White Collar Defense & Investigations Update

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An Unsurprising Sea Change for FCPA Enforcement: Key Features of DOJ's New FCPA Guidelines

On June 9, 2025, the U.S. Department of Justice (DOJ) issued its much-anticipated guidance on enforcement of the Foreign Corrupt Practices Act (FCPA). The new *Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act*, released in a memorandum from Deputy Attorney General Todd Blanche, contain few surprises. As expected, the new guidelines align closely with the administration's top law enforcement priorities: national security, dismantling cartels and transnational criminal organizations, and protecting the global competitiveness of U.S. businesses. These priorities were first outlined in President Trump's February 10, 2025, Executive Order, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security.*

While the focus of these new guidelines is expected, Blanche's memo formalizes a fundamental sea change in FCPA enforcement. First, the memorandum now requires that prosecutors obtain authorization from the Assistant Attorney General for the Criminal Division—or a more senior DOJ official—before initiating any new FCPA investigation or enforcement action. Second, the guidelines appear to de-emphasize corporate resolutions, which have long been a standard feature of many FCPA cases. Specifically, prosecutors are admonished to "not attribute nonspecific malfeasance to corporate structures," and are advised to avoid cases involving routine business practices, such as generally accepted business courtesies. Importantly, prosecutors are also directed to assess the negative "collateral consequences" of FCPA investigations on lawful businesses and their employees—not just at the resolution stage, but throughout the investigation.

Under the new guidelines, prosecutors will focus on pursuing FCPA cases against individuals suspected of serious misconduct, such as substantial bribe payments, and where there is "strong indicia of corrupt intent." In addition, prosecutors must also consider whether the matter implicates priorities outlined in the president's February 10, 2025 Executive Order. In evaluating whether to pursue an FCPA investigation or enforcement action, prosecutors must now also weigh the following questions when evaluating alleged misconduct:

- Are cartels or transnational criminal organizations (TCOs) involved in the scheme? Were money launderers or shell companies used by these groups? Are employees of state-owned entities or foreign officials bribed by cartels or TCOs implicated?
- Does the alleged misconduct place U.S. businesses and their law-abiding foreign competitors at a serious economic disadvantage by undermining market competitiveness and the rule of law? Does the misconduct implicate the "demand side" of bribery under the Foreign Extortion Prevention Act, and, if so, were specific U.S. entities or individuals harmed by the bribe demands?
- Does the allegation of bribery of foreign officials implicate U.S. national security interests, including key infrastructure or strategic assets?
- Is foreign law enforcement willing or unwilling to investigate and prosecute the same alleged misconduct?

While the FCPA enforcement landscape has shifted, it has not disappeared. In fact, the DOJ's current guidance broadens enforcement to touch many other areas previously overlooked, such as cartel and TCO involvement.

Experienced counsel can play a critical role in this evolving environment, developing and managing sophisticated compliance programs, advising on regulatory compliance procedures and requirements, targeting organizational vulnerabilities under the revised FCPA guidance, conducting complex internal investigations, and leading remediation efforts to protect against further risk. Early, proactive engagement remains essential to navigating the DOJ’s evolving enforcement priorities and avoiding exposure to an investigation or enforcement action.

FOR MORE INFORMATION

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