

White House Issues Executive Order “Pausing” FCPA Enforcement—But Beware

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On February 10, 2025, President Trump issued an Executive Order with possibly sweeping implications for enforcement of the Foreign Corrupt Practices Act (FCPA).¹ The Executive Order, titled “Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security,” directs Attorney General Pam Bondi to pause initiation of any new FCPA investigations, conduct an internal review of all existing FCPA investigations, and to issue updated guidelines and policies for FCPA enforcement going forward.² This executive action could have broad implications for the enforcement of the FCPA under the Trump administration, as discussed in greater detail below. But it also could have only minimal impact on anticorruption efforts generally, especially in

¹ 15 U.S.C. § 78dd-1, *et seq.*

² Executive Order, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security*, WHITEHOUSE.GOV (Feb. 10, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/> (hereinafter the “Executive Order,” or “Order”).

light of the SEC’s civil FCPA jurisdiction and the many FCPA analogues around the globe. Companies should exercise serious caution before changing any of their business practices in light of this Order.

The Executive Order

The Order frames overly zealous enforcement of the FCPA against American companies as a potential threat to national security: “overexpansive and unpredictable FCPA enforcement against American citizens and businesses . . . not only wastes limited prosecutorial resources . . . but actively harms American economic competitiveness and, therefore, national security.”³ The Order expresses, therefore, that it will be the policy of the United States to “advance American economic and national security by eliminating excessive barriers to American commerce abroad.”⁴

Section 2 of the Order instructs the Attorney General to implement this policy in three ways. First, for a period of 180 days starting on February 10, 2025, the Attorney General “shall review guidelines and policies governing investigations and enforcement actions under the FCPA.”⁵ During this 180-day period, the Department of Justice shall cease initiation of any new FCPA investigations or enforcement actions, unless Attorney General Bondi grants an individual exception. Second, the Attorney General shall review all existing FCPA investigations and enforcement actions and “take appropriate action” on these investigations to “restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives[.]”⁶ And third, the Order directs the Attorney General to issue updated FCPA enforcement guidelines and policies to prioritize American interests, American economic competitiveness, and to ensure the efficient use of law enforcement resources.

The Order authorizes Attorney General Bondi to extend the review period for an additional 180 days, if she determines it necessary. Any FCPA investigations initiated or continued after the review period will require authorization by the Attorney General. Finally, the Order instructs the Attorney General to review any “inappropriate past FCPA investigations and enforcement actions,” and to determine if any remedial actions should be taken by the Attorney General or the President.

Reading Between the Lines: Analysis of the Order

While the Attorney General’s policies and guidance are still forthcoming, the Order itself may shed light on the future of FCPA enforcement under the second Trump administration. At the very least, any new FCPA investigation will require an individual exception from Attorney General Bondi, indicating that such an investigation should be an outlier, not the norm. And, all existing actions will need to be vetted by the Attorney General before going forward. This functional stop-work order may leave several parties in limbo if they were already in the midst of defending FCPA enforcement actions, or even in the early stages of responding to government requests related to potential

³ *Id.*, Section 1.

⁴ *Id.*

⁵ *Id.*, Section 2.

⁶ *Id.*

FCPA violations. Moreover, the reference to “overexpansive . . . FCPA enforcement” indicates that this Administration will be unlikely to push the bounds of what conduct is prohibited by the FCPA.⁷ This could mean a scaling back as compared to past enforcement actions that took a broad view of what constituted a thing of value (e.g., charitable contributions) or FCPA jurisdiction (the application of the FCPA to non-covered entities and individuals through conspiracy and aiding and abetting charges). And the Order also contemplates remedial actions to be recommended to the President. What precisely that could entail—revisions to existing deferred prosecution agreements, use of the presidential commutation/pardon power—remains to be seen.

However, it is important to note that the Order contemplates that the FCPA will still be enforced in some form after this review period and the release of new policies and guidance. Therefore, even if there may be a dip in activity in the near term, individuals and entities already subject to FCPA investigations should not consider this Order a license to, for example, stop complying with subpoenas or requests for documents issued prior to the date of the Order nor make wholesale changes to their anticorruption compliance programs and efforts.

The Order is also explicit that the Trump administration will be interested in enforcing the FCPA in a way that is supportive of American businesses and their dealings abroad. This “America First” approach may narrow the types of subjects against whom the DOJ seeks to enforce the FCPA to primarily foreign entities that are otherwise covered by the FCPA (e.g., non-U.S. companies traded on an American stock exchange).

Ultimately, the proof will be in the pudding. The true indicator of the Order’s impact will be the updated policies and guidance issued by Attorney General Bondi at the end of the review period, and, most importantly, the implementation of these policies by prosecutors.

Broader Context: A Few Caveats and Looking Ahead on the FCPA

While the Order facially indicates a restrictive approach to enforcing the FCPA, there are at least a few counterpoints that bear mentioning.

First, as [Willkie previously discussed](#), Attorney General Bondi issued guidance on the first day of her tenure that clarified that the Justice Department would be prioritizing the “elimination” of transnational criminal organizations and cartels from the United States, including by enforcement of the FCPA—especially where the foreign bribery implicates human trafficking or the proliferation of narcotics.⁸ While the precedent for these types of FCPA cases may be limited, it seems that were such a case to arise, the DOJ under Attorney General Bondi would not hesitate to prosecute. This would seem to be a plausible case for an exception to the stop-work order on FCPA enforcement during the 180-day review period. Furthermore, this stated priority of eliminating transnational criminal organizations and cartels only is indicative of how the DOJ might use its *prosecutorial discretion*—it does not change the law. Thus, paying bribes to foreign government officials, even for business activities unrelated to drug trafficking

⁷ *Id.*, Section 1.

⁸ See Memorandum from the Office of the Attorney General, *Total Elimination of Cartels and Transnational Criminal Organizations* (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388546/dl?inline>

or human trafficking, remains a crime and could be the subject of prosecution by the current DOJ should they choose to exercise their prosecutorial discretion accordingly.

Second, even if the Attorney General issues policies and guidance to only prioritize enforcement of the FCPA against non-American individuals and entities, it bears noting that this could still result in a substantial amount of enforcement of the FCPA. Of the 10 largest FCPA sanctions in history, only one of them was against an American company.⁹ Put another way, there could still be a substantial level of enforcement of the FCPA even if the DOJ were to heavily deprioritize enforcement against American entities and individuals.

Third, the Executive Order is only directed to the Department of Justice—which is far from the only authority capable of prosecuting bribery of foreign officials. For example, the Order does not contain any instructions directed at the U.S. Securities and Exchange Commission (SEC), which is in charge of civil enforcement of the FCPA against issuers and any of their officers, directors, employees, agents, or stockholders acting on the issuer’s behalf. This means that absent any updated guidance from the SEC, or additional directive from the Trump Administration, the SEC’s civil enforcement of the FCPA could continue unabated.

The Order also has no bearing on other countries’ ability to prosecute corruption or bribery of their own officials. Bribery and corruption are generally illegal in all countries, and another country could choose to locally prosecute suspected bribery of the country’s own government officials. Multilateral development banks (MDBs) also have the ability to sanction or debar companies they suspect to be involved in corruption in connection with MDB-financed projects, including potential cross-debarment across multiple MDBs.¹⁰ Furthermore, each of the countries in the Organization for Economic Co-operation and Development (OECD) are required to have an FCPA-equivalent law under the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Each of these member countries could therefore bring cross-border anticorruption charges as long as an entity or individual is somehow covered by the member country’s statute. Thus, even if the U.S. were to scale down enforcement of certain types of FCPA violations, other countries, such as the United Kingdom or France, could step in to fill the void.

Lastly, while the Executive Order may indicate a de-prioritization of certain types of FCPA enforcement by the Trump Administration, we will note that the statute of limitations for violations of the FCPA is five years, which can effectively be further extended by charging a conspiracy to violate the FCPA or by making a foreign evidence request under relevant treaties. Therefore, even were the DOJ to decrease enforcement of certain categories of FCPA cases over the next four years, covered companies and individuals should still very much heed the FCPA in their business

⁹ See *Largest U.S. Monetary Sanctions By Entity Group*, STANFORD FCPA CLEARINGHOUSE, <https://fcpa.stanford.edu/statistics-top-ten.html> (last visited Feb. 11, 2025)

¹⁰ See, e.g., *Anticorruption Fact Sheet*, WORLD BANK.ORG (Feb. 19, 2020), <https://www.worldbank.org/en/news/factsheet/2020/02/19/anticorruption-fact-sheet#:~:text=2010%20INT%20Cross%20Debarment:%20To,30%20million%20people%20per%20year.>

dealings, as a future administration could quickly ramp up enforcement and prosecute for conduct during the current administration.

In summary, while the title and verbiage of the Executive Order may at first blush seem to indicate a major scaling back of FCPA enforcement, we urge caution. The Executive Order does not change what conduct is prohibited; bribery of foreign officials remains illegal. Only time will tell what the Attorney General’s policies and guidance will be, and how the Criminal Division puts those into practice. And there remain multiple other authorities that stand at the ready to prosecute foreign bribery. Companies should therefore be very cautious to change any behavior on the basis of the vague statements of the Executive Order.

For questions or consultation, please reach out to one of the lawyers on our team listed below.

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