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FCPA Enforcement Halted, for Now, and Appears to Open Pathway to Reexamine Prior FCPA Settlements



The Foreign Corrupt Practices Act (FCPA), passed in the wake of Watergate, prohibits U.S.-linked companies and individuals from bribing foreign government officials to procure international business and hiding the bribes in the companies' records.

Historically, FCPA enforcement has been one of the top enforcement priorities of the Department of Justice (DOJ) and has resulted in million- and billion-dollar penalties against companies in a range of industries. Along with other securities regulations, the FCPA and its aggressive enforcement has been one of the primary drivers engendering the development of robust corporate controls and compliance programs.

Based on the Administration's [FCPA Executive Order Factsheet](#), the new administration believes that "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." A pair of recent announcements by the new administration appears to change the FCPA landscape considerably, at least in the short run.

In a nutshell, the pair of new Executive Orders suggest the following impacts on current, future and even past FCPA enforcement:

- *New* FCPA enforcement actions may not be initiated for a period of 6 months, the "Review Period" (with the potential extension of that period for another 6 months);
- *Ongoing* FCPA enforcement investigation and prosecution must be "reviewed in detail" by Attorney General Pam Bondi prior to proceeding during the Review Period;
- *Updated guidelines* must be issued by the DOJ regarding FCPA enforcement dictating the standards under which FCPA enforcement investigation and enforcement will be initiated and continued after the Review Period, which shall include a requirement that the Attorney General specifically authorize the initiation and continuation of new FCPA investigation and enforcement; and

- We expect that guidance to prioritize investigations and enforcement actions involving cartels and transnational criminal organizations.
- *Prior* FCPA enforcement actions may be reviewed to determine whether “remedial measures” are warranted.

On February 6, 2025, the Attorney General issued a [memorandum](#) to DOJ employees directing the FCPA Unit to prioritize foreign bribery investigations and prosecutions of cartels and transnational criminal organizations and removing the requirement that any FCPA matter require the Criminal Division’s approval or be led by a FCPA Unit prosecutor.

Expanding on this, on February 10, 2025, an [executive order](#) pausing enforcement actions related to the FCPA entirely until Attorney General Pam Bondi issues new enforcement guidelines and policies. The executive order requires the Attorney General to review all existing FCPA investigations or enforcement matters with the final goal of restoring “proper bounds on FCPA enforcement” to preserve Presidential foreign policy prerogatives. At her discretion, the Attorney General may extend this review period for an additional 180 days. Any FCPA investigation or enforcement action initiated or continued after revised guidelines and policies are issued will be governed by the new guidelines and policies and must also be specifically authorized by the Attorney General.

Finally, the executive order requires the Attorney General to determine if any additional actions, including remedial measures with respect to past FCPA investigations and enforcement actions, are warranted. The executive order itself does not provide a current remedial pathway for companies and individuals previously subjected to FCPA enforcement. Once DOJ issues guidelines for future FCPA investigation and enforcement, it appears a pathway will either be set out in policy or at a minimum be available for affirmative review of prior FCPA enforcement actions, including deferred prosecution agreements (DPAs) and non-prosecution agreement (NPAs). Even in the absence of such formal pathways, it’s likely that affirmative approaches by companies and individuals previously subject to FCPA enforcement would be entertained.

The legal mechanism under which prior voluntary settlements, such as DPAs and NPAs, would be unwound is unclear, though models that may serve as precedent exist in various contexts. In appropriate cases, for example, defendants seeking to unwind prior settlements may consider seeking joint motions with the government to vacate forfeiture orders on the basis of shifting interpretations law. Perkins Coie lawyers will continue monitoring for DOJ policies and guidelines as well as avenues that may be available to engage with DOJ regarding prior FCPA enforcement.

While the FCPA continues to exist in its statutory form, the new administration is clearly looking to reduce—or even eliminate—any related enforcement going forward. Notwithstanding a less aggressive enforcement posture articulate by this Administration, without congressional action to repeal the FCPA, companies and individuals subject to the FCPA may still be liable for FCPA violations that occur within the five-year statute of limitations - which likely runs past the current Administration). In this regard, companies and individuals should remain cautious: a DOJ memo or executive order can be issued at any time reversing course or refocusing FCPA enforcement. And, in an environment of intense political divisions, FCPA defendants could find themselves facing a very different set of enforcement priorities in front of new DOJ leadership in 4 years.

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