

Clients & Friends Alert

The Pause is Over—the FCPA Lives On

June 11, 2025

On June 9, 2025, the U.S. Department of Justice (DOJ) announced the resumption of Foreign Corrupt Practices Act (FCPA) enforcement, ending the enforcement pause initiated by [Executive Order 14209](#). In doing so, Deputy Attorney General (DAG) Todd Blanche's [Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act \(FCPA\)](#) (the "Guidelines") declare a renewed, yet narrowed, approach to FCPA enforcement, aligning closely with the Trump administration's prior directives to target cartels and transnational criminal organizations, promote U.S. entities' competitiveness overseas, and advance national security, with an express focus on the defense, intelligence and critical infrastructure sectors. However, after months of eulogies mourning the death of the FCPA, the new Guidelines have left it largely untouched. While the Guidelines may give the impression that enforcement will look different, the continued focus on foreign companies with U.S. ties and the emphasis on historically high-risk industries reflect a clear throughline that remains faithful to the FCPA's original congressional intent. Although not entirely specific to the FCPA statute, the DOJ's and SEC's lucrative whistleblower programs remaining untouched reinforces the administration's reliance on historically successful enforcement structures.

What remains unclear is whether the DOJ will have the resources to pursue all of this, whether foreign governments will respond by targeting U.S.-based companies, and whether the revised Guidelines will materially change the types of cases that ultimately move forward. Nine out of the ten [largest FCPA settlements](#) to date have been against foreign companies listed in the U.S. With that said, the publicly signaled open season on non-U.S. companies may provoke foreign enforcers to take reciprocal action against U.S. companies.

The Guidelines

Prosecutors are directed to evaluate potential FCPA investigations and enforcement actions based on four non-exhaustive factors outlined in the Guidelines:

- 1. Cartel and Transnational Crime Organization (TCO) Involvement** – Consistent with the February 5, 2025 Attorney General Bondi [memorandum](#), a "primary consideration" for the DOJ to consider before opening an investigation or pursuing an enforcement action is

“whether the alleged misconduct (1) is associated with the criminal operations of a Cartel or TCO; (2) utilizes money launderers or shell companies that engaged in money laundering for Cartels or TCOs; or (3) is linked to employees of state-owned entities or other foreign officials who have received bribes from Cartels or TCOs.”

- 2. Economic Injury to U.S. Companies** – Prosecutors are instructed to consider whether the alleged misconduct undermines fair market principles essential to the growth and competitiveness of U.S. businesses in foreign markets. The Guidelines note that DOJ enforcement will not focus on individuals or companies on the basis of their nationality, but notes that the “most blatant bribery schemes have historically been committed by foreign companies.” To address this, in deciding whether to pursue an enforcement action, the DOJ will consider “whether the alleged misconduct deprives U.S. entities of fair access to compete and/or resulted in economic injury to specific and identifiable American companies or individuals.” This includes investigations and prosecutions of “demand-side” cases under the Foreign Extortion Prevention Act, where foreign officials’ demands for bribes have harmed U.S. entities.
- 3. Threats to U.S. National Security** – The DOJ will focus on corruption that poses a threat to national security, including more robust enforcement in sectors such as defense, intelligence, energy, or other critical infrastructure. Furthermore, the DOJ will prioritize cases where foreign adversaries gain unfair access to strategic assets or exploit corruption in weak governments to undermine U.S. interests.
- 4. Prioritizing Investigations of Serious Misconduct** – The DOJ will deprioritize investigations involving “routine business practices” or “low-dollar, generally accepted business courtesies.” Instead, prosecutors are directed to focus on serious misconduct such as substantial bribes, sophisticated concealment efforts, fraudulent conduct in furtherance of the bribery scheme, and obstruction of justice. Cases are also more likely to be pursued when foreign law enforcement authorities are unwilling or unable to prosecute the same alleged misconduct.

Additional Insights

The Guidelines establish a more rigorous vetting and approval process—requiring the initiation of all new FCPA investigations and enforcement actions be approved by either the Assistant Attorney General for the Criminal Division (or the official acting in that capacity) or a more senior DOJ official.

The Guidelines also emphasize that investigations should be focused on individual wrongdoing and “not attribute nonspecific malfeasance to corporate structures.” In his June 10, 2025 remarks at the American Conference Institute Conference on Global Anti-Corruption, Ethics & Compliance, DOJ

Criminal Division Head Matthew R. Galeotti [expanded](#) on this, stating that the Guidelines focus on “specific misconduct of individuals, rather than collective knowledge theories.”

Notably, the Guidelines make clear that the listed factors are non-exhaustive and do not limit prosecutorial discretion.

Key Takeaways

For companies that did not expect major changes following the FCPA pause, the Guidelines vindicate those who have maintained strong compliance programs. For companies that assumed the FCPA was headed for retirement, the Guidelines are a wake-up call to dust off and revamp their compliance programs. Although the new Guidelines appear to narrow the focus of FCPA enforcement, they also make clear that FCPA investigations and enforcement will live a focused, healthy life in the Trump administration. In particular, the defense, intelligence and critical infrastructure sectors appear to be at the center of the DOJ’s attention, and there is heightened risk for entities operating in jurisdictions with high levels of cartel activity. Companies operating in high-risk jurisdictions should continue to strengthen controls around third-party intermediaries and government-facing transactions. Moreover, despite the Guidelines’ pronouncement that a company’s nationality will not be a focus, foreign companies appear to be at greater risk of scrutiny by the government. We will continue to monitor developments and are available to assist all clients in evaluating how these changes may affect their risk and ongoing operations.

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