

Feds Reboot FCPA Agenda With Narrower Enforcement Focus

By Sarah Jarvis

Law360 (June 10, 2025, 10:38 PM EDT) -- The U.S. Department of Justice on Tuesday released new and tightened guidelines for enforcement of the Foreign Corrupt Practices Act after a four-month pause on such prosecutions, centering prospective investigations on situations that affect U.S. competitiveness and national security as well as transnational cartels.

The memo from U.S. Deputy Attorney General Todd Blanche said prosecutors will immediately focus their FCPA investigations and enforcement actions on matters involving criminal misconduct carried out by individuals rather than attributing "nonspecific malfeasance to corporate structures."

Among other things, the guidance instructs prosecutors to consider collateral consequences of investigations on lawful businesses "and the impact on a company's employees, throughout an investigation, not only at the resolution phase." Blanche also directed the DOJ's Criminal Division to proceed as expeditiously as possible in its investigations.

President Donald Trump signed an executive order in February pausing enforcement of the FCPA for purportedly making American companies less competitive. The president directed U.S. Attorney General Pam Bondi to revise guidelines for the federal law, which has focused on curbing public corruption around the world by overseeing how American businesses operate in other countries.

Tuesday's memo includes a nonexhaustive list of factors the DOJ will weigh in determining whether to bring FCPA investigations and enforcement actions. Among those factors is alleged misconduct associated with cartels and transnational criminal organizations — in line with Trump's January directive designating such groups as foreign terrorist organizations.

Other priorities for FCPA actions are misconduct that undermines U.S. competitiveness abroad, threatens U.S. national security or involves serious misconduct, including "substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of the bribery scheme, and efforts to obstruct justice," according to the memo.

Matthew R. Galeotti, head of the DOJ's Criminal Division, said in prepared remarks before the American Conference Institute on Tuesday that the through-line of the new guidance is that it "require[s] the vindication of U.S. interests."

"People have speculated about the meaning of that phrase, but the DAG's memo makes it clear. It is not about the nationality of the subject or where the company is headquartered," Galeotti said. "In plain

terms, conduct that genuinely impacts the United States or the American people is subject to potential prosecution by U.S. law enforcement."

He added that conduct that doesn't implicate U.S. interests should be left to foreign authorities, which he said the Criminal Division won't hesitate to work with. And he highlighted other "common-sense principles" in the guidance, including its focus on specific, individualized misconduct as opposed to "collective knowledge theories."

"Under the DAG's leadership, the department has reviewed FCPA matters, closing certain cases and proceeding with others by applying the criteria set forth in the guidelines," Galeotti said. "With these guidelines now in place, and consistent with the executive order, the Criminal Division will enforce the FCPA — firmly but fairly — by bringing enforcement actions against conduct that directly undermines U.S. national interests without losing sight of the burdens on American companies that operate globally."

Joel M. Cohen, chair of the global white collar practice group at White & Case LLP, said many players in the legal field had interpreted the DOJ's pause as a sign that there may be a complete retrenchment on FCPA enforcement, but he added that Tuesday's memo makes it clear that isn't the case.

"FCPA enforcement is not over," Cohen said. "Its demise was overstated; it's still with us."

In the wake of the pause, experts had said the forthcoming guidelines on FCPA enforcement could alter how American companies do business overseas and potentially open the door for foreign bribery when it arguably advances U.S. interests.

Those sentiments were echoed Tuesday by the consumer advocacy group Public Citizen, which published a statement characterizing the memo as a formalization of the DOJ's "retreat from enforcing the law" when American corporations violate the FCPA.

"Public Citizen's Corporate Enforcement Tracker shows that five FCPA investigations and lawsuits against corporations have already been dismissed or withdrawn, and 16 are at risk," Public Citizen said.

The DOJ had filed one of those dropped cases against two former Cognizant Technology Solutions Corp. executives, who had been charged with authorizing a \$2 million bribe to speed up a construction project in India. Cognizant agreed to pay \$25 million to settle civil corruption claims brought by the U.S. Securities and Exchange Commission in 2019, and the two former executives pled not guilty in March 2019. In early April, a New Jersey federal judge **granted** the federal government's bid to end the six-year case against the executives.

In a Tuesday statement, Public Citizen research director Rick Claypool called the new FCPA enforcement guidelines a "gift from the Trump administration to corrupt multinational corporations."

Cohen said the new guidance is in line with previous moves from the Trump administration, pointing to earlier guidance referencing Trump's "America First" approach to law enforcement. But he said Tuesday's memo offers more detail as to how the DOJ will carry out those aims.

"They're going to be more interested in pursuing and prosecuting cases where U.S. companies or entities are losing access to markets and competition because of corruption outside the United States by a non-U.S. company or a non-U.S. person," he said, adding, "that's more clarity, but directionally what

they were saying months ago."

Cohen pointed to the so-called Sons and Daughters cases, a series of investigations into the overseas hiring practices of big banks including JPMorgan Chase and Credit Suisse. He predicted the DOJ will be disinclined to bring that kind of case going forward, in light of the department's prioritization of investigations into serious misconduct.

Still, he said, the new guidance doesn't explicitly limit the DOJ and is not legally binding. And it's an open question how the SEC — which often acts alongside the DOJ on FCPA matters, or on its own — will approach FCPA enforcement for public companies.

Cohen also highlighted the memo's indication that corporations that fully and timely disclose their wrongdoing could get nonprosecution agreements. He noted that while it isn't immediately clear what constitutes full and timely disclosure, the signal from the department is strong.

The new guidance doesn't mean companies need to change their policies and procedures when it comes to compliance with the FCPA, he added, noting that policies that aim to prevent and root out corruption also target fraud.

And the DOJ might eventually revert to an enforcement approach more similar to six months ago, Cohen said.

"It's like deciding to go on a two-week vacation and not bringing a raincoat because you think it's not going to rain tomorrow," he said. "Not a good idea."

Crowell & Moring LLP partner Alexander J. Kramer, a former assistant chief in the FCPA unit of the DOJ's fraud section, said the Blanche memo and Galeotti's speech may influence when or how companies disclose potential misconduct or the steps they take in enforcement situations. But it shouldn't affect their compliance operations or their focus when it comes to the FCPA, he noted.

Kramer added that it isn't surprising that the new guidance emphasizes misconduct that harms U.S. interests and U.S. entities, though it marks a shift from prior approaches.

"That wasn't a focus or an interest in bringing an action beforehand," Kramer said. "But it's also pretty consistent with what the president's messaging has been on this since day one."

--Additional reporting by Phillip Bantz, Carla Baranauckas and Jon Hill. Editing by Alanna Weissman and Dave Trumbore.