



LEGAL UPDATES

Trump Executive Order Pausing FCPA Enforcement: Have Legal Requirements Changed?

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What Is the FCPA?

One of the most notable developments in the anti-corruption world is the Trump Administration's Feb. 10 [Executive Order, "Pausing Foreign Corrupt Practices Act Enforcement To Further American Economic and National Security."](#)

The Foreign Corrupt Practices Act (FCPA) was enacted in 1977 and generally prohibits U.S. persons, including companies, from offering or making payments to foreign officials to obtain or retain business. Such payments are a violation of the FCPA, even if such payments are otherwise legally or culturally accepted in the foreign country. The FCPA also requires companies with securities listed in the United States to keep accurate accounting records and maintain internal accounting controls.

To avoid inadvertently running afoul of the FCPA and related anticorruption laws, many companies that conduct business internationally have an anticorruption compliance program that typically includes a code of conduct and related policies, including conducting appropriate due diligence before forming business relationships, ongoing program compliance monitoring, and a reporting mechanism, such as a whistleblower hotline, to help identify potential issues.

This law is jointly enforced by Department of Justice (DOJ) and Securities and Exchange Commission (SEC), and has been aggressively imposed against corporations in recent years, resulting in significant penalties. One of the largest notable FCPA settlements involved Goldman Sachs, which, in October 2020, settled with the DOJ and SEC for approximately \$1.6 billion to resolve allegations it paid bribes to government officials in China, Malaysia and Abu Dhabi to win government contracts, also agreed to pay an additional \$1.3 billion to other governments. In imposing the large penalties, the DOJ and SEC found that Goldman Sachs's internal anticorruption program was insufficient and employees were able to circumvent internal controls to engage in corrupt activities.

In the past decade, the DOJ has increased its focus on prosecuting corporations for the acts of employees and has emphasized self-disclosure of misconduct to avoid criminal liability for the corporation. In 2024, the DOJ rolled out a new

Related People

Kathleen Fisher Enyeart

Counsel

Kansas City

816.460.5843

kathleen.fisherenyart@lathropgpm.com

Maia Frank

Partner

Washington, D.C.

202.295.2209

maia.frank@lathropgpm.com

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corporate whistleblower program that would incentivize whistleblowers with monetary rewards for reporting corporate misconduct, including FCPA violations. This program, along with updates to DOJ's guidance on the Evaluation of Corporate Compliance Programs, has put increasing pressure on companies to prevent and identify any potential bad acts and to report such actions to the government in hopes they'll avoid the most draconian consequences, such as criminal prosecution, while still leaving themselves open to significant civil penalties notwithstanding their cooperation.

What Has Changed?

The new Executive Order pauses enforcement of the FCPA for 180 days, a period which may be extended for an additional 180 days. During the review period, the Attorney General is directed to (1) cease initiation of new FCPA investigations or enforcement actions; (2) review existing FCPA enforcement actions "to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives"; and (3) issue updated guidelines to adequately promote the President's authority to conduct foreign affairs and prioritize American interests and American economic competitiveness with respect to other nations.

A review of FCPA guidelines may be helpful to businesses given the increasing pressure on corporations to self-police their own employees and agents, and the associated penalties for not quickly voluntarily disclosing any adverse findings. However, the justification for the pause on enforcement is remarkable: "U.S. companies are harmed by FCPA overenforcement because they are prohibited from engaging in practices common among international competitors, creating an uneven playing field." The "common practices" are the payment of bribes to government officials. This justification and other information is set out in a [Fact Sheet: President Donald J. Trump Restores American Competitiveness and Security in FCPA Enforcement – The White House](#).

Use Caution Moving Forward

Despite the pause on enforcement, companies should use caution before changing any of their own anticorruption practices or programs and compliance efforts. The FCPA still maintains the law and bribery of foreign officials to win business continues to be illegal and punishable through fines and imprisonment. Moreover, the Executive Order is addressed only to the DOJ and not to the SEC, which shares civil enforcement authority for the FCPA. Additionally, businesses that operate globally likely have similar legal requirements in other jurisdictions, including the UK Bribery Act and Canada's Corruption of Foreign Public Officials Act.

In short, companies should diligently continue their anticorruption efforts to protect themselves from later prosecutions under the FCPA, particularly given that FCPA investigations often look back at conduct over a number of years. A future administration may return to DOJ's recently aggressive posture. In the short term, if a company determines it may have evidence of such misconduct, counsel should carefully weigh factors in favor of disclosing, particularly given that the current administration may be more inclined to decline a further investigation. If coupled with an appropriate overall compliance program, the current window may be an opportunity for companies to address known violations with an administration that views such misconduct as a low enforcement priority.

If you have questions about the potential impact of this Executive Order, please contact [Maisa Frank](#), [Kathleen Fisher Enyeart](#) or your regular Lathrop GPM attorney.