, 2025 (the "Opted-In Schools"):
  - may allocate up to approximately $20.5 million per year from their revenue to directly compensate athletes worth up to 22% of the Power Five schools' average athletic revenues each year, subject to yearly increases[6]; but
  - must eliminate caps on scholarship awards to collegiate athletes; and
- The NCAA must adopt roster limits for each sport at the Opted-In Schools.

Although the NCAA can still prohibit third-party NIL payments, the *House* Settlement further restricts such prohibitions to a limited set of Associated Entities[7] or Individuals.[8] To enforce these and other terms of the *House* Settlement, the Power Five conferences established the College Sports Commission, a separate legal entity responsible for overseeing direct payment, NIL agreements, and roster limits.[9]

The *House* Settlement Unlocks Significant Opportunities for Private Equity in College Athletics

Historically, Division I programs have generated athletic revenue from media rights, corporate sponsorship, licensing and merchandising deals, and ticket sales, but for the first time in NCAA history, Opted-In Schools may share this revenue with their players. *House*'s revenue-sharing provisions will be easily manageable for Opted-In Schools in a Power Five conference; however, for Group of Five conferences and other mid-major

Division I schools, opting in could mean serious strains on their athletic revenues.[10] Coupled with rising expenses and an urgent need to modernize financial models, many Division I schools are leveraging outside capital, and private equity is consistently first off the bench.

- **NIL Infrastructure & Direct Athlete Compensation.** Opted-In Schools and the College Sports Commission have both engaged PE-backed technologies to professionalize and scale NIL operations, including direct athlete compensation from revenue-sharing. The recent emergence of such platforms addresses the immediate need to manage deal flow, brand management, tax support, and compliance for athletes to third-party collectives and agency-like services.

- **Commercialization of Athletic Departments.** Opted-In Schools like the University of Kentucky are quietly converting their athletic departments into limited liability companies – an early move that positions Division I programs to raise external capital and monetize assets apart from the state budget process. In light of these organizational shifts, PE firms like the Elevate Fund and Chiron Sports Group's Legacy 25 Fund are committing private credit to Division I programs.[11,12] The instant liquidity boost allows Opted-In Schools to tackle revenue-generating projects like capital improvements, increased fan and donor engagement, and system optimizations.

- **Media Rights, Capital Improvements & Ancillary Revenue**. In a post-*House* economy, institutional funds allocated to capital improvements must go beyond prolonging facility life – rather, capital improvements must also maximize revenue. As Group of Five Opted-In Schools and other mid-major Division I programs look to close the gap with their Power Five counterparts, expect an influx of private equity commitments unlocking additional media rights, hospitality models, gameday experiences, and local sponsorship inventory.

Final Legal, Regulatory & Strategic Considerations

The long-term benefits of the *House* Settlement should be weighed against uncertain factors like policy changes from the College Sports Commission, Executive Order 14322 "Saving College Sports," *Johnson v. NCAA*, and future litigation raising questions around whether college athletes should be classified as employees.[13,14]

However, for PE firms that can navigate the emerging legal landscape, structure innovative capital partnerships, and bring operating discipline to college sports, *House* presents a unique opportunity to shape the next era of the NCAA. Whether you're exploring fund formation, running due diligence on potential investments, or advising a university partner, our team is here to support your efforts.

Please contact Imani Tibbs Boone or Mark Butscha with any questions.

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[1] *In re College Athlete NIL Litigation*, No. 4:20-cv-03919 (N.D. Cal. filed June 11, 2025) (Opinion Regarding Order Granting Motion for Final Approval of Settlement Agreement).
[2] *Hubbard v. National Collegiate Athletic Association*, No. 4:23-cv-01593, (N.D. Cal.).
[3] *Carter v. National Collegiate Athletic Association*, No. 4:23-CV-06325 (N.C. Cal.).
[4] In October 2024, Judge Wilken granted preliminary settlement approval, with additional directions to address concerns around notice to future class members and roster limits. *See In re College Athlete NIL Lit.* (Opinion Regarding Order Granting Motion for Final Approval of Settlement Agreement) at 6.
[5] For the purpose of settlement, Judge Wilken approved the division of class members into three damages classes: (i) Football and Men's Basketball, (ii) Women's Basketball, and (iii) Additional Sports. The Injunctive Relief class includes all student-athletes who compete on, competed on, or will compete on a Division I athletic team at any time between June 15, 2020, through the end of the Injunctive Relief Settlement Term. *Id.* at 8.
[6] Schools that elect to opt out of *House* will be bound to existing NCAA rules, including state legislation. *See* Austin Reid and Andrew Smalley, *What the NCAA Settlement Means for Colleges and State Legislatures*, NCSL, June 9, 2025.
[7] "Associated Entities" include (a) entities that are or were known to "the athletics department staff of a Member Institution (NCAA Division I schools), to exist, in significant part, for the purpose of (i) promoting or supporting a particular Member Institution's

intercollegiate athletics program or student-athletes; and/or (ii) creating or identifying NIL opportunities solely for a particular Member Institution's student-athletes," (b) "have been directed or requested by a Member Institution's athletics department staff to assist in the recruitment or retention of … student-athletes, or (ii) otherwise has assisted in the recruitment or retention of … student-athletes", (c) "any entity owned, controlled, or operated by, or otherwise affiliated with, such entity or an Associated Individual, other than a publicly traded corporation." *In re College Athlete NIL Lit.* (Opinion Regarding Order Granting Motion for Final Approval of Settlement Agreement) at 12.

[8] "Associated Individuals" are those who (a) are or were "a member, employee, director, officer, owner, or agent" of an Associated Entity, (b) "who directly or indirectly … have contributed more than $50,000 over their lifetime" to a particular Member Institution or to an Associated Entity, and (c) that "(i) have been directed or requested by a Member Institution's athletics department staff to assist in the recruitment or retention of … student-athletes, or (ii) otherwise has assisted in the recruitment or retention of … student-athletes." *Id*.

[9] *Enforcement*, Roster Limits, College Sports Commission.

[10] For the 2024 Tax Year, the Power Five conferences generated a combined $3.54 billion in revenue, as compared against the Group of Five conferences combined $376.4 million in revenue. *See* Joseph Dylan, *Power conferences generated nearly $3.2 billion more in revenue than Group of Five in 2023-24*, June 23, 2025.

[11] Jessica Golden, *Sports agency Elevate launches $500 million college investment as payment landscape evolves*, June 9, 2025.

[12] Eric Jackson, *PE Firm Hunts College Sports With Fund Backed by Gronk, McCourtys*, Aug. 29, 2025.

[13] The Executive Order mirrors and memorializes the *House* Settlement terms. *See* Exec. Order No. 14322, 90 Fed. Reg. 35821 (2025).

[14] *Johnson v. National Collegiate Athletic Association*, No. 22-1223 (3d Cir. 2024).

Upcoming Events

Please visit our website for details on a variety of upcoming in-person and virtual events, including:

- **October 8:** SmarTrade Fundamentals 2025 - Navigating Trade Policy: 200 Days In
- **October 9:** Powering the Future: Data Centers and the Energy Infrastructure Challenge
- **October 15:** Investment Management Coffee Chat Series - Session 3: Onboarding New Members
- **October 22:** SmarTrade Fundamentals 2025 - Tariff Evasion Risks and Enforcement in the US and EU
- **October 23:** 2025 Government Contracts Symposium