

# PUBLICATION

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## Update: DOJ Issues Guidelines for Protectionist FCPA Enforcement

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In February, the White House issued an Executive Order "pausing" Foreign Corrupt Practices Act (FCPA) enforcement for 180 days, to "further American economic and national security."<sup>1</sup> On June 9, Deputy Attorney General Todd Blanche issued a Memorandum to DOJ's Criminal Division, setting forth Guidelines for FCPA Investigations and Enforcement going forward (the "Guidelines"). The next day, DOJ Criminal Division Chief Matthew R. Galeotti delivered remarks at the American Conference Institute's Global Anti-Corruption, Ethics, & Compliance conference reinforcing those Guidelines.

Moving forward under these new FCPA Enforcement Guidelines, the DOJ will prioritize cases that implicate U.S. national security, competitiveness, and key infrastructure – while de-emphasizing investigations into technical or low-impact violations, especially those that involve "routine business practices" abroad. This is not a wholesale retreat from enforcement but a refocusing of FCPA enforcement to bolster the "total elimination of cartels and transnational criminal organizations" and other "serious misconduct" while "safeguarding fair opportunities for U.S. Companies."

### I. What Are the New FCPA Enforcement Guidelines and Priorities?

The FCPA<sup>2</sup> prohibits any "issuer" (of a security, including all companies that participate in a U.S. stock exchange) from bribing foreign officials, which is defined, broadly, as offering, promising, or giving "anything of value" for the purposes of influencing any public official to assist the issuer or otherwise securing an "improper advantage."

The White House's February 10, 2025, Executive Order stated that the FCPA "has been systematically, and to a steadily increasing degree, stretched beyond proper bounds and abused in a manner that harms the interests of the United States." The Executive Order then provided that the Attorney General shall, among other directives, "issue updated guidelines or policies, as appropriate, to adequately promote the President's Article II authority to conduct foreign affairs and prioritize American interests, American economic competitiveness with respect to other nations, and the efficient use of Federal law enforcement resources."

The Guidelines therefore emphasize two stated purposes: (1) ensuring limitations to "undue burdens on American companies that operate abroad," and (2) using the FCPA to target "conduct that directly undermines U.S. national interests." And, going forward, every new FCPA matter "**must** be authorized by the Assistant Attorney General for the Criminal Division . . . or a more senior Department official." This appointee oversight is designed to ensure that every new FCPA investigation and enforcement action is in line with at least one of the following four (non-exhaustive) priorities featured in the Guidelines:

#### A. "Total Elimination of Cartels and Transnational Criminal Organizations"

In line with the White House's January 20, 2025, Executive Order *Designating Cartels And Other Organizations As Foreign Terrorist Organizations And Specially Designated Global Terrorists*, a "primary consideration" in FCPA enforcement going forward will be whether the alleged misconduct might be associated with a Cartel or Transnational Criminal Organization (TCO). Such misconduct may include laundering money or otherwise utilizing a shell company that furthers Cartel or TCO interests. Additionally, alleged misconduct

involving public officials "who have received bribes from Cartels or TCOs" is likely to result in investigation and enforcement under the new FCPA Guidelines.

## B. "Safeguarding Fair Opportunities for U.S. Companies"

A second "important factor" in FCPA enforcement going forward will be "whether the alleged misconduct deprived specific and identifiable U.S. entities of fair access to compete and/or resulted in economic injury to specific and identifiable American companies or individuals." In highlighting this factor, the Guidelines emphasize that, historically, most FCPA actions have been brought against foreign companies, in order to quash "corrupt competitors" from skewing markets and disadvantaging "law-abiding U.S. companies" that lose out on lucrative contracts as a result of the violative misconduct.

## C. "Advancing U.S. National Security"

Third, the Guidelines emphasize that "terrorists and criminals thrive where governments are weak, corruption is rampant, and faith in government institutions is low," and such corruption can affect sectors that implicate national security, such as defense, intelligence, and critical infrastructures. Thus, stamping out bribery of corrupt foreign officials in instances involving "key infrastructure or assets," which could implicate or threaten U.S. national security, is a top priority for FCPA enforcement.

## D. "Prioritizing Investigations of Serious Misconduct"

The final priority featured in the Guidelines emphasizes that, to best advance the first three priorities, FCPA enforcement **shall not** focus on misconduct involving "routine business practices" or other "*de minimis* or low-dollar, generally accepted business courtesies." Instead, FCPA enforcement should focus on misconduct that "bears strong indicia of corrupt intent tied to particular individuals," including large bribe payments, sophisticated efforts to conceal bribes, fraudulent conduct that furthers bribery, and other "efforts to obstruct justice."

## II. How Might These New Guidelines Impact Me or My Company?

**First**, the *DOJ Doesn't Want to Punish Companies Just for Being Investigated*. If your company uncovers a potential violation that's old, isolated, or procedural – particularly if no bribe was paid or no unfair advantage was obtained – the new policy suggests DOJ may be less likely to open or pursue a full-scale investigation. That's an important change. It also means companies should be thoughtful in how they internally scope and document such issues before disclosing them.

**Second**, *Compliance Programs Should Match Risk, Not Just Check Boxes*. The DOJ is encouraging companies to stop spreading compliance resources thin across every minor issue. If you're doing business in a high-risk market – say, a joint venture with a state-owned entity in Brazil or a licensing deal in West Africa – invest your compliance energy there. Risk-rank third-party intermediaries, focus on payments touching foreign officials, and don't overengineer travel policies for low-risk jurisdictions.

**Third**, *Voluntary Disclosure Still Matters – But Be Strategic*. If you uncover a significant issue (especially one involving systemic control failures or senior management), early and strategic engagement with the DOJ still offers meaningful benefits. However, if the issue is borderline or remedial steps are already well underway, you may have stronger footing to decide not to disclose. Under the new FCPA Guidelines, there is less risk that the DOJ will treat a technical slip-up like a headline case.

**Fourth**, *Document Your Decisions Thoughtfully*. This is a good time to update internal protocols for issue escalation and decision-making. Make sure someone is tracking not just what is being investigated internally

but also why the company chose not to escalate or disclose. DOJ is shifting toward evaluating proportionality. In the event an investigation does come your way, it is important to show the exercise of sound judgment – red flags cannot be ignored.

***Fifth, Don't Let Your Guard Down.*** This policy shift does raise the bar for enforcement, but it also raises the stakes. The cases DOJ does pursue will likely involve serious allegations and major reputational exposure – bribes involving foreign companies to win lucrative government contracts; corrupt dealings with cartels, TCOs, or third parties with corrupt connections; or efforts that harm U.S. National Security interests. If your business may touch these areas, if even through third parties, now is the time to test your controls and revisit your compliance training.

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<sup>1</sup> The Department of Justice (DOJ or the "Department") dutifully stalled FCPA enforcement initiatives, including through its April 2, 2025, dismissal of FCPA charges against two former Cognizant executives (which we reviewed [HERE](#)).

<sup>2</sup> 15 U.S. Code § 78dd-1.