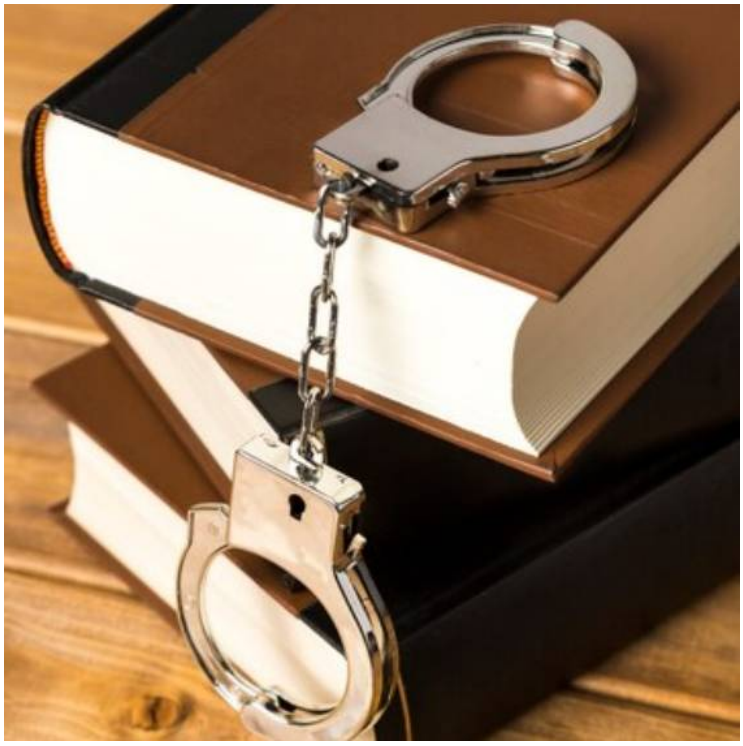
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DOJ Issues New FCPA Enforcement Guidelines



On June 9, 2025, the U.S. Department of Justice (DOJ) released a memorandum establishing long-awaited guidance for the investigation and enforcement of the Foreign Corrupt Practices Act (FCPA).[1] The guidance was a direct result of President Trump's February 10 Executive Order, signed on February 10, 2025, which directed the DOJ not to initiate new FCPA investigations or enforcement actions for 180 days, except where specifically authorized by senior DOJ officials.[2] The Order also required a detailed review of all ongoing FCPA matters and the issuance of updated enforcement guidelines. The President's stated objectives were to prevent the FCPA from being "stretched beyond proper bounds," to avoid enforcement that could harm U.S. economic competitiveness, and to ensure that FCPA actions do not undermine U.S. national security or foreign policy interests.[3]

The new guidelines, styled as a memorandum from the Deputy Attorney General to the attorney currently in charge of the DOJ Criminal Division (the "Memorandum"), signal a significant recalibration of FCPA enforcement priorities, with a focus on serious misconduct that can be attributed to specific individuals, national security threats, and conduct linked to transnational criminal organizations, while also seeking to limit undue burdens on U.S. companies operating abroad. Perhaps surprisingly, considering the doomsday scenarios that some anticorruption advocates had predicted, the new guidance signals a commitment to further FCPA enforcement, albeit with a narrower focus.

Key Takeaways:

- Narrowed Enforcement Focus. The DOJ will prioritize FCPA cases that directly implicate U.S. national interests, serious individual misconduct, and connections to cartels and other transnational criminal organizations.
- Protection of U.S. Business Interests. Enforcement will emphasize cases where U.S. companies or individuals have been deprived of fair competition or suffered economic injury.
- National Security Considerations. Bribery schemes affecting critical infrastructure or assets relevant to U.S. national security will be a central focus.
- De-Emphasis of Routine Conduct. The DOJ will avoid penalizing routine business practices or minor, customary payments, instead targeting substantial, intentional, and concealed corrupt acts.
- Foreign Companies Beware. Notwithstanding the emphasis on protecting U.S. companies and interests, the guidance disclaims any intention to "focus[] on particular individuals or companies on the basis of their nationality." It has long been a fact, however, that the vast majority of serious FCPA enforcement actions have been against foreign companies that are subject to the FCPA either because they are U.S. issuers, or are otherwise subject to the jurisdiction of the U.S. Indeed, the guidance points this out in a footnote as evidence that "[t]he most blatant bribery schemes have historically been

committed by foreign companies." Whether or not that is true, the current administration's emphasis on U.S. interests and stakeholders counsels in favor of extra caution in this area by foreign companies.

Guiding Principles for FCPA Enforcement

In the Memorandum, the Deputy Attorney General outlined a series of non-exhaustive factors that will guide DOJ prosecutors in determining whether to pursue FCPA investigations and enforcement actions:

In practice, FCPA cases have rarely, if ever, intersected with TCOs and cartels, and prosecutors pursuing these entities would likely look elsewhere than the FCPA and its complexity, likely choosing more bread-and-butter tools like narcotics and money laundering laws. Additionally, with the State Department's designation of 8 cartels as Foreign Terrorist Organizations,[7] those who provide material support to such organizations now face criminal prosecution under 18 U.S.C. § 2339B. Many cartel members are also Specially Designated Nationals, which would risk prosecution under the Kingpin Act or other appropriate sanctions regimes. These statutes of course carry strict penalties, which should prompt U.S. companies to focus heavy attention to their cartel and TCO risks, whether or not there is realistic FCPA risk.

This focus on harm to "specific and identifiable U.S. entities or individuals" extends to enforcement under the Foreign Extortion Prevention Act (FEPA), 18 U.S.C. § 1352, which targets the "demand side" of foreign bribery and allows the prosecution of foreign public officials. To date, DOJ has not taken any public action under FEPA, but the general focus on harm to U.S. companies and individuals could lead to renewed emphasis on the new law.

On the flip side, the new guidance instructs that "the focus of FCPA enforcement will be on alleged misconduct that bears strong indicia of corrupt intent tied to particular individuals, such as substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of the bribery scheme, and efforts to obstruct justice." These factors are not exhaustive, nor must they all be present. It is notable that the Memorandum emphasizes individual culpability more than once, warning at the outset that prosecutors "shall focus on cases in which individuals have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures."

Finally, prosecutors are also instructed to consider whether foreign authorities are willing and able to investigate and prosecute the alleged misconduct, to avoid duplicative or unnecessary U.S. enforcement.

Procedural Safeguards and Ongoing Review

- Authorization Requirement: All new FCPA investigations or enforcement actions must be authorized by the Assistant Attorney General for the Criminal Division or a more senior DOJ official.
- Collateral Consequences Throughout: Prosecutors are required to consider collateral consequences, including the potential disruption to lawful business and the impact on employees throughout the investigation, not just at resolution.
- Efficiency Mandate: The DOJ is committed to moving investigations and prosecutions expeditiously, and expects cooperating companies to do the same.

Future DOJ White-Collar Enforcement

In remarks delivered to the American Conference Institute on June 10, 2025, the head of the DOJ's Criminal Division summarized the new FCPA guidance as follows: "In plain terms, conduct that genuinelyimpacts the United States or the American people is subject to potential prosecution by U.S. law enforcement. Conduct that does not implicate U.S. interests should be left to our foreign counterparts or appropriate regulators." [10] The speech also touched on DOJ white collar crime enforcement more generally. Key points include:

- White Collar Crime is a Priority: The remarks make clear that "[f]ighting white-collar and corporate crime is a critical component of the Criminal Division's priorities," emphasizing health care fraud, money laundering, and sanctions evasion in particular, and noting that such crimes, among other things, "disturb markets, hurt the economy, and victimize vulnerable Americans."

- Declinations: The remarks emphasize a small but notable change in policy: Companies that voluntarily self-report misconduct to the Criminal Division, cooperate fully with the government's investigation, and timely and appropriately remediate the misconduct will not only receive a presumption of declination of prosecution, as per the previous administration's guidance, but an actual declination. It remains to be seen whether this is a distinction without a difference, as the Criminal Division remarks still allow for prosecutions if aggravating factors are present.[11]
- Corporate Monitorships: The DOJ is refining its approach to monitorships, favoring self-directed compliance measures where appropriate. This echoes the first Trump DOJ, which also issued guidance de-emphasizing the use of corporate monitors.

Targeting Cartels and Transnational Criminal Organizations (TCOs). Not surprisingly in light of the President's executive order[4] and prior guidance by the Attorney General,[5] the Memorandum directs DOJ to prioritize FCPA cases that are associated with the operations of cartels and TCOs, particularly where foreign bribery facilitates criminal activity by these organizations. Investigations will be required to focus on misconduct involving money laundering, shell companies, or bribes to employees of state-owned entities linked to cartels or TCOs. This approach aligns with President Trump's efforts earlier this year to designate cartels and TCOs as foreign terrorist organizations and to dismantle their financial networks.[6]

Safeguarding Fair Opportunities for U.S. Companies. The guidelines underscore the importance of protecting U.S. companies from perceived unfair competition resulting from foreign bribery. Prosecutors are directed to consider whether alleged misconduct "deprived specific and identifiable U.S. entities" of fair access to compete or caused economic injury to American companies or individuals. Presumably, this means that DOJ will look to see whether bribery that benefitted a corporate wrongdoer also had the effect of depriving innocent U.S. companies of business or other financial benefit.

Advancing U.S. National Security. FCPA enforcement will prioritize cases where bribery of foreign officials threatens U.S. national security, particularly in sectors such as critical minerals, deep-water ports, defense, intelligence, and key infrastructure. The guidelines recognize, as prior administrations had, that corruption in these sectors can undermine U.S. strategic interests and facilitate exploitation by adversaries. This is a narrower application of a principle that goes back to the Obama Administration and was reemphasized by President Biden: corruption abroad jeopardizes U.S. national interests by weakening the critical government functions of other nations, such as customs enforcement and counterterrorism.[8]

Prioritizing Serious Misconduct. The guidelines instruct prosecutors not to pursue FCPA actions for "routine business practices in other nations" or de minimis, low-dollar business courtesies that are generally accepted in other nations. In practice, cases involving minor or routine payments have not been an area of focus in FCPA enforcement. More common have been complaints about prosecutors stretching the elements to fit high-profile circumstances, and DOJ could be signaling an intention to rein in such cases. If so, one area that could be impacted by this provision are cases where the connection to the FCPA's "business purpose" test is tenuous, such as the Cognizant prosecution recently dismissed by the DOJ.[9] The bribes at issue there were not strictly for the purpose of "obtaining or retaining business," as required by the FCPA, but rather to obtain the necessary government permitting to build a corporate headquarters. Although DOJ has in the past taken an expansive view of the business purpose test, as evidenced by Cognizant and other permitting cases or those involving customs duties, this provision may get renewed respect under the new and narrower FCPA regime.

Implications for Companies and Compliance Programs

In the months since the President's February order, defense lawyers had been sending out warnings to companies not to let up on their anticorruption compliance efforts, if for no other reason than the statute of limitations is five years, while the President's term is a year shorter. With the issuance of the new DOJ guidance, companies have little reason to loosen their compliance efforts, as DOJ policy continues to reward prevention efforts when it comes time to make prosecutive decisions.[12] U.S. companies operating abroad, as well as foreign issuers and foreign companies subject to the U.S.'s jurisdiction, should continue to maintain robust anticorruption compliance programs, particularly in high-risk sectors and jurisdictions and, as mentioned above, such compliance efforts need to include risks posed by TCOs and cartels, including sanctions risk and material support risk.

Relatedly, companies conducting internal investigations must take care to document any business disruption or other collateral consequence that would take place in the case of a prosecution. This includes disruption during an investigation, such as overly

broad document requests or other burdensome administrative steps. And at an investigation's conclusion, the difficult decision of whether to self-report findings of misconduct will be informed by the clear openness of the Criminal Division to decline prosecution with appropriate cooperation and remediation.

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