

Trump Administration's FCPA Investigations and Enforcement Guidelines

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On June 9, Deputy Attorney General Todd Blanche released a much-anticipated update to the Trump administration's plans for enforcement of the Foreign Corrupt Practices Act (FCPA).

The *Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA)* demonstrate that FCPA enforcement will continue under the Trump administration, but the Department of Justice's (DOJ) focus will be much different than under prior administrations. Further, the DOJ's enforcement standards will be different, with guaranteed declination of enforcement for those companies that "voluntarily self-report, cooperate, and remediate," as established in the revised *Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy* (CEP) and articulated by Head of the DOJ's Criminal Division Matthew Galeotti in his [June 10 remarks](#).

Background

The guidelines follow a series of announcements by the administration in February regarding the FCPA. On February 5, Attorney General Pamela Bondi released a [memorandum](#) detailing the administration's goal of pursuing the "total elimination of cartels and transnational criminal organizations (TCOs)."

Just five days later, on February 10, President Trump signed Executive Order 14209, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security*, which detailed plans for revised guidelines to further the administration's policy of "preserv[ing] the Presidential authority conduct foreign affairs and advance American economic and national security by eliminating excessive barriers to American commerce abroad."

For an in-depth analysis of this Executive Order, see Troutman Pepper Locke's February 18 alert, [Trump Pauses FCPA Enforcement: Implications for Corporate Compliance Strategies](#).

On May 12, Galeotti released a memorandum on the *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime* as well as the revised CEP, which together highlighted the administration's general white collar enforcement priorities and revised policy to guarantee declinations of enforcements where companies voluntarily self-reported.

For an in-depth analysis of this memorandum, see Troutman Pepper Locke's May 14 alert, [DOJ's Criminal Division Announces Updates to White-Collar Enforcement and Corporate Policies](#).

The Guidelines

The guidelines affirm the Trump administration's prior directives.

Specifically, the guidelines seek to "ensure that FCPA investigations and prosecutions are carried out in accordance with President Trump's directive by (1) limiting undue burdens on American companies that operate abroad and (2) targeting enforcement actions against conduct that directly undermines US national interests."

To accomplish this, the guidelines detail a series of non-exhaustive factors that the DOJ is to consider in evaluating whether to pursue FCPA investigations and enforcement actions:

- **Total Elimination of Cartels and TCOs**

In accordance with Bondi's February 5 memorandum, the DOJ will pursue investigations and enforcement actions when the corrupt payment: (1) is associated with criminal operations of a cartel or TCO; (2) paid to cartels or TCOs through money laundering schemes, including the improper use of shell companies; or (3) is linked to foreign officials or state-owned entities who are known to take bribes from cartels or TCOs. This marks a shift in the DOJ's use of the FCPA, from prior administrations, when payments to benefit cartels and TCOs were typically investigated and enforced under other criminal statutes. Such cartel and TCO-related violations are also a new priority area of focus for the DOJ's Criminal Division's Corporate Whistleblower Awards Pilot Program.

- **Fair Opportunities for U.S. Companies**

The DOJ will prioritize bribes that negatively impact U.S. business opportunities abroad and consider whether the alleged misconduct caused economic injury or deprivation of fair access to specific and identifiable U.S. entities.

- **U.S. National Security**

In line with the administration's view of U.S. economic competitiveness as important to national security, the DOJ will prioritize enforcement where the misconduct implicates American national security interests in the form of key infrastructure or assets like critical minerals and deep-water ports.

- **Strong Indicia of Corrupt Intent Tied to Specific Individuals and Serious Misconduct**

The DOJ will also prioritize enforcement and investigation of specific individuals for serious instances of misconduct bearing "strong indicia of corrupt intent"— "substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of the bribery scheme, and efforts to obstruct justice"— rather than routine business practice misconduct or *de minimis* corporate conduct. This policy shift flows directly from the priorities articulated in Executive Order 14209 to ensure that the FCPA is not

“used against American citizens and businesses . . . for routine business practices in other nations” and demonstrates a movement away from enforcement of nonspecific corporate structure malfeasance or technical violations. Indeed, as Galeotti noted in his remarks on behalf of the DOJ, the guidelines focus on “specific misconduct of individuals, rather than collective knowledge theories.” These remarks signal that the DOJ may narrow its interpretation of the FCPA’s knowledge requirement in its corporate enforcement actions, potentially raising the threshold for corporate entity conduct that could constitute an FCPA offense.

Notably, the guidelines also explicitly direct prosecutors to consider an investigation’s impact to the target company’s business and potential disruption of business throughout the investigation, rather than just at resolution. This further signals the administration’s overarching policy goal of promoting American business and consideration of corporate impact.

Implications for Corporate Compliance

These guidelines also affirm that the DOJ intends to continue investigations and enforcement under the FCPA. Relatedly, the SEC, which conducts civil enforcement of FCPA anti-bribery and accounting provisions, has not announced any intent to change its enforcement, though its Deputy Director of Enforcement for the Northeast, Antonia Apps, [remarked in April](#) that the agency would follow the DOJ’s lead.

While the guidelines detail new priorities, the legal framework of the FCPA remains unchanged, and only Congress has the authority to amend or repeal the statute. Moreover, the FCPA’s anti-bribery provisions have a five-year statute of limitations, meaning that past violations can still be prosecuted, and future violations will likely outlive the current administration. Additionally, conduct that implicates the FCPA often implicates other U.S. criminal statutes—such as the Racketeer Influenced and Corrupt Organizations Act (RICO), the Travel Act, and other laws regarding campaign finance, wire fraud, and anti-money laundering, False Claims Act actions, and foreign criminal statutes.

In light of these guidelines, companies should consider:

- 1. Maintaining Robust Compliance Programs:** Companies should continue to uphold strong anti-bribery and anti-corruption policies. These Guidelines communicate that the Trump Administration does intend to continue FCPA enforcement and investigations.
- 2. Issuing Guidance and Reminders to Internal Stakeholders:** Companies should proactively issue communications to internal stakeholders about the FCPA’s impact on company compliance and reiterate that employees should continue to adhere to existing policies. Consider providing updated training to re-emphasize these points.
- 3. Evaluating Risk Exposure:** Companies currently under investigation or with active deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs) should assess their risk exposure. The DOJ’s review of existing actions may offer opportunities to seek closure or modification of ongoing matters.
- 4. Considering Self-Disclosure When FCPA Priorities Are Implicated:** The DOJ is encouraging voluntarily self-

disclosure of misconduct and has promised to decline to bring an enforcement action where companies do self-disclose. While this is a greater benefit than that offered for self-disclosure under the Biden administration, companies still need to carefully evaluate their specific factual scenarios and how they fit with the Trump administration's priorities.

If you are currently under investigation for an alleged violation of the FCPA or have questions on how the executive order will impact your business, please do not hesitate to contact a member of Troutman Pepper Locke's White Collar Litigation and Government Investigations practice.

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