wiley

ALERT

DOJ's Approach to White Collar Enforcement: Target Those Who Harm U.S. Interests While Minimizing Collateral Damage

June 24, 2025

The U.S. Department of Justice (DOJ) recently announced Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA). The June 9 memorandum from Deputy Attorney General Todd Blanche instructs prosecutors to prioritize misconduct that causes identifiable harm to U.S. interests, focus on individual wrongdoing, and avoid lengthy and burdensome investigations that inherently harm U.S. businesses, innocent employees, shareholders, and consumers. While the guidelines represent a marked realignment of FCPA priorities, they do not amount to the wholesale gutting of FCPA enforcement that many predicted. In parallel remarks at the American Conference Institute's Global Anti-Corruption, Ethics & Compliance Conference, DOJ Criminal Division Head Matthew R. Galeotti also doubled down on a common DOJ refrain across Administrations: Self-disclose, cooperate, and remediate early or risk aggressive and swift enforcement. Galeotti stressed that the path to a declination has "never been clearer and more certain." Taken together, companies should be prepared for continued white collar enforcement (including FCPA enforcement) in key priority areas and take steps to ensure that their compliance programs are sufficiently calibrated to prevent and detect misconduct.

FCPA Enforcement Guidelines

Under DOJ's new FCPA guidelines, prosecutors must consider a list of non-exhaustive factors in determining whether to bring an FCPA investigation or enforcement action. As Galeotti noted, the "through-line" of these factors is "vindication of U.S. interests."

Authors

Brandon J. Moss
Partner
202.719.7554
bmoss@wiley.law

Corey J. Hauser
Associate
202.719.4436
chauser@wiley.law

Practice Areas

FCPA and Anti-Corruption

White Collar Defense & Government Investigations

- TCOs and National Security: DOJ will prioritize FCPA cases implicating cartels and transnational criminal organizations (TCOs). Importantly, for government contractors, the memorandum also noted increased FCPA attention to critical national security sectors such as defense, intelligence, and infrastructure.
- Harm to U.S. Companies: The memorandum emphasized the need to "vindicate" misconduct that "deprived specific and identifiable U.S. entities of fair access to compete and/or resulted in economic injury to specific and identifiable American companies or individuals." Put differently, DOJ will target conduct that not only distorts markets and undermines the rule of law, but also disadvantages law-abiding U.S. companies. While this could lead to increased enforcement of foreign companies with a nexus to the United States, historically, many of the largest FCPA cases have involved non-U.S. companies (as the memorandum itself notes).
- Serious Misconduct: DOJ will also focus enforcement on serious misconduct that "bears strong indicia of corrupt intent tied to particular individuals." This could include substantial, recurring bribes and efforts to conceal the same (including efforts to obstruct justice). DOJ clarified that it will not pursue conduct involving "routine business practices" or "de minimis or low-dollar, generally accepted business courtesies." Indeed, the memorandum reminds prosecutors that the FCPA contains an exception for facilitating and expediting payments, and "provides affirmative defenses for reasonable and bona fide expenditures and payments that are lawful under the written laws of a foreign country."

Additionally, DOJ's guidelines and Galeotti's remarks highlighted the need for FCPA enforcement actions to be tied to specific, individual misconduct, not collective knowledge of corporate malfeasance – which has been on the white collar defense bar's wish list for years. Prosecutors should also assess whether certain misconduct is better addressed by foreign jurisdictions willing and able to prosecute. If adequate foreign enforcement is available, DOJ may choose not to proceed in parallel. Finally, the guidelines require all new FCPA investigations or enforcement actions to be approved by the Assistant Attorney General for the Criminal Division or a more senior official.

White Collar Enforcement Remarks

Galeotti also reiterated key points from DOJ's White Collar Enforcement Plan in his remarks. He emphasized that the Enforcement Plan offers substantial benefits for companies that self-disclose, cooperate, and remediate. Declinations are no longer "presumed," as they were in earlier versions of the Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP), but are instead almost certain. Yes, the current CEP includes a narrowed "aggravating circumstances" exception, but Galeotti made clear "it is not a game of 'gotcha.'" He pledged that he would personally "closely scrutinize any [voluntary self-disclosure] that is not recommended for a CEP declination," and added that "the circumstances would have to be truly aggravating and sufficient to outweigh the fact that the company voluntarily came forward." Without question, this is the most explicit DOJ has ever been about the prospects of a declination. On the other hand, Galeotti reiterated that, when companies identify criminal conduct that undermines U.S. interests, the Department "will move aggressively – yet fairly – to prosecute" and that "all the benefits of our policies will not be available to these offenders."

Efficiency also remains a top DOJ priority, as "lengthy and sprawling investigations do not serve the Department, [DOJ] prosecutors, the American public, or those under investigation. Galeotti reported that he has impressed upon prosecutors the need to move quickly and bring clarity to those under investigation. However, he also noted that companies are expected to contribute to DOJ's promised efficiency by responding promptly to requests. Cooperating companies are expected to produce documents swiftly, make witnesses available, and otherwise assist by effectively navigating competing global legal regimes.

In a rare move directed at defense counsel and their clients, Galeotti also spoke to the practice of, and process for, appealing AUSA and trial attorney decisions "up the chain" at the Department. Acknowledging that appeals, when done "judiciously at the appropriate time," can be effective, he cautioned counsel against making premature appeals, mischaracterizing prosecutorial conduct, or otherwise being less than forthright, warning that such conduct may be "counterproductive" to an appeal and could color otherwise meritorious arguments. With respect to timing, Galeotti expressed his expectations that companies work closely with prosecutors to narrow disagreements and only "raise up issues after exhausting discussions." While clearly "inside baseball," Galeotti's message was clear: DOJ will pursue and will not dismiss meritorious cases; however, leadership will listen to arguments to the contrary if counsel are forthright, judicious in their arguments, and follow the appropriate appeal channel.

Finally, DOJ will continue to use monitors sparingly. Galeotti noted that, in addition to being a financial drain, the imposition of monitors could inhibit a company's ability to transition to full compliance – companies under monitorships may be more focused on "teaching to the test" than making lasting improvements. DOJ would prefer to institute requirements like self-reporting, compliance certifications, and other requirements that, while putting additional burden on the Criminal Division, transition companies to self-sustaining compliance more quickly and efficiently.

Key Takeaways

DOJ's guidelines suggest that future FCPA enforcement during the Trump Administration will target high-impact cases featuring conduct that "directly undermines U.S. national interests" while, at the same time, not "losing sight of the burdens on American companies that operate globally." With a focus on cartels and TCOs, companies operating in places like Latin America may see greater scrutiny over the next three years. And with DOJ prioritizing threats to U.S. national security, U.S. contractors supporting defense, intelligence, and critical infrastructure should be alert to increased FCPA attention. Still, it remains to be seen how the U.S. Securities and Exchange Commission (SEC) will approach FCPA enforcement in light of DOJ's realignment, and whether the Commission will formally or informally incorporate DOJ's guidelines into its own enforcement standards.

While not specific to the FCPA, Galeotti's recent remarks reminded companies of two primary enforcement risks: whistleblowers and industry sweeps. The Department continues to see a steady stream of whistleblower submissions and has noted recent tips related to procurement fraud, corruption, health care fraud, and other DOJ priority enforcement areas. Companies should expect insider whistleblowing to remain a primary source of criminal investigations and enforcement actions. And while these areas remain at the top of DOJ's list, they

are not exclusive. Accordingly, companies should look to uncover all fraud and evaluate potential disclosure. Second, DOJ is more likely to investigate industries once one company reports misconduct, noting that self-disclosure by one "typically leads to the discovery of similar misconduct at other companies." If a competitor discloses misconduct before you do, there is an increased risk that you will face an investigation or enforcement action.

In light of these guidelines and pronouncements, companies should consider updates and enhancements to internal compliance programs to help deter and detect misconduct. While deterrence is always the ultimate objective, early detection is an increasingly close second. DOJ's updated Corporate Enforcement Policy provides a clear path to a declination if misconduct is disclosed promptly and the company cooperates and effectively remediates. While disclosure always presents risks and requires careful consideration, a company must learn of the underlying conduct before the government does for it to be an option. Increasingly, companies should look at ways to improve their ability to detect misconduct, including through whistleblower programs, data analysis, social media monitoring, tracking industry enforcement trends, and creating a culture in which employees are rewarded for "floating up" compliance concerns. In sum, regardless of whether a company chooses to disclose misconduct, having a strong compliance program puts it in the best position to timely detect misconduct and thoroughly evaluate potential disclosure.

To stay informed on all announcements from the Trump Administration, please visit our dedicated resource center below.

Wiley's Trump Administration Resource Center