CLIENT ALERTS & INSIGHTS

New FCPA Guidance Underscores Importance of Internal Compliance for Companies Doing Business Abroad

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On June 9, 2025, Todd Blanche, Deputy Attorney General for the United States Department of Justice, published guidelines for investigations and prosecutions under the Foreign Corrupt Practices Act (FCPA). These guidelines demonstrate a shift in priorities as part of the Trump Administration's effort toward "total elimination" of Cartels and Transnational Criminal Organizations (TCOs). On June 10, 2025, the head of the DOJ's Criminal Division, Matthew R. Galeotti, spoke before the American Conference Institute about FCPA enforcement under the new guidelines and urged companies to self-report potential misconduct.[1]

Shift in Priorities for FCPA Investigations and Prosecutions

Deputy Attorney General Todd Blanche published Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act, ("Guidelines") in response to President Trump's February 2025 Executive Order,[1] which Benesch previously reported on. The Executive Order, entitled *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security*, ordered the Department of Justice to (1) pause new FCPA investigations or enforcement actions absent specific authorization by the Attorney General for 180 days; (2) review existing FCPA cases and "take appropriate action" to further the president's directive; and (3) publish updated guidelines for investigation and prosecution under the FCPA.

The President also recently directed the federal government to pursue "total elimination" of Cartels and TCOs.[2] The Guidelines aim to ensure that prosecutors comply with the President's directives by focusing FCPA actions specifically on foreign bribery connected to criminal Cartel and TCO operations that undermine U.S. interests. The Guidelines instruct prosecutors not to focus on alleged misconduct involving "routine business practices" or "nonspecific malfeasance [by] corporate structures."

Focus Areas for Investigations and Prosecutions

The Guidelines prioritize four main types of alleged misconduct in FCPA investigations and prosecutions:

1. Conduct with a nexus to TCOs or Cartels, including alleged misconduct that (1) is associated with the criminal operations of a TCO or Cartel; (2) uses money launderers or shell companies that also launder for a TCO or Cartel; or (3) is linked to employees of state-owned entities or foreign officials that received bribes from a TCO or Cartel.

2. Conduct that negatively impacts U.S. entities by depriving them of fair access to compete or otherwise injuring them financially.
3. Conduct that poses national security threats, like bribery of corrupt foreign officials that involves critical infrastructure, key assets, and defense or intelligence sectors.
4. "Serious misconduct," such as substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of a bribery scheme, or efforts to obstruct justice.

While the Guidelines encourage prosecutors to shift their focus in FCPA actions, they are not exhaustive. Prosecutors must consider the totality of circumstances and comply with other DOJ policies in determining whether to pursue a new FCPA investigation or prosecution, and when reviewing current cases.

Impact of the Guidelines on FCPA Enforcement According to DOJ's Criminal Division Head

On June 10, 2025, the day after the Deputy Attorney General published the new FCPA Guidelines, Criminal Division Head Matthew R. Galeotti spoke before the American Conference Institute about the impact of the Guidelines on DOJ's FCPA enforcement strategies.

According to Mr. Galeotti, FCPA prosecutions will focus on "conduct that genuinely impacts the American people" by undermining U.S. national interests. Even though DOJ generally will not prosecute conduct that does not implicate U.S. interests, Mr. Galeotti said the criminal division "won't hesitate" to work with foreign law enforcement or other domestic regulators to help them "vindicate their interests." This means U.S. businesses or individuals may still be investigated and prosecuted for misconduct under other federal laws or by foreign law enforcement entities.

Mr. Galeotti urged business and compliance leaders and their legal advisors to self-report potential FCPA violations and other offenses. "Report potential crimes, root out misconduct, cooperate with the Department, and help the company remediate . . . and when you do, significant benefits are available to your clients." Failure to self-report crimes that undermine U.S. interests will result in "aggressive" prosecution.

Conclusion

DOJ's new enforcement priorities create a new risk landscape, especially for U.S. companies with business interests in countries where cartels are known to infiltrate legitimate businesses. It is imperative, therefore, that U.S. businesses closely reexamine their compliance programs and understand the entities they interact with abroad. Benesch's White Collar, Government Investigations & Regulatory Compliance Group is comprised of several former federal prosecutors with vast experience prosecuting cartels and TCOs. Our experience and deep knowledge of this landscape is critical in creating and updating compliance controls tailored to your organization's specific needs and risks.

[1] Executive Order, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security*, https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforceme (Feb. 10, 2025).

[2] Executive Order, *Designating Cartels And Other Organizations As Foreign Terrorist Organizations And Specially Designated Global Terrorists,* Designating Cartels And Other Organizations As Foreign Terrorist Organizations And Specially Designated Global Terrorists - The White House (Jan. 20, 2025).

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