CLIENT ALERTS & INSIGHTS

President Trump "Pauses" FCPA Enforcement: What This Means for Legal & Compliance Departments

FEBRUARY 12, 2025

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On February 10, 2025, President Trump issued an Executive Order entitled Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security.[1] The executive order comes just days after the Attorney General issued 14 policy memos directed to Justice Department Employees on February 5, 2025.[2] The memos cover a variety of topics including internal personnel issues, a prohibition on third-party settlements, guidelines for plea negotiations and sentencing, and other far-ranging topics. One such memo-the Attorney General's Total Elimination of Cartels and Transnational Criminal Organizations (TCO)-signals a greater emphasis in combating drug trafficking and human smuggling using tools such as the Foreign Corrupt Practices Act (FCPA).[3] The president's Executive Order, coupled with the attorney general's recent guidance memos, signal a significant shift in white-collar enforcement priorities for the Department of Justice, leaving in-house legal and compliance departments guessing as to what will come next. The good news is that despite seismic shifts in enforcement priorities at the Department of Justice, companies' compliance obligations remain the same. A strong focus on compliance will continue to mitigate risks associated with future changes in enforcement.

FCPA Enforcement Halted Pending Revised Enforcement Guidelines

On February 10, 2025, the president issued an Executive Order pausing new investigations or enforcement of the FCPA for a period of 180 days, during which time the attorney general must review existing FCPA investigations and enforcement actions and "take appropriate action . . . to restore proper bounds on FCPA enforcement." The Executive Order further directs Attorney General Pam Bondi to pause new FCPA enforcement actions until the Department of Justice issues "revised, reasonable enforcement guidelines" for FCPA enforcement,[4] taking into account the president's Article II authority to conduct foreign affairs, American interests and economic competitiveness, and the efficient use of government resources.

All future FCPA investigations and enforcement actions will be governed by these forthcoming guidelines, which must be issued at the end of the 180-day period, although the attorney general may extend the review period by 180 days if she determines it to be appropriate. Notably, the Executive Order also contemplates review of past enforcement actions, and possible "remedial measures" aimed at past enforcement actions, including action by the president.

With guidance anywhere from six months to a year over the horizon, legal and compliance departments should exercise caution in making any official or *de facto* changes to their compliance programs based on this order or any upcoming enforcement guidance and policies. The Executive

Order only governs FCPA enforcement for this administration, and it is not a repeal of the FCPA-the law itself remains unchanged and requires an act of Congress to revise or repeal.

As a further matter, the statute of limitations for the FCPA's anti-bribery violations is five years, the limitations period based on accounting violations is six years, and the limitations period can be tolled up to a total of eight years if the government seeks Mutual Legal Assistance Treaty requests from foreign jurisdictions. This means that violations during the Trump administration may be prosecuted by a future administration. Foreign or state enforcement agencies may also seek to fill any perceived gaps in U.S. anti-corruption efforts in the interim.

It remains to be seen how the shift in FCPA enforcement priorities will affect more traditional white-collar enforcement, but legal and compliance teams should continue to ensure their programs and training are directed at compliance with the law as written. Enforcement priorities may change from administration to administration, but in the absence of a change to the law by Congress, the FCPA still applies with equal force and, of note for public companies, neither the Executive Order nor the attorney general's memo (discussed below) affects the Securities and Exchange Commission's (SEC) enforcement obligations and priorities. Last year the SEC brought several high-profile FCPA enforcement actions such as the action against RTX Corp., a Virginia-based aerospace and defense firm, which resulted in a $124 million settlement.[5]

Multinational corporations, and any firms that conduct business overseas, must also remain vigilant in their compliance efforts for several reasons. First, the United States remains a member of the Organization for Economic Cooperation and Development (OECD) and party to the OECD's Convention on Combating Bribery. As such, the United States has a continuing obligation under international law to combat corruption. Second, many foreign jurisdictions, particularly in Europe, have robust anticorruption regimes and may seek to fill any perceived gaps in U.S. anti-corruption efforts.

Department of Justice Evaluation of Corporate Compliance Program Guidance

Because of the risks beyond the Department of Justice, anti-corruption compliance should remain top of mind for legal and compliance professionals. In September 2024 the Department of Justice updated its Evaluation of Corporate Compliance Programs (ECCP) guidance.[6] The ECCP sets out factors the Department will consider when evaluating corporate compliance programs for companies facing criminal enforcement actions. The updated guidance emphasized compliance in emerging technologies, whistleblower protections, access to data by compliance officers, incorporation of lessons learned, and post-integration compliance. The guidance was aimed at providing prosecutors a framework with which to evaluate compliance programs, but it also serves as a helpful tool for companies assessing their own compliance program through the lens of government enforcement.

The ECCP has not been withdrawn by Attorney General Bondi to date. As such, companies will presumably continue to be held to these standards in the Department's assessment of not only FCPA enforcement actions, but all other white-collar matters.

Total Elimination of Cartels and TCOs

In her short time in office, the attorney general has already provided some direction on FCPA enforcement. In a February 5 memo, the attorney general took aim at cartels and TCOs engaging in

narcotics and firearms trafficking and human smuggling, labeling them threats to U.S. sovereignty. The memo outlines steps to refocus priorities and reallocate resources toward "total elimination" of cartels and TCOs, including a shift in focus for FCPA prosecutions. "The Criminal Division's Foreign Corrupt Practices Act Unit shall prioritize investigations related to foreign bribery that facilities the criminal operations of Cartels and TCOs, ***and shift focus away from investigations and cases that do not involve such a connection***."[7] (emphasis added). The memo includes as examples cases that include bribery of foreign officials to facilitate human smuggling and the trafficking of narcotics and firearms.

In addition to the change of focus, the attorney general empowered individual United States Attorneys Offices to initiate FCPA and Foreign Extortion Prevention Act (FEPA) investigations and prosecutions-traditionally the purview of Department's Fraud Section. The delegation of authority is limited to cases with a cartel or TCO nexus. The Department's Fraud Section will retain its default authority to bring all other FCPA and FEPA cases-albeit it with an increased emphasis on cartels and TCOs and a lower priority given to all other FCPA and FEPA matters.

The Total Elimination memo also directed the Criminal Division's Money Laundering and Asset Recovery Section to prioritize investigations, prosecutions, and asset forfeiture actions that target activities of cartels and TCOs.[8] It also disbanded the Department's Kleptocracy Team-the organization responsible for enforcing sanctions against Russian organizations-to shift resources and personnel to support the total elimination of cartels and TCOs.

Conclusion

A change in administration always comes with shifts in policy and priorities, and this administration is no different. Although the president and the attorney general have announced a shift in priorities relating to white-collar crime, the fundamental reasons that underpin the compliance program, such as mitigation of risk, avoidance of reputational harm, fostering free and fair competition, and establishing an ethical means of conducting business, have not changed. The uncertainty in enforcement, at least for now, cautions against rash changes. A wait-and-see outlook may be the best path forward for most companies.

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[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] Department of Justice, https://www.justice.gov/ag/select-publications (last visited Feb. 10, 2025).

[3] Department of Justice, *Total Elimination of Cartels and Transnational Criminal Organizations*, https://www.justice.gov/ag/media/1388546/dl?inline (Feb. 5, 2025).

[4] Executive Order Fact Sheet, *Fact Sheet: Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security*, https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-american-c (Feb. 10, 2025).

[5] SEC, *SEC Enforcement Actions: FCPA Cases*, https://www.sec.gov/about/divisions-offices/division-enforcement/enforcement-topics-initiatives/sec-enforc (last visited Feb. 10, 2025).

[6] Department of Justice, *Evaluation of Corporate Compliance Programs*, https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl?inline (Sept. 2024).

[7] Department of Justice, *Total Elimination of Cartels and Transnational Criminal Organizations*, https://www.justice.gov/ag/media/1388546/dl?inline (Feb. 5, 2025).

[8] Id.