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Contractor Compliance and Internal Investigations: New Practical Strategies for Unpredictable Times

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Nearly two years ago, we wrote an article for *The Procurement Lawyer* discussing “Contractor Compliance and Internal Investigations: Practical Strategies for 2023 and Beyond.”¹ The article examined the enforcement landscape for federal contractors and—breaking out the crystal ball—speculated on possible trends for Department of Justice (DOJ) enforcement actions.

We detailed comments by then-Deputy Attorney General Lisa O. Monaco regarding the incentive to reward companies “whose historical investments in compliance enable voluntary self-disclosure.”² Those comments, coupled with the impending rollout of the DOJ Criminal Division’s pilot program on voluntary self-disclosures, helped us envision a system with a heavy focus on internal controls, timely investigations, and high-pressure disclosure decisions.

What a difference a year (or two) makes. Since publication, there has been a significant national election,

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policy changes intended to reduce the size of the federal government and minimize waste and abuse, and a corresponding shift in DOJ enforcement priorities. In February 2025, an Executive Order paused all ongoing Foreign Corrupt Practices Act (FCPA) investigations and enforcement actions and barred any new FCPA investigations and enforcement actions for six months.³ The current administration also rescinded the prior administration's ethics-based Executive Order 13,989, which required every appointee in an executive agency appointed after January 20, 2021, to sign an ethics pledge and which prohibited the appointee from accepting gifts from lobbyists.⁴

Less than a week before issuing Executive Order 14,209 pausing FCPA investigations, newly appointed Attorney General Pam Bondi issued more than a dozen memoranda to DOJ offices detailing the new administration's agenda. Among the changes is a hard shift toward investigations "related to foreign bribery that facilitates the criminal operations of Cartels and [Transnational Criminal Organizations]."⁵ Then, in June 2025, DOJ Deputy Attorney General Todd Blanche issued a memorandum further solidifying the shift away from traditional FCPA enforcement priorities and toward conduct that causes identifiable harm to US companies and national security interests.⁶

This article revisits our prior assessment in light of the shifting enforcement environment under the new Trump administration and considers how contractors might respond to the apparent shift away from traditional priorities. We ask the question, "Given the current environment, can contractors take a step back from compliance programs and internal controls?" And, even more specifically, "How should contractors approach an imminent voluntary self-disclosure decision under the current administration?"

We conclude that one thing is certain: Corporate compliance for government contractors has not suddenly become optional, or even dramatically pared down. An effective compliance program relies on long-term consistency and benefits all aspects of the company. Contractors should resist reacting to recent developments by weakening anticorruption or ethics compliance programs and practices. The administration's pause in FCPA enforcement is temporary.⁷ The Trump administration's final priorities and outcomes remain uncertain. Right now, however, adopting a "stay the course" focus on compliance is wise counsel for every government contractor.

Likewise, companies should avoid revising value statements or training with respect to anticorruption or ethics. Strong and consistent compliance programs can attract customers, investors, employees, and suppliers who are concerned about risks as well as those who value ethical practices. In addition, a strong and consistent

anticorruption compliance program can detect operational weaknesses and mitigate the risk of an improper outflow of funds.

While the Executive Orders have attracted the attention of industry and might give the impression that the current administration is less interested in initiating enforcement actions, it is critical to remember that relevant statutes remain in place, and noncompliant conduct happening today could still be actionable under this administration, or a future one.⁸ If anything, given the Department of Government Efficiency's (DOGE) focus on fraud, waste, and abuse, contractors should be even more wary of government clawbacks.

To get a sense of the administration's enforcement priorities, we will first examine two key Executive Orders and an important guidance update from the DOJ. We will then discuss some of the key compliance areas that should be on the radar for every federal contractor. This discussion will be forward-looking (cybersecurity), mindful of more traditional compliance topics with proven staying power (small business), and will address areas of sweeping national security and public safety policies (immigration) because these areas are likely to remain priorities for any administration when it comes to contractor compliance. We then conclude with key recommendations on what contractors should do to minimize their compliance risks and mitigate compliance breakdowns.

Executive Order 14,209, Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security, dated February 10, 2025

Executive Order 14,209, Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security (the FCPA Executive Order), halts ongoing and new investigations and enforcement actions for six months.⁹ The period of the pause in enforcement may be extended by the Attorney General for an additional six-month period until February 2026.¹⁰ The FCPA Executive Order also directs the Attorney General to revise FCPA guidelines or policies to "adequately promote the President's Article II authority to conduct foreign affairs and prioritize American interests, American economic competitiveness with respect to other nations, and the efficient use of Federal law enforcement resources."¹¹ As of the date we are preparing this article, that updated guidance remains pending.

The FCPA Executive Order states that past enforcement of the FCPA has been "stretched beyond proper bounds and abused in a manner that harms the interests of the United States," which has led to excessive barriers to American commerce abroad.¹² On the same day it issued the FCPA Executive Order, the White House also issued a "Fact Sheet" including the corresponding mission statement of "stopping excessive, unpredictable

FCPA enforcement that makes American companies less competitive.”¹³

On June 9, 2025, on the heels of the FCPA Executive Order, Deputy Attorney General Todd Blanche issued a memorandum establishing “guidelines to ensure that FCPA investigations and prosecutions are carried out in accordance with [the administration’s] directive.”¹⁴ The primary takeaway from the memorandum is that FCPA enforcement will be redirected toward cases that affect US national security interests or otherwise harm American companies. We should expect that new enforcement actions will target corruption that disadvantages US companies or undermines access to global markets. Specifically, the memorandum states that DOJ will prioritize cases where there is a “specific and identifiable” harm to American companies or individuals.¹⁵ Logically, cases that do not hit these targets seem unlikely to be aggressively pursued.

It is also clear that the administration wants to leverage FCPA enforcement against cartels and transnational criminal organizations. That objective was expressly stated in the FCPA Executive Order and was reiterated in this more recent memo. Bribery schemes that help these criminal groups gain power, launder money, or control infrastructure will receive heightened attention.¹⁶

On the flipside of these stated enforcement priorities, DOJ’s June 9, 2025, memorandum deemphasizes “corporate conduct that involves de minimis or low-dollar, generally accepted business courtesies.”¹⁷ In making this statement, DOJ appears to lower the bar when it comes to facilitation payments by US entities operating abroad. These so-called “grease payments” already constitute a technical exception under the FCPA.¹⁸ The newly stated emphasis on “substantial bribe payments” therefore appears to move the target for the type of misconduct needed to land on DOJ’s enforcement radar.¹⁹

Understandably, US contractors could view the administration’s FCPA enforcement pause as a relief. The FCPA *can* make it objectively harder for US companies to do business abroad in several important (and very tangible) ways. Most prominently, the FCPA prohibits companies from paying, or promising to pay, anything of value in order to influence any action or decision of a foreign official, to secure an improper advantage, or retain business.²⁰ This prohibition can place the company at a disadvantage when competing against foreign competitors that are not so prohibited (and who routinely make those kinds of payments in the regular course of business). DOJ’s new enforcement guidelines openly seek to level the international playing field for US businesses.

With all of that said, contractors should not be lulled into a false sense of security or reduce current anticorruption and bribery compliance programs in response to the FCPA Executive Order or June 9, 2025, DOJ memo. As discussed below, DOJ’s revised enforcement priorities do not eliminate the FCPA or provide contractors a “get-out-of-jail-free card.” This is a time for compliance

departments to be agile and align with current risks and enforcement probabilities.

The FCPA Executive Order does not, and cannot, modify the FCPA statute. In addition, a five-year statute of limitations²¹ is generally applied to FCPA enforcement. The ongoing validity of the FCPA and the relatively long statute of limitations (spanning at least more than the length of a single presidential term) means that conduct today could be subject to enforcement under this administration (if current priorities change or evolve) or even the next administration. The requirements of the FCPA—including maintaining accurate books and records and implementing internal controls—therefore still apply to federal contractors. Even during the pause, legal and reputational risks remain. This is particularly true for companies operating internationally because they are also subject to the anti-bribery and corruption laws of other jurisdictions. For example, the United Kingdom has the UK Bribery Act 2010, which applies to companies operating in both the public and private sectors.²²

The FCPA Executive Order also does not apply to the Foreign Extortion Prevention Act (FEPA), which was enacted in July 2024 and criminalizes the “demand side” of foreign bribery.²³ The FEPA complements the FCPA by making it a crime for any foreign official to corruptly demand, seek, receive, accept, or agree to receive or accept, directly or indirectly, payments in return for taking certain actions and in connection with obtaining or retaining business.²⁴ US companies may be impacted by FEPA compliance if the United States brings an action against a foreign official alleging that the official solicited a bribe from that company. To protect against entanglement in a FEPA enforcement action, contractors should implement or maintain anti-corruption compliance programs and take appropriate steps under the FCPA if there are any indications of a foreign official seeking improper payments.

Further, while the FCPA addresses DOJ enforcement, it does not bind other government enforcement agencies. For example, the Securities and Exchange Commission (SEC) has not formally changed its position that FCPA enforcement continues to be a high priority.²⁵ It remains to be seen whether, and to what extent, the SEC will modify this stance under the leadership of Acting Chairman Mark Uyeda. We note that under Chairman Uyeda’s leadership, the SEC has made a number of changes that more closely align the Commission with other initiatives of the Trump administration.²⁶ Executive Order 14,215, Ensuring Accountability for All Agencies, issued on February 18, 2025 (the Independent Regulatory Agency Executive Order), appears to assert that the SEC, as an independent regulatory agency, is required to act consistent with and advance President Trump’s policies and priorities.²⁷ Executive Order 14,215 states, “[t]he President and the Attorney General’s opinions on questions of law are controlling on all employees in the conduct of

their official duties. No employee of the executive branch acting in their official capacity may advance an interpretation of the law as the position of the United States that contravenes the President or the Attorney General's opinion on a matter of law, including but not limited to the issuance of regulations, guidance, and positions advanced in litigation, unless authorized to do so by the President or in writing by the Attorney General.²⁸ It remains to be seen how the SEC will respond to the FCPA Executive Order and the Independent Regulatory Agency Executive Order.

Executive Order 14,148, Initial Recissions of Harmful Executive Orders and Actions, dated January 20, 2025

On January 20, 2025, the Trump administration issued Executive Order 14,148, which rescinded a large number of Executive Orders, including Biden-era Executive Order 13,989 that addressed ethics commitments by members of the executive branch (the Ethics Executive Order).²⁹ The now-rescinded Ethics Executive Order required every appointee in an executive agency appointed after January 20, 2021, to sign an ethics pledge³⁰ and prohibited the appointee from accepting gifts from lobbyists.

While members of the executive branch no longer have to sign the Biden-era ethics pledge, there are various federal and state laws that still prohibit improper payments to federal government employees and that regulate the activities of lobbyists. As a result, the rescission of Executive Order 13,989 has little legal impact on federal contractors.

The Lobbying Disclosure Act of 1995 requires all lobbyists to register and file reports semiannually that contain certain specified information such as the name of the client on behalf of whom they are lobbying, the issues on which the client has engaged them to lobby, the government officials contacted in connection with their lobbying, and an estimate of the amount the lobbyist will be paid by its client for the lobbying activities.³¹ This law, which remains in force, was enacted so that there is transparency in the activities of lobbyists and the government official with whom they interact.³²

Bribery of US public officials is further prohibited by a number of federal laws. In particular, 18 U.S.C. § 201 (Bribery of Public Officials) criminalizes offering a bribe to a public official and (separately) public officials who accept a bribe.³³ The law prohibits the giving to or accepting of anything of value by a public official, if the thing is given “with intent to influence” an official act, or if it is received by the official “in return for being influenced.”³⁴ The law also prohibits gratuities to public officials under certain circumstances.³⁵ Many states have similar laws that prohibit offering anything of value to a public official with the intent to influence an official act.³⁶

Since the rescission of Executive Order 13,989 does not appear to have a significant legal impact on existing laws and regulations, contractors should keep existing

Upcoming Conferences

2025 FALL FORUM

November 13–15, 2025

Hyatt Regency Hotel • Reston, Virginia

CLE—November 13–14, 2025

Council Meeting—November 15, 2025

2026 FEDERAL PROCUREMENT INSTITUTE

March 11–13, 2026

Westin Hotel • Annapolis, Maryland

Council Meeting—March 11, 2026

CLE—March 12–March 13, 2026

https://www.americanbar.org/groups/public_contract_law/events/

compliance practices in place when interacting with lobbyists and government officials.

DOJ's New White Collar and Corporate Enforcement Focus Areas

On May 12, 2025, DOJ announced that it is “turning a new page on white-collar and corporate enforcement.”³⁷ With this announcement, DOJ noted that it will prioritize investigating and prosecuting several high-impact areas of white-collar crime including health care fraud, procurement fraud, trade and customs fraud (including tariff evasion), offenses related to Chinese-owned companies, financial fraud, and bribery.³⁸ While DOJ noted specific focus areas and crimes of emphasis in its new policy memo, DOJ also recognized that “overbroad and unchecked corporate and white-collar enforcement burdens US businesses and harms US interests,” also noting that “[DOJ’s] policies must strike an appropriate balance between the need to effectively identify, investigate, and prosecute corporate and individuals’ criminal wrongdoing while minimizing unnecessary burdens on American enterprise.”³⁹

While enforcement in certain areas continues to trend downward with the current administration, contractors should remain vigilant and promote internal compliance. The DOJ’s emphasis on procurement fraud is a recent change, and it is uncertain how it will play out in the coming years.

DOJ Evaluation of Corporate Compliance Programs Guidance

In September 2024, DOJ updated its “Evaluation of Corporate Compliance Programs” (ECCP) guidance.⁴⁰ The ECCP guidance is written to assist federal prosecutors in evaluating the effectiveness of a company’s compliance program when that company is facing criminal enforcement.⁴¹ While there have been shifts in enforcement policy since the issuance of the ECCP update in late 2024, it remains on the DOJ Criminal Division website. The ECCP can therefore serve as a valuable tool for companies to evaluate how their compliance programs would be judged in a hypothetical enforcement action.

The ECCP guidance is centered around three questions:

1. Is the corporation’s compliance program well-designed?
2. Is the program being applied earnestly and in good faith?
3. Does the corporation’s compliance program work in practice?⁴²

The latest changes to the guidance included additions to three areas: (i) emerging technologies (including artificial intelligence (AI)), (ii) whether a compliance program has appropriate access to data, and (iii) whistleblower incentives and protection.⁴³

In terms of emerging technologies, the new ECCP guidance advises that contractors should evaluate whether their compliance programs appreciate risks that integrating new technology (for example, increased reliance on AI) creates for the company, assess those technology-driven risks, and put controls in place to mitigate any potential consequences from the new technology. Companies’ compliance personnel should be present at meetings discussing new systems, documenting their concerns, and cognizant of any policy adopted, or updated, for using the technology.

Another of the new focus areas under the ECCP guidance concerns compliance programs’ access to resources and data.⁴⁴ Compliance programs using data analytics tools effectively could earn credit from the DOJ during enforcement actions if the data analytics help identify problems that might otherwise escape detection. In building effective compliance programs, companies should consider the ratio of resources, technology, and data provided for compliance purposes to those provided for commercial purposes. The guidance does not address a “correct” ratio—but best practices would suggest one should not vastly outpace the other.

The last major update to the ECCP guidance emphasized DOJ’s continued commitments to rewarding and protecting whistleblowers. Contractors must have sufficient policies and training to prevent retaliation against whistleblowers. Relating to DOJ’s continued focus on whistleblowers as a tool for identifying misconduct, we

will discuss DOJ enforcement actions and the decision of self-disclosure in the following sections.

Government Enforcement Actions Targeting Fraud, Waste, and Abuse Will Continue

In our 2023 article, we emphasized that internal compliance controls remain critical because government enforcement actions are a clear and present danger for federal contractors. Among others, we highlighted the need to strengthen internal controls in areas including cybersecurity and small business contracting compliance.

We were hardly going out on a limb with this forecast, but our prediction was correct. Irrespective of the pause in FCPA enforcement, the record shows an ongoing appetite by DOJ to claw back funds under the civil False Claims Act (FCA).⁴⁵ For fiscal year 2024, DOJ reported over \$2.9 billion in FCA settlements and judgments alone.⁴⁶

Settlements and judgments in the billions underscore DOJ’s continued commitment to enforcing the FCA to combat fraud and protect taxpayer funds. Given DOGE’s focus on fraud, waste, and abuse, contractors should fully expect compliance actions to continue or increase.

We will briefly examine two settlements DOJ announced since our last publication that seem to prove this point.

DOJ Enforcement—Cybersecurity Compliance

Cybersecurity remains the most buzzworthy federal compliance issue. With the publication of the final CMMC rules in October 2024,⁴⁷ the Cybersecurity Maturity Model Certification (CMMC) 2.0 program is final. This news should be on the radar for all federal contractors—and particularly those that contract with the Department of Defense (DOD). Bottom line: Cybersecurity clauses will be part of your contracts soon (if not already), and failure to comply can lead to significant penalties.

For example,⁴⁸ DOJ recently announced a \$4.6 million civil FCA settlement with a federal contractor arising out of allegations that the company failed to comply with DOD cybersecurity requirements included in its government contracts.⁴⁹ The government alleged that the contractor violated the FCA by submitting claims for payment despite knowing it was not in compliance with the cybersecurity obligations included in its contracts.⁵⁰

The most prominent cybersecurity clauses applicable to federal contractors are found at Defense Federal Acquisition Regulation Supplement (DFARS) 252.204-7008 and 252.204-7012. Collectively, the solicitation provision and contract clause, respectively, require DOD contractors and subcontractors (with contracts incorporating the clause) to maintain adequate security with regard to covered contractor information systems (including, at a minimum, the standards set forth in the applicable version of NIST SP 800-171). Contractors and subcontractors also must post summary level scores of current NIST SP 800-171 DOD

assessments to the Supplier Performance Risk System, which has a score range of –203 to 110.

In the settlement under review, the contractor acknowledged outsourcing cloud storage of emails that did not meet the DFARS requirement.⁵¹ The contractor also failed to implement required security controls under NIST SP 800-171 and did not prepare a written plan for each of its covered systems related to cybersecurity infrastructure. Most notably, the contractor submitted a summary level score of 104—and then failed to update that score for more than a year after a third-party consultant assigned it a score of –142.⁵² Critical to our discussion below regarding self-reporting disclosures, the contractor did not seek to update its score until *after* learning that a government investigation was underway.

DOJ's settlement is the latest in a series of enforcement actions under DOJ's Civil Cyber-Fraud Initiative. Since October 2021, DOJ has focused on cybersecurity-related enforcement through the FCA, with some investigations and settlements targeting DOD contractors.

As cyberattacks increase in frequency and sophistication, DOJ will keep focusing on protecting sensitive government information and personal data privacy under federal contracts. This recent settlement shows that DOD contractors should remain vigilant in ensuring that they comply with the cybersecurity requirements in their contracts, including confirming compliance by third-party vendors used in supporting their work.

DOJ Enforcement—Small Business Contracting Compliance

Unlike the emerging issue of cybersecurity, small business contracting compliance has been a prominent area of enforcement for well over a decade. As an issue with bipartisan support (protecting small businesses), the maze of regulations impacting both large and small businesses offers DOJ a target-rich environment for contractors who find themselves out of compliance with the Small Business Administration's complicated web of regulations.

In a recent settlement, DOJ clawed back more than \$1.3 million in federal funds related to allegations that a contractor, Whitcraft Companies (Whitcraft), violated the FCA by continuing to hold itself out as a small business concern and compete for set-aside contracting opportunities—even after Whitcraft became affiliated with a large business when it was acquired by a private equity firm.⁵³

For about five years after the acquisition, Whitcraft competed against legitimate small businesses and secured more than 71 small business set-aside contracts that it was not eligible to receive.⁵⁴

Unlike the contractor in our cybersecurity example, Whitcraft discovered the violation as part of its own internal due diligence, and the company made the decision to self-report. The company received credit in the settlement for the voluntary disclosure and cooperation with the government during the investigation.⁵⁵ These

settlement credits underscore the importance of voluntary self-disclosures, as we discussed in our 2023 article.

DOJ Enforcement—Immigration

In the first 100 days, the Trump administration has pushed greater border enforcement and mass deportations through immigration-related Executive Orders in an effort to reshape the US immigration system. While there are ongoing challenges to Trump's immigration actions at the US Supreme Court, the DOJ is determined to penalize institutions that support illegal immigration. A February 2025 memorandum states that DOJ "shall use all available criminal statutes to combat the flood of illegal immigration that took place over the last four years, and to continue to support the Department of Homeland Security's immigration and removal initiatives."⁵⁶

Federal contractors should be aware of laws that prohibit "resisting, obstructing, and otherwise failing to comply with lawful immigration-related commands and requests."⁵⁷ The DOJ will concentrate its efforts investigating such incidents.⁵⁸ With the emphasis on immigration, federal contractors should review company hiring practices, documentation requirements, and any relevant policies that could be construed as efforts to impede lawful federal immigration operations.

Deciding Whether to Self-Disclose

Our prior article discussed considerations that should inform contractors' voluntary self-disclosure decisions.⁵⁹ Our primary consideration was the cooperation credit—a concept emphasized by then-Deputy Attorney General Monaco in her 2022 speech. The bottom line, according to Monaco, was that responsible contractors that act diligently in identifying compliance failures and produce the relevant facts and documents for DOJ's review should receive consideration commensurate with that cooperation at the penalty phase.

Back in 2023, our forecast placed a great deal of emphasis on how DOJ would roll out and conduct its self-reporting program. Under the pilot program, launched in April 2024, individual reporters could obtain non-prosecution agreements for self-reporting compliance violations—provided they met a number of criteria.⁶⁰

Now, more than a year later, DOJ has published a new Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP).⁶¹ Under the new policy, DOJ will not prosecute a company for criminal conduct if it satisfies the following updated criteria:⁶²

1. The company voluntarily self-disclosed the misconduct;
2. The company fully cooperated with the DOJ's investigation;
3. The company timely and appropriately remediated the misconduct; and
4. There are no aggravating circumstances.⁶³

There are also additional benefits for companies who disclose misconduct but cannot satisfy the four criteria listed above.⁶⁴ Along with the new CEP, DOJ also published an updated Corporate Whistleblower Awards Pilot Program.⁶⁵ The new pilot program discusses a whistleblower's eligibility for award, considerations for payment of awards, and other updated information.⁶⁶ Fraud against the government in connection with federal contracts or federal programs is one of the areas in which whistleblowers are eligible for award.⁶⁷

Where do the new policies place a contractor considering self-reporting (for example) an FCPA violation? The administration has publicly announced (at least temporarily) a shift in focus away from enforcement of the infraction. It is easy to see why some contractors may choose to stay silent. After all, why make yourself a target for significant fines (or worse) when the government's attention is focused elsewhere?

On the flip side, as noted above, the hypothetical conduct at issue remains illegal under the FCPA. While failing to disclose now could delay the consequences, it is likely that DOJ's priorities will shift again. If that is the case, you could lose the opportunity to take advantage of the self-reporting option—and the potential cooperation credit that comes with it.

In another circumstance, self-reporting an FCA violation presents a different risk analysis. DOJ continues to use the FCA as its most effective tool in combatting fraud, posting record numbers of settlements over the past several years.⁶⁸ In addition, DOJ recently announced that investigating and prosecuting health care, federal programs, and procurement fraud were among its top priorities,⁶⁹ while also publishing a new Corporate Whistleblower Awards Pilot Program.⁷⁰ While the administration seems to be trending away from enforcement in certain areas, the same does not appear to be true for the FCA. That said, self-reporting would allow companies to receive valuable cooperation credit.

In considering the voluntary self-reporting question, compliance failures should be treated as a “bet the company” proposition. And to be clear, taking the wrong path can lead to severe outcomes. Depending on the violation, DOJ enforcement actions bring the threat of significant financial penalties, suspension or debarment from federal contracting, and even prison time for individuals.

As a matter of best practice, contractors should not “bet the company” on the way the current political wind is blowing. Compliance programs and internal controls are meant to operate over the long term. Contractors faced with a triggering event should trust the process—including conducting an appropriate investigation and determining whether there is sufficient evidence to consider a voluntary disclosure.

If the decision is made not to disclose, it should not be a matter of “playing the odds.” In the event that DOJ investigates, contractors must be prepared to discuss the

nature of the internal investigation, the underlying facts, and documentation and rationale justifying the decision against disclosure.

Conclusion

While the current administration's priorities seem to have shifted away from certain enforcement priorities, contractors nevertheless should maintain strong compliance programs. The current FCPA enforcement priorities and other Trump administration actions discussed in this article may change in future administrations, or the pause on enforcement may be lifted. In the meantime, the compliance obligations of the business community remain because the relevant statutes remain in force and breaking the law always carries consequences. An effective compliance program will rely on consistency and stability over the long term to protect a company from significant penalties, no matter how the winds may shift. *PL*

Endnotes

1. Diana Lyn Curtis McGraw & Nicholas T. Solosky, *Contractor Compliance and Internal Investigations: Practical Strategies for 2023 and Beyond*, 58 *PROCUREMENT LAW.*, no. 1, Winter 2023, at 10, https://www.americanbar.org/groups/public_contract_law/resources/procurement-lawyer/2023-winter/contractor-compliance-internal-investigations-practical-strategies/.
2. Press Release, Off. of Pub. Affairs, US Dep't of Just., Deputy Attorney General Lisa O. Monaco Delivers Remarks on Corporate Criminal Enforcement (Sept. 15, 2022), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-remarks-corporate-criminal-enforcement>.
3. Exec. Order 14,209, Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security, 90 Fed. Reg. 9587 (Feb. 14, 2025).
4. Exec. Order 14,148, Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 8237 (Jan. 28, 2025), rescinding Exec. Order 13,989, Ethics Commitments by Executive Branch Personnel, 86 Fed. Reg. 7029 (Jan. 25, 2021).
5. Memorandum from Off. of the Att'y Gen., Total Elimination of Cartels and Transnational Criminal Organizations (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388546/dl?inline>.
6. Memorandum from Off. of the Dep. Att'y Gen., Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA) (Jun. 9, 2025), <https://www.justice.gov/dag/media/1403031/dl>.
7. Exec. Order 14,209, 90 Fed. Reg. 9587. This Executive Order will remain in effect for at least 180 days and may be extended. *See id.* § 2.
8. The statute of limitations for a criminal violation of the FCPA's antibribery provisions is five years and for the accounting provision is six years. To the extent DOJ seeks foreign evidence, these limitation periods can be extended up to three years. *See* 18 U.S.C. § 3292.
9. Exec. Order 14,209, 90 Fed. Reg. 9587.
10. *Id.*
11. *Id.*
12. *Id.*
13. Press Release The White House, Fact Sheet: President Donald J. Trump Restores American Competitiveness and Security in FCPA Enforcement (Feb. 10, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-american-competitiveness-and-security-in-fcpa-enforcement/>.
14. Memorandum from Off. of the Dep. Att'y Gen., Guidelines

for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA) (Jun. 9, 2025), <https://www.justice.gov/dag/media/1403031/dl>.

15. *Id.*

16. *Id.*

17. *Id.*

18. 15 U.S.C. §§ 78dd-1(b).

19. Memorandum from Off. of the Dep. Att’y Gen., Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA) (Jun. 9, 2025), <https://www.justice.gov/dag/media/1403031/dl>.

20. Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1 *et seq.*

21. 18 U.S.C. § 3282(a) provides: “Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.”

22. Bribery Act 2010 (c.23) (UK). In fact, the June 9, 2025 DOJ memorandum from the Deputy Attorney General assumes that certain types of violations will be investigated and prosecuted by “an appropriate foreign law enforcement authority.” Memorandum from Off. of the Dep. Att’y Gen., Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA) (Jun. 9, 2025), <https://www.justice.gov/dag/media/1403031/dl>.

23. 18 U.S.C. § 1352.

24. *Id.*

25. SEC Enforcement Actions: FCPA Cases, US SEC. & EXCH. COMM’N, <https://www.sec.gov/about/divisions-offices/division-enforcement/enforcement-topics-initiatives/sec-enforcement-actions-fcpa-cases> (last visited May 7, 2025).

26. Under Acting Chairman Uyeda, on February 11, 2025, the SEC requested a delay in the pending litigation regarding the SEC Climate Risk Disclosure Rules to “provide time for the Commission to deliberate and determine the appropriate next steps.” Acting Chairman Uyeda voted against the Rule’s adoption. The SEC also rescinded Staff Legal Bulletin No. 14L on February 12, 2025, which allowed for a greater number of shareholder proposals to be included on proxy statements.

27. Exec. Order 14,215, Ensuring Accountability for All Agencies, 90 Fed. Reg. 10,447 (Feb. 24, 2025).

28. *Id.* at 10,448–49.

29. Exec. Order 14,148, Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 8237 (Jan. 28, 2025), rescinding Exec. Order 13,989, Ethics Commitments by Executive Branch Personnel, 86 Fed. Reg. 7029 (Jan. 25, 2021).

30. The ethics pledge read: “I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.” Exec. Order 13,989, § 1, 86 Fed. Reg. 7029.

31. 2 U.S.C. §§ 1601–1614.

32. *Id.*

33. 18 U.S.C. § 201.

34. *Id.*

35. *Id.*

36. See, e.g., CAL. PENAL CODE § 67 (2024) (Bribery of Executive Officers); D.C. CODE § 22-712 (Bribery); MD. CODE ANN.,

CRIM. LAW § 9-201 (2024) (Bribery of Public Employees); N.Y. PENAL LAW, art. 200 (Bribery Involving Public Servants and Related Offenses); VA. CODE ANN. § 18.2-438 (Bribes to Officers or Candidates for Office).

37. Matthew R. Galeotti, US Dep’t of Just. Head of Crim. Div., Remarks at SIFMA’s Anti-Money Laundering and Financial Crimes Conference (May 12, 2025), <https://www.justice.gov/opa/speech/head-criminal-division-matthew-r-galeotti-delivers-remarks-sifmas-anti-money-laundering>.

38. Memorandum from Matthew R. Galeotti, Head of Dep’t. of Just. Crim. Div., to All Crim. Div. Personnel (May 12, 2025), <https://www.justice.gov/criminal/media/1400046/dl?inline>.

39. *Id.*

40. DEP’T OF JUST., EVALUATION OF CORPORATE COMPLIANCE PROGRAMS (2024), <https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl?inline>.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. 31 U.S.C. §§ 3729–3733.

46. Press Release, Off. of Pub. Affairs, US Dep’t of Just., False Claims Act Settlements and Judgments Exceed \$2.9B in Fiscal Year 2024 (Jan. 15, 2025), <https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024>.

47. 32 C.F.R. pt. 170.

48. Regrettably for contractors, this is just one of many examples we could offer. The emphasis on this one fact pattern is by no means indicative of the growing range of cybersecurity compliance failures leading to significant settlements.

49. Robbie Pratt & Jaeho Lee, *Government Contractors Beware: Failure to Comply with DOD Cybersecurity Requirements Can Trigger Civil FCA Liability*, FOX ROTHSCHILD FED. GOV’T CONT. & PROCUREMENT BLOG (Apr. 17, 2025), <https://governmentcontracts.foxrothschild.com/2025/04/articles/general-federal-government-contracts-news-updates/government-contractors-beware-failure-to-comply-with-dod-cybersecurity-requirements-can-trigger-civil-fca-liability/>; see also Settlement Agreement, United States *ex rel.* Berich v. MORSECORP, Inc., No. 23-cv-10130-GAO (D. Mass. Mar. 14, 2025).

50. *Id.*

51. *Id.*

52. *Id.*

53. Press Release, Off. of Pub. Affairs, US Att’y’s Off., Dist. of Conn., Companies Pay \$1.3 Million to Resolve Allegations of False Claims Act Violations Concerning Small Business Size Representations (Apr. 14, 2025), <https://www.justice.gov/usao-ct/pr/companies-pay-13-million-resolve-allegations-false-claims-act-violations-concerning>.

54. *Id.*

55. *Id.*

56. Memorandum from Off. of the Att’y Gen., General Policy Regarding Charging, Plea Negotiations, and Sentencing (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388541/dl>.

57. *Id.*

58. Memorandum from Off. of the Att’y Gen., Sanctuary Jurisdiction Directives (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388531/dl?inline>.

59. To be clear, this article addresses voluntary disclosure decisions. There is no complex decision process when it comes to mandatory disclosures under FAR 52.203-13. Contractors *must* timely disclose, in writing, to the agency Office of the Inspector General (OIG), credible evidence of a violation of criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act.

60. US DEP’T OF JUST. CRIM. DIV., THE CRIMINAL DIVISION’S

PILOT PROGRAM ON VOLUNTARY SELF-DISCLOSURES FOR INDIVIDUALS (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl?inline>.

61. US DEP'T OF JUST. CRIM. DIV., CRIMINAL DIVISION CORPORATE ENFORCEMENT AND VOLUNTARY-SELF DISCLOSURE POLICY (May 12, 2025), <https://www.justice.gov/criminal/media/1400031/dl?inline>.

62. *Id.*

63. DOJ retains discretion to not prosecute a company even if some aggravating circumstances are present. These circumstances include the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct within the company, severity of harm caused by the misconduct, or criminal adjudication or resolution within the last five years based on similar misconduct by the entity engaged in the current misconduct. *Id.*

64. *Id.*

65. US DEP'T OF JUST., CORPORATE WHISTLEBLOWER AWARDS PILOT PROGRAM (May 12, 2025), <https://www.justice.gov/criminal/media/1400041/dl?inline>.

66. *Id.*

67. *Id.*

68. Press Release, Off. of Pub. Affairs, US Dep't of Just., False Claims Act Settlements and Judgments Exceed \$2.9B in Fiscal Year 2024 (Jan. 15, 2025), <https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024>.

69. Memorandum from Matthew R. Galeotti, Head of Dep't of Just. Crim. Div., to All Crim. Div. Personnel, Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime (May 12, 2025), <https://www.justice.gov/criminal/media/1400046/dl?inline>.

70. DOJ CORPORATE WHISTLEBLOWER AWARDS PILOT PROGRAM, *supra* note 58.