CLIENT ALERTS & INSIGHTS

A Survey of Recent Enforcement Actions, Trends & Priorities

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The landscape of criminal prosecution of foreign bribery has shifted, and the second Trump administration has made its priorities clear; however, companies still have 950 million reasons and counting to strengthen their compliance frameworks when dealing with government contracts and/or government officials-specifically foreign government officials. RTX Corporation's recent $950 million settlement highlights the need for companies to be aware of the current Foreign Corrupt Practices Act ("FCPA") and the False Claims Act of 1863 ("FCA") cases, enforcement trends, considerations, and recommendations to mitigate or avoid penalties and associated reputational harm for FCPA and FCA violations. This client bulletin provides an overview of RTX Corporation's $950 million settlement, other notable FCPA/FCA cases, trends and enforcement priorities, and outlines the recommendations that individuals and companies can take to adhee to the FCPA/FCA, strengthen compliance, mitigate risk, and reduce reputational harm.

The FCPA and FCA Generally

The Foreign Corrupt Practices Act ("FCPA") and the False Claims Act of 1863 ("FCA") are laws used by the government to target individuals and companies accused of corporate misconduct mainly in the healthcare, defense, finances, and energy industries. The FCPA and FCA apply to domestic and foreign companies subject to personal jurisdiction of the United States. The Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC") are the primary government entities tasked with FCPA and FCA enforcement. FCPA and FCA laws cover different corporate conduct, but are regularly utilized in tandem, with the ultimate goal of enhancing corporate accountability and integrity of companies doing business within the United States.

The Foreign Corrupt Practices Act

The FCPA is federal law enacted in 1977 to address and combat American businesses and/or individuals using foreign bribes to gain business advantages internationally. [1] Among other things, the FCPA makes it illegal for companies or individuals subject to United States personal jurisdiction, including foreign companies, to offer anything of value to foreign officials in an attempt to influence or secure improper business advantages.[2] The statute requires companies to maintain records and internal accounting controls to prevent bribery payments and FCPA violations.[3] The FCPA does allow facility or "grease" payments, i.e. payments used to secure or accelerate routine government documents such as permits, visas, and police protection.[4] Although the line between legitimate facility payments and unlawful bribes may be difficult to distinguish-and likely subject to less rigorous scrutiny under the Trump administration-historically, lawful facility payments either do not determine the outcome of the government official's decisions, or the outcome must have been determined before the payment.

Once an inquiry or potential violation is brought to light, either through an audit, investigation, and/or whistleblower, United States and/or foreign agencies open an investigation and start gathering evidence. The violating party could be subject to criminal charges, and upon conviction, potential imprisonment and/or heavy civil penalties. For example, "willful" FCPA violations carry a possible maximum prison sentence of up to twenty years' confinement in the United States Bureau of Prisons, and fines upwards of $5 million; moreover, entities can be fined up to $25 million for "willful" violations. [5]

If investigations prove fruitful, the DOJ and SEC could open negotiations and extend offers for a Non-Prosecution Agreement ("NPA") or a Deferred Prosecution Agreement ("DPA"). These agreements allow the violating party to avoid criminal prosecution and the terms are typically dependent on the level of cooperation with the government. [6] Even when the violating party is able to avoid criminal prosecution or receive a reduced sentence, there is still the looming threat of lengthy fines and restitution, enhanced internal controls, and subsequent compliance requirements and audits.[7]

False Claims Act of 1863

The FCA or "Lincoln's Law" is a federal law enacted to impose liability on individuals or companies who knowingly defraud governmental programs. [8] Historically enacted in response to Civil War con-artists defrauding the Union Army, the FCA makes it unlawful for individuals or companies to knowingly submit false claims to defraud the government.[9] Treble damages (three times the actual damages) are available to the government upon conviction,[10] and violators are subject to a per claim fine between $13,946 to $28,619, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990. Although less common, the statute does allow criminal charges, including prison sentences of up to five years.[11] Additionally, whistleblowers-i.e. people who are not affiliated with the government-may file actions on behalf of the government through a process called *qui tam* .[12] There is a major financial incentive for employes to be whistleblowers, successful whistleblowers may receive between 15 and 30 percent of the recovery. [13] The whistleblower awards can reach hundreds of millions of dollars, in 2023, the SEC issued a record $279 million whistleblower award.[14] In 2023, the DOJ obtained settlements and judgments totaling more than $2.68 billion and $2.9 billion in 2024.[15] Today, FCA prosecutions are especially prevalent in the healthcare industry.

Raytheon's Cases

In October 2024, RTX Corporation ("RTX"), formerly Raytheon Company, formalized a Deferred Prosecution Agreement ("DPA") and agreed to pay over $950 million to resolve claims that RTX misled the Defense Department and paid bribes to a Qatari military official to secure air defense system contracts with the Qatari Emiri Air Force and Qatar Armed Forces. The allegations are that, through the use of sham subcontractors, RTX paid bribes to secure contracts totaling more than $5.89 billion, in violation of the anti-bribery provisions of the FCA and the FCPA. Former United States Attorney Breon Peace for the Eastern District of New York indicated these types of investigations may continue to be a priority: "[o]ver the course of several years, Raytheon employees bribed a high-level Qatari military official to obtain lucrative defense contracts and concealed the bribe payments by falsifying documents to the government, in violation of laws including those designed to protect our national security….[w]e will continue to pursue justice against corruption, and as this agreement establishes, enforce meaningful consequences, reforms and monitorship to ensure this misconduct is not repeated." [16] The government reduced RTX criminal penalty under the U.S. Sentencing Guidelines by 25%; however, it notes that RTX cooperation in the initial phases of the investigation was limited.[17]

The alleged billions in benefits conferred to RTX include:

- Four additions to an existing contract between RTX and Gulf Cooperation Council, and a $510 million contract to build a joint-operations center for the Qatari military, resulting in $36.7 million profit to RTX, and another $72 million in profits had the joint-operations center been built.
- Inflated costs incurred in building three Patriot missile firing units, valuing the contract with the U.S. Army at $619 million.

- Claims of overpayment of weapons by $100 million based on 2013 representations by an RTX employee to a Pentagon official that RTX's expected costs increased though they actually went down.
- Inflated personnel and benefit costs of more than $11 million by misleading the U.S. Air Force in 2017 regarding costs associated with maintaining and operating a radar surveillance system.[18]

RTX's $950 million DPA includes:

- Civil Penalties: Totaling more than $428 million for lying to the government about labor and material costs, and potentially double-billing the government on a weapon maintenance contract.
- Criminal Penalties in NY and MA: Totaling approximately $400 million, in federal courts in Brooklyn and Massachusetts, for allegedly inflating costs for missile systems from 2011 to 2013, and a radar surveillance system in 2017.
- Securities and Exchange Commission Fines: SEC fines include $52.5 million to settle allegations, and at least $66 million in forfeiture of profits.
- RTX agreed to implement and retain independent compliance monitoring for three years, including submitting reports.[19]

In August 2024, RTX voluntarily disclosed more than two dozen alleged violations of the Arms Export Control Act (22 U.S.C. § 2751 et seq.) and International Traffic in Arms Regulations (22 C.F.R. parts 120-130), including allegations that RTX employees took RTX-issued laptops containing classified and sensitive information; ultimately, settling with the Department of State for $200 million.[20]

Other Notable Recent Enforcement Actions[21]

AAR Corp.

In December 2024, AAR Corp. ("AAR"), an Illinois aviation corporation, agreed to pay $56 million in penalties and fines in order to resolve FCPA violations related to a bribery scheme to win a contract for the sale of two Airbus A330 aircrafts valued at $210 million to Nepal Airlines, an airline owned by the Nepal government from 2015 - 2018. [22] It was alleged that AAR used a third-party agent to pay bribes to officials. Additionally, it was alleged that AAR engaged in a similar bribery scheme involving a contract with government-owned South African Airways. AAR self-reported the violations to the DOJ and SEC in 2019.[23] Chief of the SEC's FCPA Unit, Charles Cain stated, "[t]his matter serves as another reminder that companies must have robust compliance and accounting controls that are commensurate with the FCPA risks they face, including with respect to their work with third parties across their business operations." The $56 million included $30 million in disgorgement and $26 million in criminal penalties. AAR Corp also entered into an NPA. Deepak Sharma, President of International Supply Chain at the time of the violations, was ordered to pay $184,597 in disgorgement and prejudgment interest.[24]

Goldman Sachs

Billion-dollar settlements for FCPA violations are not uncommon. In October 2020, Goldman Sachs agreed to pay over $2.9 billion in penalties and disgorgement to settle its own FCPA case, stemming from allegations between 2012 and 2019. [25] Goldman Sachs was alleged to have been involved in the infamous 1Malaysia Development Berhad ("1MDB"), a bribery scheme involving then Malaysian Prime Minister Najib Razak, who was alleged to have embezzled millions of dollars, eventually resulting in criminal charges.[26] Goldman Sachs, through Jho Low, is alleged to have paid $1.6 billion in bribes to Malaysia, 1MDB, and other foreign officials. Low and the co-conspirators were alleged to have diverted or misappropriated more than $2.7 billion in funds.[27] Goldman Sachs is also alleged to have failed to have proper control functions, especially since Jho Low's involvement raised red flags and was considered a significant risk warranting reasonable steps to ensure Low did not have involvement.[28]

For its FCPA violations, Goldman Sachs agreed to pay a criminal penalty, including disgorgement of over $2.9 billion to the U.S. government, with Goldman Sachs reaching separate parallel resolutions with the U.K., Singapore, and Malaysia. Goldman Sachs received up to $1.6 billion in payment credits to resolve those parallel resolutions. Goldman Sachs' former executive, Tim Leissner, was accused of receiving over $43 million for his participation in the scheme, he ultimately settled and agreed to pay $43.7 million and was permanently barred from the securities industry. [29]

Goldman Sachs' settlement is an example of penalties and disgorgement when there is partial cooperation from the offending entity or individual. The government reached the resolution considering the partial cooperation by Goldman Sachs; however, it stated Goldman Sachs failed to voluntarily disclose the conduct, it ignored red flags, and delayed producing relevant evidence. [30] The government reduced the criminal penalty by about 10 percent because of the partial cooperation, but declined to reduce it more based on the seriousness of the offense and the high-level employees and foreign officials involved. [31]

SAP

Between 2013 and 2022, SAP SE ("SAP"), a German based software company, is alleged to have paid South African and Indonesian government officials bribes, including gifts and cash to secure government contracts. In January 2024, SAP settled with the DOJ and SEC for over $220 million in FCPA violations. [32] The $220 million includes $118.8 million in criminal penalties, and $103 million in profit forfeiture.

The government weighed SAP's cooperation with the DOJ as a factor supporting leniency in reaching the resolution. SAP immediately began cooperating by providing prompt and detailed updates to the department regarding facts obtained through internal investigations, which allowed the government to preserve and obtain evidence for its investigation. It expeditiously produced documents and information to the department, made its top officers and employees available for interviews, and took affirmative steps to facilitate interviews and address witness security concerns. The government stated SAP collected, analyzed, and organized complex information requested by the government and translated voluminous foreign language documents. Moreover, SAP imaged the phones of relevant custodians and preserved probative communications from the beginning of the investigation. [33]

The government also credited SAP's remedial measures, which included analysis of root causes of the underlying conduct and gaps. It credited SAP for undertaking appropriate remediation to

address those causes, focusing on regular compliance processes in high risk areas, and incorporating comprehensive operational and compliance risk assessments. SAP agreed to eliminate its third-party sales commission and also agreed to prohibit all sales commissions for public sector contracts in high risk markets; it agreed to enhance the compliance budget and to restructure its Office of Ethics and Compliance. SAP agreed to enhance its code of conduct and policies regarding third parties and gifts. It also addressed the goal of enhancing its reporting, investigations, and management processes. It adjusted the compensation to align with compliance objectives and in an effort to reduce risk of corruption. SAP agreed to enhance and expand compliance monitoring and audit programs, including a team devoted to audits of third-parties. SAP agreed to expand its data analytics capabilities to cover 150 countries and to promptly discipline any employees involved in misconduct. [34]

Although SAP cooperated with the government, it could have received more favorable terms had it voluntarily self-disclosed. SAP would have received 5-points off the overall multiplier when calculating the fines. [35] This reduction could have amounted to approximately $20,000,000 under the Sentencing Guidelines and potentially $94.5 million in discounts under the Corporate Enforcement Policy.

Self-Reporting/Voluntary Self-Disclosure (VSD)

The above cases illustrate how cooperation could determine the extent of the liability. In recent years, companies and individuals have been successful in negotiating Non-Prosecution Agreements (NPA) and/or Deferred Prosecution Agreements (DPA) relating to FCPA and FCA cases. A NPA or DPA allows companies and individuals to avoid formal prosecution in exchange for reaching an agreement to penalties, compliance measures, and monitoring. [36] The availability and use of a NPA or DPA typically depends on a variety of factors, such as the severity of the allegations, subsequent criminal or civil penalties, and the party's cooperation.[37] A big factor that is considered when the government offers an NPA/DPA is whether the individual or entity voluntarily self-disclosed ("VSD").

Different DOJ components and offices have different policies related to what voluntary self-disclosure looks like. [38] For example in the Criminal Division, a company that has self-disclosed, fully cooperated, and appropriately and timely remediated the violation, may see a reduction of at least 50% and up to 75% off of the low end of the U.S. Sentencing Guidelines fine range, except in cases of criminal recidivist.[39] Additionally, those who cooperate at this level may avoid a corporate guilty plea, absent egregious or aggravating circumstances, and may not be required to appoint a monitor. Companies that do not voluntarily self-disclose, but later fully cooperate, may receive a reduction of up to 50% off the low end fine range, except in cases of criminal recidivist.[40]

Although voluntary self-disclosure and cooperation is not a one size fits all strategy, under the FCPA, companies and individuals could benefit from cooperation by receiving a presumption of declination, or face no prosecution, along with significantly lower penalties and fines.[41] Under the FCA, liability is less likely to be avoided, although self-disclosure can be used as a tool to negotiate more favorable DPA terms and lower penalties.[42] Ultimately, the availability of a NPA/DPA and/or reduced penalties depends on the timing and thoroughness of the self-disclosure, subsequent cooperation, and the party's transparency throughout the investigation and compliance period.[43]

In situations where there are whistleblowers involved, concealment, and/or insufficient cooperation, the government may be less likely to offer an NPA/DPA and/or lower fines and penalties. [44] The Criminal Division typically requires the self-disclosure to be to its component directly, but will also apply the policy "where the company made a good faith disclosure to another officer or component of the Department of Justice..."[45]

Under the new VSD policy, a company is considered to have made a VSD if it becomes aware of misconduct by employees or agents before that misconduct is publicly reported or otherwise known to the DOJ, and discloses all relevant facts known to the company about the misconduct to a USAO in a timely fashion prior to an imminent threat of disclosure or government investigation." [46] Absent aggravating factors, those who fully cooperate and timely and appropriately remediate the criminal conduct (including agreeing to pay all disgorgement, forfeiture, and restitution resulting from the misconduct), could receive significant benefits, such as the United States Attorney's Office not seeking a guilty plea or criminal charges, and possibly the party may not be required to implement compliance monitoring.[47] Although, "[w]hen negotiating with the USAO, three aggravating factors could warrant USAO seeking a guilty plea even if the other requirements of the VSD policy are met: (1) if the misconduct poses a grave threat to national security, public health, or the environment; (2) if the misconduct is deeply pervasive throughout the company; or (3) if the misconduct involved current executive management of the company."[48]

The SAP matter, in particular, demonstrates that VSD can open negotiations for reduced fines and sentencings, and more favorable NPA/DPAs. The DOJ has indicated that self-reporting in a reasonably prompt manner is weighed heavily; however, in the past, the DOJ has received scrutiny related to policies such as VSD, the Whistleblower Program, and self-reporting guidelines. At the International Conference on the Foreign Corrupt Practice Act in December 2024, DOJ representatives attempted to reassure attendees of the DOJ's intent and efforts to improve policies involving whistleblowers, self-reporting, and NPA/DPAs. The representatives mentioned a 120-day grace period for corporate self-reporting after an external whistleblower disclosure. [49] Additionally, there would be increased leniency for NPA/DPAs related to response to whistleblower disclosures and FCPA investigations. "The 41st Annual FCPA Conference offered hope for the coming year of FCPA/FEPA enforcement, promising continued year-over-year increases in investigations and successful enforcement. By prioritizing enforcement against 'gatekeepers' of the field and leveraging cooperation and good faith relationships with corporations, federal agencies hope to see continued growth in the enforcement sector."[50]

United States Businesses Will Likely Face Less FCPA Criminal Prosecution Risk Under the Second Trump Administration

Under the first Trump administration, FCPA prosecutions and fines were at a record high. In a "fundamental change in mindset and approach," Attorney General Bondi made it clear in a February 5, 2025, memo that the DOJ is scaling back enforcement and prosecution of FCPA and the Foreign Agents Registration Act ("FARA") investigations and cases that do not have a connection to pursing the "total elimination of Cartels and Transnational Criminal Organizations (TCOs)." [51] Meaning, United States companies that do not "facilitate the criminal operations of Cartels and TCOs" or bribe foreign officials to "facilitate human smuggling and the trafficking of narcotics and firearms" are at less risk of FCPA criminal prosecution.[52]

AG Bondi's memorandum should give United States businesses hope that their FCPA criminal prosecution risks are reduced; however, the amount of risk reduction is currently unclear. It is also unclear how ongoing FCPA investigations and cases will be treated under the new directive. Companies may be able to avoid criminal prosecution under the new memorandum, but there could be cases where prosecution may be delayed rather than totally avoided. Typically, the FCPA's statute of limitations for substantive violations, under 18 U.S.C. § 3282, is five years, and six years under 18 U.S.C. § 3301, for violations of accounting provisions. [53] Meaning, if the next administration come 2028 prioritizes FCPA criminal prosecutions, foreign briberies completed today could still be prosecuted under the FCPA, even if the allegations are not related to Cartels or TOCs. Since the facts that could warrant an FCPA violation could warrant an FCA violation, whistleblowers could still be quietly collecting information to collect their award or sitting on the information until a new administration. Additionally, Commissioner Uyeda has yet to release a similar memorandum signifying that the SEC is also scaling back United States businesses civil FCPA liability. As of now, there are no indications that companies and/or individuals will avoid civil liability, penalties and fines, even if they avoid criminal prosecutions. Lastly, because most FCPA cases involve the FCA and/or other statutes, businesses and individuals may still face criminal risks, even if the FCPA criminal charge is absent.

With reduced, but still present FCPA/FCA risks, companies and individuals concerned with potential FCPA/FCA liability can reduce their risk of liability by conducting internal investigations and identifying potential FCPA/FCA risks before a whistleblower or the government escalates it. Even if there is no indication there is a current violation, companies can under certain circumstances benefit from implementing policies and procedures that adhere and comply with FCPA/FCA provisions, adequately vet its contractors and other third-parties, regularly train employees and third-parties on FCPA/FCA compliance and adherence, and continue to follow GAAP-type standards. If a potential violation is found, businesses may still be encouraged to self-disclose and cooperate, even if there is no criminal liability, since the SEC is more likely to view the internal investigation positively and as proactive conduct on the companies end when determining civil fines. Ultimately, whether it be through self-disclosure, a whistleblower complaint, or an independent government investigation, it has been shown with recent cases that cooperating with the government might result in favorable NPA/DPAs and/or reduced fines and penalties.

When it comes to FCPA and FCA enforcement and reducing liability, there is no one size fit all approach available, and each individual or company's situation is unique and nuanced. However, no company or individual should face a FCPA/FCA violation without an experienced legal team. Our white collar group is a one-stop shop, specializing in internal investigations, white collar litigation, and government-related matters.

About our team: Representing major corporations, officers, board members and executives, as well as municipalities and public agencies, Benesch's White Collar, Government Investigations & Regulatory Compliance Practice Group has repeatedly prevailed for clients in regulatory investigations and high-stakes white collar cases. Our team includes former federal and state prosecutors, former members of public defender and attorney general offices, experienced trial and appellate lawyers, investigators, healthcare regulators and securities and compliance-focused lawyers. Many of our attorneys have experience working for the same agencies investigating cases and bringing enforcement actions against our clients. As a result, we understand the government's

perspective, how regulators think and how they build cases, and we have the connections and credibility to guide clients successfully through every phase of a government investigation or inquiry.

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[1] Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, et seq.

[2] *Id.*

[3] *Id.*

[4] Department of Justice, *Foreign Corrupt Practices Act*, Justice.gov, Last Accessed October 27, 2024, Criminal Division | Foreign Corrupt Practices Act.

[5] FCPA, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2nd ed.), Justice.gov, Last Accessed October 28, 2024, https://www.justice.gov/criminal/criminal-fraud/file/1292051/dl.

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