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PUBLISHED: APRIL 28, 2025

State Attorneys General May Step Up Foreign Anti-Corruption Enforcement Efforts Following Federal Enforcement Pause

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Professionals

REBECCA FURDEK
MILWAUKEE:
414.978.5348
REBECCA.FURDEK@
HUSCHBLACKWELL.COM

JODY L. RUDMAN
AUSTIN:
512.703.5716
JODY.RUDMAN@
HUSCHBLACKWELL.COM

SYDNEY SZNAJDER
WASHINGTON:
202.378.9312
SYDNEY.SZNAJDER@
HUSCHBLACKWELL.COM

For decades Foreign Corrupt Practices Act (FCPA) enforcement has been largely considered a federal matter, with the U.S. Department of Justice (DOJ) enforcing the statute's criminal provisions.[1] Enacted in 1977, FCPA contains anti-bribery provisions prohibiting U.S. companies or individuals from providing or offering to provide payments or things of value to foreign government officials. The FCPA also contains "books and records" provisions requiring public companies to maintain accurate books and records and sufficient internal controls.

In February 2025, the Trump administration issued an executive order that largely halted FCPA criminal enforcement for an initial period of 180 days, which may be extended at the Attorney General's discretion for another 180 days. Specifically, the Executive Order instructed Attorney General Pam Bondi to (i) not initiate new FCPA investigations; (ii) review all pending FCPA investigations to ensure they conform to presidential priorities; and (iii) issue new guidelines or policies that 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."

Notably, the Executive Order did not halt the prosecution of pending FCPA cases following the mandated review but subjected their continuation to the Attorney General's specific authorization. On April 11 alone, the DOJ filed notices in two separate FCPA cases, indicating that DOJ had completed its

review and "intends to proceed to trial."[2] In addition, the Executive Order did not address the authority retained by the U.S. Securities and Exchange Commission (SEC) to bring civil enforcement actions against public companies for violations of both the FCPA's anti-bribery and books and records provisions.

Furthermore, while federal enforcement priorities have shifted, companies should remain mindful that foreign bribery and related activities may still be actionable offenses under state laws, and thus there is the very real potential for State Attorneys General to fill in perceived gaps in federal FCPA enforcement.

California AG announces state-level initiative to enforce FCPA violations

On April 2, 2025, California Attorney General Rob Bonta issued a legal advisory stating his office would take up the mantle of FCPA enforcement for California businesses. This advisory informed businesses that FCPA violations are actionable under California's Unfair Competition Law (CA-UCL).[3] The CA-UCL is a sweeping consumer protection and fair business competition statute that outlaws fraudulent, illegal, and unfair business practices and permits the California Attorney General to bring enforcement actions predicated on FCPA violations. Punishments authorized under the CA-UCL include civil penalties, restitution, disgorgement, and injunctive relief.

Attorney General Bonta explained his stance by reminding businesses that California is the world's fifth-largest economy, and corruption within it will not be tolerated. He commented, "Illegal activity is still illegal. Paying bribes to foreign officials is not only unethical, it's also bad for business." His press release urged companies and individuals to maintain strong accounting controls and take care that they and their agents avoid improper payments to foreign officials to avoid prosecution.

FCPA vs. CA-UCL

Industry participants should understand that the CA-UCL is not simply a stand-in for the FCPA; enforcement under the two laws differs in important ways. Most importantly, the CA-UCL is a civil statute and therefore does not carry the criminal penalties available to the DOJ under an FCPA criminal prosecution. Also, as a state law, the CA-UCL can only be used to pursue a person or business who causes injury to a California resident or causes injury within California's borders. Finally, the CA-UCL has a four-year statute of limitations, shorter than the FCPA's (five years for civil and antibribery violations; and six years for violations of accounting and internal controls provisions).

Looking forward

Specific to the FCPA, California Attorney General Bonta's position on anticorruption enforcement may be repeated in other states that have analogs to the CA-UCL. If other states follow California's

lead, the foreign bribery and anticorruption enforcement landscape may become increasingly complicated as players navigate a patchwork of laws and regulations.

It is also worth noting that there remains a risk of federal enforcement of commercial bribery under the Travel Act, 18 U.S.C. § 1952, which prohibits the use of interstate commerce with intent to "distribute the proceeds of any unlawful activity." Such "unlawful activity" may include violations of individual states' commercial bribery laws, thus empowering federal prosecutors to consider bringing federal Travel Act charges based on state bribery statutes.

More generally, it should be noted that California's approach to FCPA enforcement mirrors a growing willingness by State AGs to shore up enforcement in other areas seemingly less prioritized by the Trump administration. As our team recently stated, Democratic State AG offices have openly signaled an intent to strengthen enforcement regarding corporate merger transactions to fill in perceived gaps in enforcement in the current administration. And even more recently, on April 18, Oregon Attorney General Dan Rayfield filed a securities enforcement action against a leading cryptocurrency exchange, stating that "[t]his lawsuit comes as the SEC recently dropped its case" against the entity and further asserting that "states must fill the enforcement vacuum being left by federal regulators who are giving up under the new administration and abandoning these important cases."

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[1] 15 U.S.C. § 78dd-1, *et seq*.

[2] *United States v. Bautista, et al.*, No. 2:22-cr-00086 (W.D. Pa. Apr. 11, 2025); *United States v. Hobson*, No. 1:23-cr-20434 (S.D. Fla. Apr. 11, 2025).

[3] Cal. Bus. & Prof. Code, § 17200, *et seq*.