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¶ 268 FEATURE COMMENT: From Four Remedies To Multiple Pressures: The New Risk Model For Government Contractors And Grantees

Government contractors and grant recipients, take note: January will bring a new oversight calendar. Congressional committees are already sending inquiries to companies whose dealings with the Government have drawn attention, and Members who may soon hold subpoena power have said they intend to use it. Executive-branch enforcement priorities, meanwhile, continue on their own track.

For Government contractors and grant recipients, the risk is not simply that there will be more oversight. It is that the framework most companies use to understand their exposure no longer describes it.

For decades, contractors have managed enforcement risk through the so-called "procurement fraud remedies" model. Allegations of contractor misconduct generally could lead to four remedies—criminal, civil, contractual, and administrative—and the Government buying agencies assigned a single point of contact to coordinate them. That model assumed a Government acting through coordinated channels against a single set of alleged facts.

That assumption no longer holds. Today's risks also come from actors that no one single individual coordinates, triggered by matters that may have nothing to do with misconduct, and some of those actors are adverse to each other. We call this the "Pressure Model." This article explains the shift, and what general counsel and boards of entities that accept Government funds such as contractors, grantees, universities, and nonprofits should do about it.

The Four Remedies Model—Department of Defense Instruction 7050.05 is an example of a Government directive about coordinating the criminal, civil, contractual, and administrative remedies that may follow investigations of procurement fraud or corruption. The military departments implement the instruction through centralized remedies organizations. Agency-employed contracting officers address contractual remedies, agency suspending and debarring officials address administrative remedies, and the Department of Justice addresses civil fraud and (in rare cases) criminal prosecutions. Meanwhile, the remedies program coordinator is communicating with the relevant stakeholders.

For contractors, this model was demanding but manageable, for multiple reasons.

First, every remedy flowed from a single factual predicate: the alleged misconduct.

Second, there was a Government-side coordinator with an institutional interest in consistency. Remedies coordinators exist to help avoid one part of the Government undercutting the other.

Third, coordination made global resolution more realistic. A contractor could negotiate a criminal disposition (on the rare occasion one was warranted), a civil settlement, a contract adjustment, and an administrative agreement to avoid debarment as a package, with each Government stakeholder at the table.

Each of those features is now under strain.

The Four Remedies Have Shifted—Even before considering new actors, each of the four traditional remedies has changed.

Criminal Enforcement Is No Longer the Rare Remedy: In May 2025, the Criminal Division identified procurement and federal program fraud among its high-impact enforcement areas. In April 2026, DOJ formally established a National Fraud Enforcement Division with a broad mandate that includes procurement, Government program, and trade and customs fraud. Contractors can no longer assume that a procurement fraud matter will stay civil.

The False Claims Act Has Become a Policy-Enforcement Tool: DOJ's Civil Rights Fraud Initiative, launched in May 2025, uses the FCA to pursue federal contractors and funding recipients over alleged civil rights violations, including through diversity, equity, and inclusion programs. For example, four Government contractors have settled FCA allegations DOJ brought as policy enforcement relating to diversity programs or hiring. Routine certifications of compliance with antidiscrimination law now carry FCA exposure that most compliance programs were not built to assess.

Contract and Grant Remedies Increasingly Follow Policy: Large-scale terminations for convenience and grant terminations based on changed agency priorities have become common. It is not all that difficult to imagine a raft of default terminations for failing to meet policy expectations, which could impair Government contractors' ability to obtain future work because defaults must be disclosed in the System for Award Management.

The Pressure Model—Unfortunately, the four remedies no longer capture the most likely consequences faced by recipients of Government funds. The Pressure Model differs from the Four Remedies Model in the following ways.

- *More Actors, Less Coordination*: Congressional committees, White House and agency political leadership, and oversight bodies each act on their own timelines. No remedies coordinator manages them, and some stakeholders may have objectives adverse to one another.
- *Triggers Beyond Misconduct*: Pressure can follow a company's policies, public positions, political engagement, or proximity to a controversial Government decision, whether or not anyone alleges wrongdoing. Ordinary business conduct can come under the microscope.
- *No Single Place to Resolve*: There is no global settlement with a congressional committee, and no way to bind a future administration.
- *Risks that Change Over Time*: Conduct that was lawful, even encouraged, when it occurred can be revisited later. Today's accommodations with the Government can become tomorrow's oversight subject.

Three pressures illustrate the model.

Congressional Inquiry—Members who may chair key oversight committees in the next Congress have said publicly that they intend to investigate allegations of corruption in the Government's dealings with private companies. Recognizing that voters' top concern is the economy, Members have said that affordability, including the effect of rising prices on consumers and taxpayers, will be a priority in the next Congress. Early signs are already visible. For example, Rep. Robert Garcia, the ranking member of the House Oversight Committee, has written to two Government contractors on the Lincoln Memorial Reflecting Pool renovation, which he says received non-competitive awards, stating

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that taxpayer dollars have been "flushed down the drain" and seeking information about how the contractors were selected and vetted. See House Oversight Democrats, *Ranking Member Robert Garcia Demands Answers on Donald Trump's Reflecting Pool Failure* (June 24, 2026), https://oversightdemocrats.house.gov/news/press-releases/ranking-member-robert-garcia-demands-answers-on-donald-trumps-reflecting-pool-failure. Areas of interest that may also reach Government contractors and funding recipients include Government equity stakes in companies and other types of perceived "deals" with the administration.

Congressional investigations differ from the four remedies in ways that matter to general counsel.

Privilege Is Contested Ground in the Halls of Congress: Congressional committees have long taken the position that they are not bound to recognize the attorney-client privilege or work-product protection, and they treat such claims as matters within the discretion of the committee chair. However, in contrast to Congress's longstanding position on privilege, the Supreme Court indicated in *Trump v. Mazars* in 2020 that common-law privileges *do* apply in the context of congressional investigations, a point the D.C. Circuit repeated this year in *U.S. v. Navarro*, an executive privilege case. For discussion of privilege in congressional investigations, see https://www.jenner.com/a/web/meaJqLRMjZTDsBNpHD1bq5/nlj07032026xxxxxjenner.pdf.

This authority gives counsel strong ground in support of negotiations over how privileged material is handled.

What Is Produced May Become Public: Congressional committees can release documents and testimony, and reputational harm is a risk even if there are no formal findings. Material made public can then supply the factual basis for qui tam relators and private plaintiffs.

Release takes many forms: exhibits at a hearing, documents quoted in a staff report, excerpts in a letter to an agency or the company, transcripts of interviews or depositions, a press release timed to a hearing, or a Member's post on social media or remarks in a cable news interview. The consequences reach well beyond the committee room. A document that was routine in a contract file can look very different when it is quoted without context in a hearing or a news story. For that reason, companies should coordinate their legal, Government affairs, and communications teams before a response begins, so they can act quickly and strategically if material is released.

Timing Cuts Against Waiting: A letter from a ranking member carries no compulsion today, but the same member may hold the gavel and subpoena power in January. Companies that treat current letters as optional should plan for the questions to return in a form that is not.

Targeted Executive Action—The second pressure comes from within the executive branch but outside the remedies-coordination architecture. We use the term "targeted executive action" for Government actions directed at particular companies or institutions that impose exclusion-like consequences without passing through the four traditional remedies.

These actions take several forms: supply chain or security designations; terminations of contracts or grants tied to an institution's policies or positions rather than its performance; directives limiting which vendors other contractors may use; and referrals into the exclusion system for matters unrelated to procurement integrity.

These tools differ from the four remedies in important ways. They may not follow the procedures of Federal Acquisition Regulation Subpt. 9.4 or of 2 CFR 180, which require notice, an opportunity to respond, and a present-responsibility determination. Their stated basis may be a policy judgment rather than evidence of misconduct, which leaves little room for the mitigation arguments contractors traditionally make. Their effects can reach downstream, so that companies with no connection to the underlying dispute must change their own supply chains. And they are rarely coordinated with the remedies officials who would ordinarily ask whether a less drastic measure would protect the Government.

The practical lesson is that the protections built into suspension and debarment, procedural protec-

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tions, and alternatives to exclusions may not apply to these new risks.

Conflicting Oversight Demands—The third pressure may be the least discussed and the most immediately practical: instructions from one part of the Government that are difficult to reconcile with obligations owed to another.

Consider an increasingly common instruction. An agency tells its contractors not to provide information in response to Congress or any other outside inquiry, and instead to notify the agency and follow its direction. That instruction sits uneasily with FAR 52.203-13, the contractor code of business ethics clause. The clause requires covered contractors to maintain an internal control system providing for full cooperation with any Government agencies responsible for audit, investigation, or corrective action. FAR 52.203-13(c)(2)(ii)(G); see FAR 52.203-13(a) (definition of full cooperation).

Full cooperation, as the clause defines it, includes disclosing information sufficient to identify the offense and those responsible, and responding fully to auditors' and investigators' requests for documents and access to employees.

The conflict is sharpest when an agency instruction would interfere with cooperation with an inspector general, DOJ, or the Government Accountability Office, each plainly a Government agency responsible for audit or investigation. It is less clear-cut for congressional committees, which are not agencies in the clause's sense. Still, a contractor that routes every outside request through its customer may later have to explain to an inspector general (who reports to both the agency head and to Congress)—or to the requesting congressional committee—why it did not respond directly.

Why the Pressures Compound—These pressures cannot be managed one at a time because action taken in one forum can become evidence in another.

For example, a cooperation package carefully prepared for DOJ can later be demanded by a congressional committee and published, without the protections that governed its original production. Or a contractor that accommodates an agency instruction today may find that accommodation is the subject of an oversight hearing tomorrow.

The remedies coordinator was the Government's own answer to fragmentation in a prior era. But that era may have ended. No equivalent exists for the new pressures. In the Pressure Model, the contractor must become its own coordinator.

Disclosure Decisions Under the Pressure Model—The FAR Mandatory Disclosure Rule shows how the Pressure Model changes even familiar compliance decisions. Under the Mandatory Disclosure Rule, covered contractors must timely disclose in writing to the agency inspector general credible evidence of certain federal criminal violations, civil FCA violations, and significant overpayments. Knowing failure to disclose remains a cause for suspension and debarment.

The rule's key terms—"timely," "credible evidence," and "significant overpayment"—have not been satisfactorily defined. Given that vagueness, contractors grapple with the gray areas of whether a disclosure is required and what the benefits of disclosing would be. Benefits from disclosure typically flow from the organizations that receive and process disclosures: inspector general agents, COs, and debarring officials. After all, a well-prepared disclosure lets a contractor communicate important aspects of the situation and ensure the Government recipients understand the relevant considerations.

But that calculus depended on a predictable set of recipients, and that set has changed. Contractors need to anticipate the dissemination of disclosures or collaterally developed materials more broadly, including to Congress. More fundamentally, a disclosure creates a record that other Government stakeholders (perhaps even in other branches of Government) may seize upon in the future.

None of this changes the obligation to make a mandatory disclosure when the rule so requires. It changes how contractors should interpret disclosure requirements and conduct cost/benefit analyses in the gray areas. Contractors should evaluate what a disclosure will produce with each potential audi-

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ence in view, and document the basis for each decision, including decisions not to disclose.

What General Counsel and Boards Should Do Now—The Pressure Model calls for several adjustments to how companies prepare.

1. *Build a Pressure Map*: The Government once prepared a remedies plan for each significant investigation. Companies should now prepare their own map of every actor with leverage over a matter, including congressional committees, agency leadership, and oversight bodies, and designate an internal coordinator to manage across them.

2. *Gather the Facts and Assess Your Risks*: Companies that have already been contacted by Government actors, or who fit the profile of companies that may be contacted in the future, should begin internal assessments now, directed by counsel and under privilege. Knowing the facts early enables a company to strategize how to engage before a future letter or subpoena arrives.

3. *Assume Every Production Becomes Public and Permanent*: Maintain one consistent factual narrative across all forums, and build a privilege strategy that anticipates a potential challenge.

4. *Adopt a Protocol for Conflicting Instructions*: Get agency instructions in writing, raise them with the CO, document the company's analysis of its full-cooperation obligations, and never simply ignore either demand.

5. *Reset Preservation Practices*: Watch informal and ephemeral communications with agency counterparts; the company may hold the only record of a Government decision.

6. *Assemble Your Response Team*: When a Government inquiry arrives, the time for developing a response is short and the pressure is high. Having your team in place is critical—including in-house and outside counsel, internal and external Government affairs, and internal and external communications professionals. Working together in advance, this group of stakeholders can begin to craft your affirmative story—backed by fact—that is deployable across forums *now*, so the company is not building its response from scratch under deadline.

7. *Strengthen Board Oversight of Government Interactions*: Boards should understand the company's significant Government engagements and political activities, and review them for matters likely to draw scrutiny.

8. *Revisit Disclosure and Certification Practices*: Update the disclosure protocol to account for every downstream audience, and review anti-discrimination and other certifications for FCA exposure.

Conclusion—The Four Remedies Model rested on the premise that the Government would coordinate its own response to contractor misconduct. That premise gave contractors a single, if formidable, counterpart and a realistic path to resolution. The Pressure Model offers neither. The Government once coordinated its remedies against contractors. Now contractors must coordinate their own response to a Government that no longer acts through a single coordinated channel.

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This Feature Comment was written for THE GOVERNMENT CONTRACTOR by* David Robbins, Emily Loeb, Matthew Haws, *and* Rachel Palermo.** ***Mr. Robbins is a partner and co-chair of the Government contractor litigation and compliance practice at Jenner & Block LLP. He previously served as acting suspending and debarring official, deputy general counsel, and leader of the global Procurement Fraud Remedies Office at the U.S. Air Force. Ms. Loeb is a partner and co-chair of the congressional investigations practice at the firm. She previously served as associate deputy attorney general at the U.S. Department of Justice and as an associate counsel in the White House Counsel's Office. Mr. Haws is a partner in the firm's Government contractor litigation and compliance practice. Ms. Palermo is an associate in the congressional investigations practice at the firm. She previously served as deputy com-

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munications director and associate counsel to Vice President Kamala Harris in the White House.

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