

## Are You Ready for a Government Investigation?

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We hear about government investigations of companies on almost a daily basis and have come to accept them as a sign of our times. Most companies, however, also consider it part of their business plan to simply hope or even naively believe that the government will never knock on their door. Even though we never expect to be victim to a fire, we still hold fire drills to be prepared for that unlikely event and to increase the likelihood of survival for those who work for us. Nonetheless, we do not prepare for the more likely possibility of a government investigation where such preparations could increase the likelihood of survival for our companies and the jobs of our employees. You should ask yourself whether you are ready to deal with a government investigation before you find yourself in the middle of one.

The government is serious about enforcement of the laws and regularly seeks novel ways to apply existing laws to new scenarios. Moreover, as our state and federal governments struggle financially, prosecutors' offices are left to validate their efforts or even fund their existence by recouping monies from the cases they initiate and so are incentivized to go after the "deep pockets." It seems at times that the government investigators cast an extremely wide net and are grasping at anything, even unsubstantiated complaints, to make a name or a dollar for themselves or their offices. Indeed, we hear more and more about companies working to prove their innocence to the government where they truly had done nothing improper. It only takes the uncorroborated, even anonymous, complaint of someone who wants to make things difficult for the company and its employees to jeopardize a company's existence. More investigations are based on such scenarios than you realize.

Knowing in advance how to address investigation requests from a government agency – whether interviews, subpoenas, or search warrants – and how to react internally could be the difference between a company continuing business as normal or closing its doors. For example, the reaction of Arthur Andersen LLP to a government request for documents in the Enron investigation caused the government to shift gears away from treating Andersen and its employees as witnesses toward investigating and then prosecuting the company itself and some of its executives. Andersen now no longer operates as we once knew it. A different reaction after consulting with outside counsel and Andersen likely would have been able to avoid criminal prosecution and still successfully operate. Although the example involves a large company, the principles apply equally to large and small companies. Indeed, a small company faced with fending off an investigation and possible prosecution is in an even more precarious situation.

It is imperative that companies ask themselves whether they are prepared for the time when government agents are knocking at their door. Procopio can help you with that assessment, help prepare you, and assist you with the response if that knock already has occurred. For assistance with your questions and concerns, please contact our attorney Robert Marasco at [robert.marasco@procopio.com](mailto:robert.marasco@procopio.com) and 619-906-5732.

*Robert G. Marasco utilizes his background as a former Assistant United States Attorney to effectively and efficiently defend corporate clients and individuals who are working through complex internal or government investigations, responding to grand jury and administrative subpoenas, or facing criminal prosecution. He also advises clients on compliance with health care laws including fraud and abuse laws, the Health Insurance Portability and Accountability Act (HIPAA) and other health care privacy laws.*

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