

## White Collar Defense

June 11, 2025

### **The End of 180 Days of Uncertainty? DOJ Closes Current FCPA Investigations, Issues New Guidelines for FCPA Enforcement**

By [Robert A. Johnston Jr.](#), [Rachel Maimin](#), [Scott B. McBride](#), [Samantha Sigelakis-Minski](#), and [Alessandra M. Moore](#)

On June 9, Deputy Attorney General Todd Blanche issued a memorandum (the Memorandum) outlining revised guidelines for investigation and enforcement of the Foreign Corrupt Practices Act (FCPA).<sup>1</sup> The U.S. Department of Justice (DOJ) had paused FCPA enforcement in response to President Donald Trump's Executive Order 14209 (the Executive Order),<sup>2</sup> which asserted that the FCPA, as previously enforced, put U.S. companies at a disadvantage in the global market.<sup>3</sup> Blanche's Memorandum responds to the Executive Order, reaffirming the DOJ's commitment to combatting serious corruption, but doing so by directing resources toward protecting U.S. national security and economic interests, all while aiming to reduce the compliance burden of the FCPA on American businesses operating abroad. In addition to issuing the Memorandum, the DOJ reported that it has closed a large number of open FCPA-related investigations without bringing criminal charges in line with the Executive Order.<sup>4</sup> The Memorandum addressed the Executive Order's main directives as follows:

#### **1. A Temporary Pause and Review of FCPA Activity:**

In accordance with the Executive Order, the DOJ:

- Suspended the initiation of all new FCPA investigations or enforcement actions for 180 days, absent express authorization for exceptions;
- Conducted a comprehensive review of all existing FCPA matters during the review period to ensure enforcement aligned with the current administration's U.S. foreign policy and economic objectives; and
- Issued updated enforcement guidance focused on promoting U.S. competitiveness and resource efficiency.

#### **2. Refocused Enforcement Priorities:**

Going forward, prosecutors are instructed to prioritize cases involving:

- Serious criminal misconduct that poses a direct threat to U.S. national security interests or involves transnational criminal organizations (TCOs) or cartels;
- Bribery or corruption tied to criminal operations using shell companies, money launderers, or corrupt foreign officials connected to TCOs;
- Tangible harm to U.S. entities or individuals – such as unfair competition or economic injury caused by corrupt foreign competitors; for example, instances in which a U.S. company lost access to an opportunity due to a competitor's corruption of the procurement process; and
- Threats to U.S. strategic interests, particularly in critical industries such as defense, deep water ports, critical infrastructure, and key resources such as rare earth minerals.

#### **3. Reduced Burdens on U.S. Companies:**

The DOJ will now direct prosecutors to avoid penalizing "routine business practices in other nations" and instead focus enforcement on "substantial misconduct," including:

- Significant bribe payments;
- Sophisticated concealment tactics;
- Fraudulent activity in support of bribery, and
- Obstruction of justice.

Although the Memorandum specifically references the “facilitation payment” affirmative defense under the FCPA, which allows for small expediting payments for routine government services, companies should be mindful that the FCPA is unique in this regard and that the laws of many other jurisdictions, including the U.K. Bribery Act, contain no such defense. Similarly, the FCPA contains an affirmative defense for bona fide product promotion expenses; however, companies should confirm that such expenditures are legal under local law before proceeding with marketing and promotional expenses related to government officials.

## Conclusion

Blanche’s Memorandum — like President Trump’s Executive Order — signals a significant shift in the DOJ’s FCPA enforcement priorities, and the ramifications are still uncertain. The Memorandum marks a clear recalibration of the DOJ’s FCPA enforcement priorities, whose full scope will be seen in the coming months. All attention will be on the DOJ as it determines what constitutes “substantial misconduct” or threats to “U.S. national security” sufficient to rise to the level of an acceptable FCPA action.

Instead of resting on assurance that the DOJ will not be prosecuting FCPA actions during the prescribed review period, companies should take proactive steps to review their policies, internal controls, and third-party due diligence frameworks to ensure they are aligned with evolving DOJ expectations with respect to FCPA compliance.

This narrowed scope of enforcement should not be interpreted as a license to ease anti-corruption compliance controls and safeguards. Among other things, the DOJ’s guidance is not binding on the SEC, which has jurisdiction over issuers of securities trading on a U.S. exchange, or on foreign law enforcement authorities investigating transgression of local anti-corruption laws and regulations. For guidance on how these changes may affect your organization or to assess your current FCPA compliance posture, please get in touch with your main contact at Lowenstein Sandler or the authors of this Client Alert.

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<sup>1</sup> U.S. Dept. of Justice, Office of the Dep. Atty. General, “Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA),” June 9, 2025.

<sup>2</sup> For prior Lowenstein Sandler coverage on the FCPA and Presidents Trump’s Executive Order 14209, see “Long Live the FCPA?,” Feb. 11, 2025, [available here](#). To read the full Executive Order 14209, see The White House, “Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security,” Feb. 10, 2025, [available here](#).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at fn. 1.

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