



# Executive Order Temporarily Pauses FCPA Enforcement

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The President cites economic, foreign policy, and national security concerns when instructing the Attorney General to suspend FCPA enforcement, but questions remain if this move will achieve or undermine those objectives.

On February 10, 2025, President Trump signed an executive order (EO) directing the Attorney General (AG)

to pause enforcement of the Foreign Corrupt Practices Act (FCPA) for 180 days while she issues revised and “reasonable” FCPA enforcement guidelines.<sup>1</sup> The EO requires the AG to (i) review existing FCPA actions and (ii) cease new FCPA investigations and enforcement, unless the AG determines that an individual exception should be made. Future FCPA investigations and enforcement actions may resume subject to the AG’s new guidance and the AG’s approval.

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The EO states that these measures are necessary to achieve economic, foreign policy, and national security objectives. According to a Fact Sheet that the White House released on the EO, “U.S. companies are harmed by FCPA overenforcement because they are prohibited from engaging in practices common among international competitors, creating an uneven playing field.”<sup>2</sup> Among other matters, the President is concerned that the FCPA deprives the United States from achieving strategic advantages with respect to critical minerals, deep-water ports, and other key infrastructure or assets that are important to U.S. national security.

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Prior to the EO, the U.S. government viewed anti-corruption enforcement as an important tool in protecting U.S. national security rather than undermining it. A significant number of past FCPA enforcement actions have actually been directed against non-U.S. headquartered companies and non-U.S. individuals. Also, as a result of encouragement by the United States, several foreign governments increased anti-corruption enforcement against their own companies and citizens.

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The EO does not explicitly account for any of these factors. However, the EO does allow the AG to make individual exceptions and pursue new FCPA investigations or enforcement actions in her discretion. Perhaps, she will exercise this authority to prosecute foreign parties. This would be consistent with the AG’s recent memorandum prioritizing FCPA action that

supports the “total elimination” of drug cartels and transnational criminal organizations.<sup>3</sup>

The EO also does not account for the fact that corruption generally increases the cost of doing business for U.S. companies: The expense associated with increased bribery activity will likely result in bloated supply chain prices which of course will ultimately be passed onto U.S. consumers. This will only exacerbate the concern of higher costs resulting from the administration's recent decisions to increase global tariffs. There also remains potential harm to the U.S. securities market. Publicly-traded companies tend to be overvalued if they artificially induce their sales by paying bribes rather than competing based on the bona fide merits of their products and services.

Notwithstanding the EO, the FCPA remains the law of the United States, and it has a five-year statute of limitations (which can be tolled for up to 8 years) that exceeds the term of the current administration. Also, the EO does not halt FCPA enforcement indefinitely; it has paused enforcement pending issuance of the AG's guidance. This means that certain companies could remain exposed to potential criminal prosecution down the road. However, this development also enhances the potential leverage of companies currently undergoing government investigations. The EO is directed at the Justice Department, and it makes no mention of the Securities and Exchange Commission (SEC), which is

responsible for civil enforcement of the FCPA against publicly-traded companies and other issuers. Perhaps we can expect an announcement from the SEC on its enforcement posture as well.

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The FCPA has close to 50-year ~~history~~ and enforcement trends have certainly varied in the past. Of course, the temporary suspension imposed by the EO is unprecedented. Like many recent rapid-fire announcements coming from the administration, the EO raises more questions than it answers. This increases rather than reduces the uncertainty faced by businesses, especially in light of the highly discretionary nature of the current administration.

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<sup>1</sup>The EO can be accessed here: Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security – The White House

<sup>2</sup>The Fact Sheet can be accessed here: Fact Sheet: President Donald J. Trump Restores American Competitiveness and Security in FCPA Enforcement – The White House

<sup>3</sup>The AG’s memorandum can be accessed here: Total Elimination of Cartels and Transnational Criminal Organizations

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