

## OFAC Risk Alert DOJ Adopts Risk-Based Approach in FCPA & White-Collar Enforcement Policy Shift

On June 9, 2025, the U.S. Department of Justice (**DOJ**) issued guidelines governing investigations and the enforcement of the Foreign Corrupt Practices Act (**FCPA**), following through on commitments made in President Trump's February 10, 2025, Executive Order to reconsider the DOJ's approach towards investigating and prosecuting the FCPA. These guidelines reflect a shift away from expansive interpretations of the FCPA and toward a more targeted, risk-based enforcement model aligned with the Administration's views on U.S. national interests. The guidelines instruct prosecutors to focus enforcement on cases involving serious misconduct – particularly those implicating national security, foreign policy, or demonstrable harm to U.S. economic competitiveness.

Per the new guidelines, prosecutors are now instructed to assess whether an FCPA investigation or enforcement action aligns with the DOJ's strategic priorities, based on four non-exhaustive considerations:

Whether the alleged misconduct involves individuals or entities engaged in bribery, money laundering or other support activities on behalf of cartels or Transnational Criminal Organizations;

Whether the conduct distorts international markets or undermines fair competition by disadvantaging law-abiding U.S. companies;

Whether the misconduct implicates sectors critical to U.S. national security, such as defense, intelligence or critical infrastructure, resulting from the bribery of corrupt foreign officials involving key infrastructure or assets;

Whether the conduct involves significant criminal activity, rather than minor, low-value or routine practices commonly accepted in the relevant foreign jurisdictions. To prioritize cases that warrant U.S. enforcement, the DOJ also instructs prosecutors to consider the likelihood that a capable foreign law enforcement authority is willing and able to prosecute the same matter locally.

These priorities represent a targeting of FCPA enforcement and signal that the DOJ will be taking a "risk-based approach" in pursuing those matters it considers as most critical to U.S. interests. The new guidelines also continue to emphasize the importance of individual accountability but create a window where such focus can allow for enhanced leniency with respect to corporations. Prosecutors are directed to focus "cases in which individuals have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures." Finally, prosecutors are expected to consider potential collateral consequences throughout the investigation phase, and not just at a matter's resolution, including disruption to lawful business operations and the impact that prolonged investigations can have on employees.

**See Risk Alert Announcement - <https://www.justice.gov/dag/media/1403031/dl>**