PROGRAM MATERIALS
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Navigating the Current FCPA Enforcement Landscape

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Agenda

I. **DOJ's Enforcement Priorities**

II. **Impact on FCPA Enforcement & Alternative Enforcement Mechanisms**

III. **Best Practices for Navigating Anticorruption Investigations**

IV. **Recent Trends**

V. **Q&A**

Eric Nitz

- Eric Nitz handles complex disputes and investigations—mostly white-collar criminal and enforcement matters, but also business disputes—from their earliest stages through appeal.
- Mr. Nitz has helped many clients successfully navigate high profile and politically sensitive investigations, and he has resolved white collar matters confidentially, persuading the government to close an investigation without bringing charges.
- He has won significant victories for clients, both at trial and on appeal.
- Before joining MoloLamken, Mr. Nitz served as a law clerk to the Honorable Joel M. Flaum of the United States Court of Appeals for the Seventh Circuit.

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Ken Notter

- Ken Notter is a trusted advocate for clients facing criminal charges or high-stakes business disputes. He has litigated—and won—at every level of the judicial system, from trial courts to the U.S. Supreme Court.
- In his last two criminal trials, Mr. Notter won a complete acquittal in a high-profile campaign finance prosecution and, most recently, he persuaded the court to dismiss all charges with prejudice after a closely watched fraud trial.
- Before joining MoloLamken, Mr. Notter clerked for the Honorable Jerome A. Holmes of the United States Court of Appeals for the Tenth Circuit and the Honorable Gerald J. Pappert of the United States District Court for the Eastern District of Pennsylvania.

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DOJ's Priorities

Formal Rulemaking

- With a few exceptions, federal law vests "all functions" of the Department of Justice "in the Attorney General." 28 U.S.C. § 509.
- Some statutes specifically authorize the Attorney General to "promulgate regulations." *E.g.*, 42 U.S.C. § 12134(a).
- Under the Administrative Procedure Act, the Attorney General (or a delegated subordinate) may issue formal rules according to the ordinary notice-and-comment procedure. *See* 5 U.S.C. § 553.
- But the Department need not follow the notice-and-comment procedure to issue "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. § 553(b)(4)(A).

The Justice Manual

JUSTICE MANUAL

1-1.100 - Purpose

The Justice Manual publicly sets forth internal Department of Justice (DOJ) policies and procedures.

[updated March 2024]

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Principles of Federal Prosecution

9-27.001 - Preface

These principles of federal prosecution provide federal prosecutors a statement of prosecutorial policies and practices. As such, they should promote the reasoned exercise of prosecutorial authority and contribute to the fair, evenhanded administration of the federal criminal laws.

9-27.220 - Grounds for Commencing or Declining Prosecution

The attorney for the government should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution.

Principles of Federal Prosecution

9-27.230 - Initiating and Declining Charges — Substantial Federal Interest

In determining whether a prosecution would serve a substantial federal interest, the attorney for the government should weigh all relevant considerations, including:

1. Federal law enforcement priorities, including any federal law enforcement initiatives or operations aimed at accomplishing those priorities;
2. The nature and seriousness of the offense;
3. The deterrent effect of prosecution;
4. The person's culpability in connection with the offense;
5. The person's history with respect to criminal activity;
6. The person's willingness to cooperate in the investigation or prosecution of others;
7. The person's personal circumstances;
8. The interests of any victims; and
9. The probable sentence or other consequences if the person is convicted.

Principles of Federal Prosecution

9-27.240 - Initiating and Declining Charges — Prosecution in Another Jurisdiction

In determining whether prosecution should be declined because the person is subject to effective prosecution in another jurisdiction, the attorney for the government should weigh all relevant considerations, including:

1. The strength of the other jurisdiction's interest in prosecution;
2. The other jurisdiction's ability and willingness to prosecute effectively; and
3. The probable sentence or other consequences if the person is convicted in the other jurisdiction.

When declining prosecution, or reviewing whether federal prosecution should be initiated, the attorney for the government should: (1) consider whether to discuss the matter under review with state, local, territorial, or tribal law enforcement authorities for further investigation or prosecution; and (2) coordinate with those authorities as appropriate. The attorney for the government should be especially aware of the need to coordinate with state, local, territorial, and tribal law enforcement authorities, and shall do so as permitted by law, when declining a matter that involves an ongoing threat or relates to acts of violence or abuse against vulnerable victims, including minors. The attorney for the government should document these coordination efforts, where undertaken, when federal prosecution is declined.

Principles of Federal Prosecution

9-27.250 - Non-Criminal Alternatives to Prosecution

In determining whether there exists an adequate, non-criminal alternative to prosecution, the attorney for the government should consider all relevant factors, including:

1. The sanctions or other measures available under the alternative means of disposition;
2. The likelihood that an effective sanction will be imposed;
3. The effect of non-criminal disposition on federal law enforcement interests; and
4. The interests of any victims.

Principles of Federal Prosecution of Businesses

9-28.010 - Foundational Principles of Corporate Prosecution

The prosecution of corporate crime is a high priority for the Department of Justice. By investigating allegations of wrongdoing and bringing charges where appropriate for criminal misconduct, the Department promotes critical public interests. These interests include, among other things: (1) protecting the integrity of our economy and capital markets by enforcing the rule of law; (2) protecting consumers, investors, and business entities against bad actors that gain unfair advantage or cause economic harm by violating the law; (3) preventing violations of environmental and worker safety laws; and (4) discouraging business practices that would permit or promote unlawful conduct at the expense of the public interest.

Evolution

Office of the Attorney General
Washington, D. C. 20530

May 19, 2010

MEMORANDUM TO ALL FEDERAL PROSECUTORS

From: Eric H. Holder, Jr.
Attorney General

Subject: Department Policy on Charging and Sentencing

Office of the Attorney General
Washington, D. C. 20530

December 16, 2022

MEMORANDUM FOR ALL FEDERAL PROSECUTORS

FROM: THE ATTORNEY GENERAL

SUBJECT: GENERAL DEPARTMENT POLICIES REGARDING CHARGING, PLEAS, AND SENTENCING

How DOJ Signals Its Priorities

- Budget requests
- Press releases
- Speeches
- Congressional testimony
- Social media

PRESS RELEASE

Attorney General Bondi Announces Department of Justice Prioritization of Animal Welfare Enforcement

AAG Galeotti's May 2025 Memo

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

May 12, 2025

MEMORANDUM

TO: All Criminal Division Personnel

FROM: Matthew R. Galeotti
Head of the Criminal Division

SUBJECT: Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime[1]

AAG Galeotti's May 2025 Memo

1. Waste, fraud, and abuse
2. Trade & customs fraud
3. Fraud perpetrated through "variable interest entities"
4. Fraud that victimizes U.S. investors
5. Conduct that threatens national security
6. Material support by corporations to foreign terrorist organizations
7. Complex money laundering
8. Violations of the Controlled Substances Act and Federal Food, Drug, and Cosmetics Act
9. Foreign bribery that impacts U.S. national interests
10. Crimes involving digital assets that: (1) victimize investors, (2) advance other criminal conduct, or (3) willfully facilitate significant criminal activity

AAG Galeotti's May 2025 Memo

II. Fairness – Prosecuting Corporations and Individuals

The Criminal Division developed these policies because justice demands the equal and fair application of criminal laws to individuals and corporations who commit crimes. The

The Criminal Division developed these policies because justice demands the equal and fair application of criminal laws to individuals and corporations who commit crimes. The Department's first priority is to prosecute individual criminals. It is individuals—whether executives, officers, or employees of companies—who commit these crimes, often at the expense

III. Efficiency – Streamlining Corporate Investigations

our national security. But federal investigations into corporate wrongdoing can be costly and intrusive for businesses, investors, and other stakeholders, many of whom have no knowledge of, or involvement in, the misconduct at issue. Federal investigations can also significantly interfere

Accordingly, I am directing that prosecutors must move expeditiously to investigate cases and make charging decisions. That means that my office will work closely with the relevant Sections to track investigations and ensure that they do not linger and are swiftly concluded.

2026 Corporate Enforcement Policy

Corporate Enforcement and Voluntary Self-Disclosure Policy[1]

Background

The Department of Justice (Department) is committed to prosecuting corporate criminal conduct firmly, fairly, and efficiently. To do so, the Department seeks to incentivize responsible corporate behavior, encouraging companies to invest in effective compliance programs, voluntarily self-report potential misconduct, meaningfully cooperate with law enforcement, and make good-faith efforts to rectify wrongdoing. This aligns the Department's interest in swift criminal justice with the interests of companies, shareholders, and other stakeholders in good corporate governance and the public's interest in rooting out fraud and misconduct.

2026 Corporate Enforcement Policy

Part I. Declination Under the CEP

The Department is committed to transparently describing the benefits a company may earn through voluntarily self-disclosing misconduct. The Department will decline to prosecute a company for criminal conduct when the following factors[4] are met:

1. The company voluntarily self-disclosed the misconduct to an appropriate Department criminal component.[5]
2. The company fully cooperated with the Department's investigation;
3. The company timely and appropriately remediated the misconduct; and
4. There are no aggravating circumstances related to the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct within the company, severity of harm caused by the misconduct, or corporate recidivism, specifically, a criminal adjudication or resolution either within the last five years or otherwise based on similar misconduct by the entity engaged in the current misconduct.

2026 Corporate Enforcement Policy

Part II. "Near Miss" Voluntary Self-Disclosures or Aggravating Factors Warranting Resolutions

If a company fully cooperated and timely and appropriately remediated but it is ineligible for a declination under Part I of this policy solely because (1) it acted in good faith by self-reporting the misconduct but that self-report did not qualify as a voluntary self-disclosure, as defined in Appendix B, and/or (2) it had aggravating factors that warrant a criminal resolution, the Department shall:

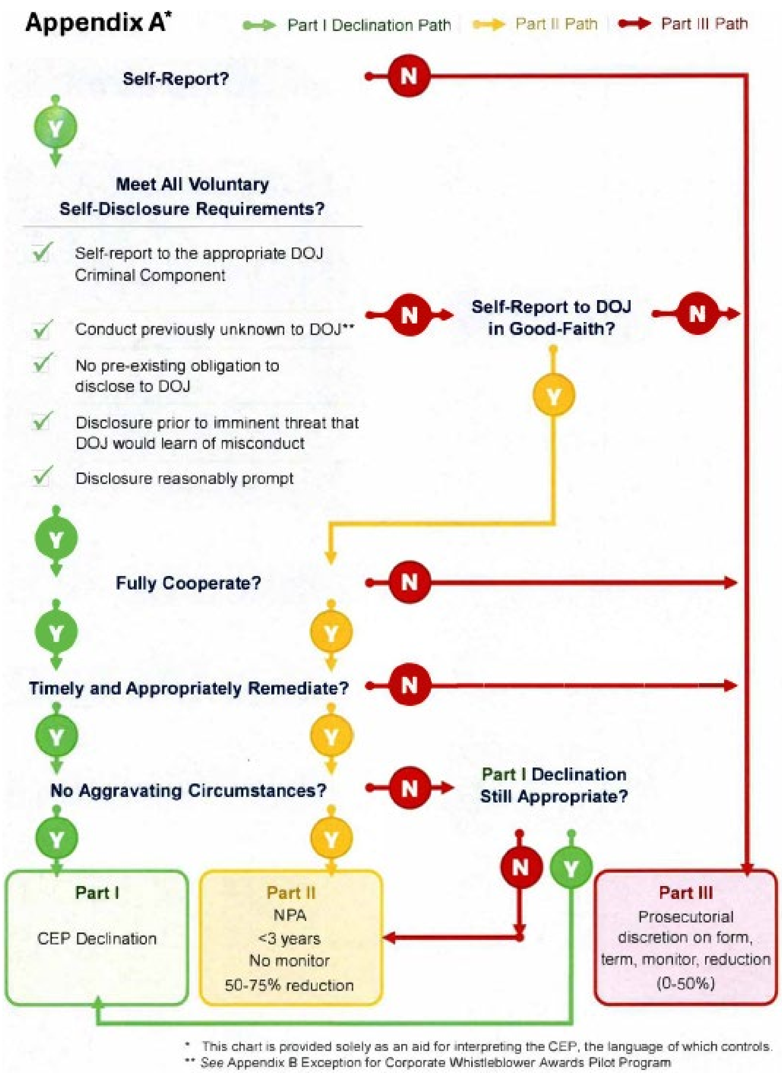
1. Provide a Non-Prosecution Agreement (NPA)—absent particularly egregious or multiple aggravating circumstances;
2. Allow a term length of fewer than three years;
3. Not require an independent compliance monitor; and
4. Provide a reduction of at least 50% but not more than 75% off the low end of the U.S. Sentencing Guidelines (U.S.S.G.) fine range.

2026 Corporate Enforcement Policy

Part III. Resolutions in Other Cases

If a company is not eligible for Part I or Part II set forth above, prosecutors maintain discretion to determine the appropriate resolution including form, term length, compliance obligations, and monetary penalty. With respect to the monetary penalty, the company will not receive, and the Department will not recommend to a sentencing court, a reduction of more than 50% off the fine under the U.S.S.G. Prosecutors will have discretion to determine the specific percentage reduction but there will be a presumption that the reduction will be taken from the low end of the U.S.S.G. range for companies that fully cooperate and timely and appropriately remediate. Otherwise, prosecutors will determine the starting point in the range based on the particular facts and circumstances of the case, including (but not limited to) the company's recidivism.[7] In exercising discretion to determine the monetary penalty, prosecutors will consider the factors under U.S.S.G. § 8C2.8.

2026 Corporate Enforcement Policy



National Fraud Enforcement Division

FACT SHEETS

Fact Sheet: President Donald J. Trump Establishes New Department of Justice Division for National Fraud Enforcement

The White House | January 8, 2026

FCPA Enforcement

Attorney General's Memorandum – Feb. 5, 2025

Office of the Attorney General
Washington, D.C. 20530

February 5, 2025

MEMORANDUM FOR ALL DEPARTMENT EMPLOYEES

FROM: THE ATTORNEY GENERAL

SUBJECT: TOTAL ELIMINATION OF CARTELS AND TRANSNATIONAL CRIMINAL ORGANIZATIONS[1]

Attorney General's Memorandum – Feb. 5, 2025

- Required FCPA Unit to "prioritize" investigations related to "foreign bribery that facilitates the criminal operation" of cartels & Transnational Criminal Organizations ("TCOs")
- Bribery of foreign officials to facilitate human smuggling and narcotics/firearms trafficking
- Suspended the requirement of Criminal Division authorization for FCPA investigations involving cartels and TCOs

The Pause – Feb. 10, 2025

Executive Order – Feb. 10, 2025

- Stated that FCPA enforcement had been “stretched beyond proper bounds” in ways that “harm[] the interests of the United States”

- Punished American businesses for conduct that is routine or normal in other countries, harming American competitiveness

Executive Order – Feb. 10, 2025

- Instituted 180-day pause on FCPA enforcement
- AG required to review pending FCPA enforcement actions
- Issue updated guidance and policies for FCPA enforcement that adequately "prioritize American interests, American competitiveness with respect to other nations, and the efficient use of Federal law enforcement resources."
- Future FCPA enforcement must be approved by AG

The Blanche Memo – June 9, 2025

- Implements overall focus and purpose of promoting and advancing American interests and the interests of American companies

- Four main criteria to consider:
  - Cartels and TCOs
  - Competitiveness for U.S. companies
  - U.S. national security interests
  - Serious misconduct/individual culpability

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

June 9, 2025

MEMORANDUM FOR HEAD OF THE CRIMINAL DIVISION

FROM: THE DEPUTY ATTORNEY GENERAL Todd Blanche

SUBJECT: Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA)[1]

On February 10, 2025, President Trump signed Executive Order 14209, titled *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security* (Feb. 10, 2025) (Order), to ensure that the FCPA is not "stretched beyond proper bounds and abused in a manner that harms the interests of the United States," used "against American citizens and businesses . . . for routine business practices in other nations," or enforced in a manner that "harms American economic competitiveness and, therefore, national security." Order, § 1. The Order directs the Department of Justice (Department), through the Attorney General, for a period of 180 days, to "(i) cease initiation of any new FCPA investigations or enforcement actions, unless the Attorney General determines that an individual exception should be made; (ii) review in detail all existing FCPA investigations or enforcement actions and take appropriate action with respect to such matters to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives; and (iii) issue updated guidelines or policies [governing investigations and enforcement actions under the FCPA], as appropriate, 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." *Id.* § 2.

This memorandum establishes guidelines to ensure that FCPA investigations and prosecutions are carried out in accordance with President Trump's directive by (1) limiting undue burdens on American companies that operate abroad and (2) targeting enforcement actions against conduct that directly undermines U.S. national interests. Effective today, prosecutors shall focus on cases in which individuals have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures; proceed as expeditiously as possible in their investigations; and consider collateral consequences, such as the potential disruption to lawful business and the impact on a company's employees, throughout an investigation, not only at the resolution phase.

[1] This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any person.

Cartels and TCOs

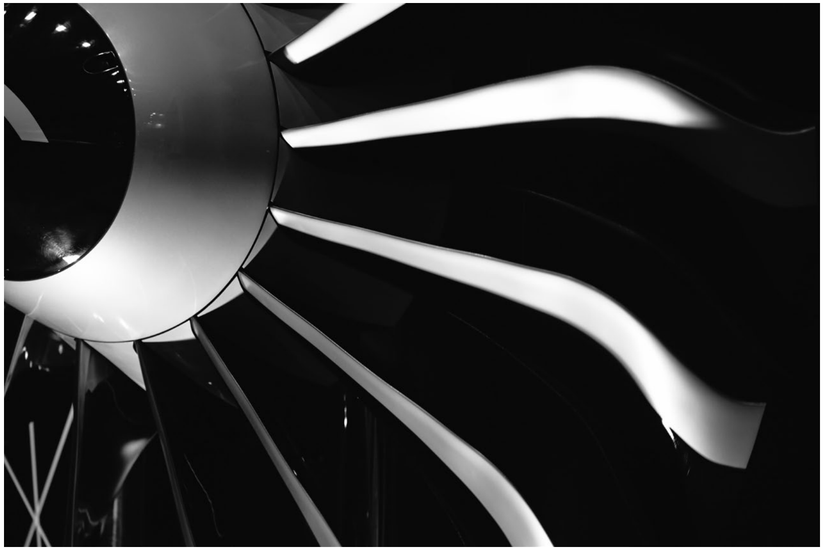
- Focus FCPA enforcement on foreign bribery by cartels or transnational criminal organizations, including money launderers and transactions involving shell companies
- Focus on foreign officials who accept bribes from cartels and TCOs
- Orient FCPA work toward the goals outlined in February 5, 2025 Bondi Memo

Competitiveness for U.S. Companies

- Focus on conduct that causes economic injury to U.S. persons competing in the international market
- Identifying and prioritizing individuals or companies that skew markets and disadvantage law-abiding U.S. companies
    - Focus is on the victim, **NOT** nationality of target
- Specific and identifiable U.S. entities who are denied fair access to compete or injured economically by the misconduct
- Use FEPA to target foreign officials who shake down U.S. companies

Threatens National Security

- Focus on international corruption in sectors like defense, intelligence or critical infrastructure where corruption can threaten or impair American national security interests



Strong Indicia of Corruption

- Focus on high-value bribes, the use of sophisticated efforts to conceal the payments, or other fraudulent conduct or obstruction of justice
- Increased focus on "individuals" – specific bad actors responsible for the misconduct rather than focusing on the company as a whole
- Greater focus on cases foreign authorities are unwilling to pursue
- More expansive view of "grease payments" and less focus on routine (in the foreign market) business practices or de minimis payments

Practical Consequences

- Head of the Criminal Division (or above) must approve all new FCPA enforcement actions
- Fewer FCPA enforcement actions
- De-white-collar-ification of FCPA
- Greater receptivity to reports by American companies who feel harmed by foreign corruption
- Greater receptivity to arguments that payments were "grease payments" or are otherwise necessary to effectively compete in foreign market

Alternatives to FCPA Enforcement in U.S.

- State attorneys general
  - Unfair competition laws
    - Cal. Bus. & Prof. Code 17200 *et seq.*
    - N.Y. Gen. Bus. L. 349(a)
  - California AG Rob Bonta Legal Advisory – April 2, 2025
- Private Plaintiffs
  - Securities fraud suits (15 U.S.C. 78j)
  - RICO (18 U.S.C. 1961-1968)
  - *Qui tam* actions under False Claims Act (31 U.S.C. 3729)

Alternative Enforcement: Foreign Regulators

SFO serious fraud office

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Navigating the Landscape

Priorities Matter

- The Department of Justice has clear priorities right now: cartels, immigration, health care fraud, and tariff evasion.
- FCPA cases generally are not a priority, but individual cases may be if they implicate other priorities.
- Identifying where a case falls on the spectrum of the Department's priorities will inform later strategic decisions.

Remember the Statute of Limitations

- The FCPA uses the five-year "catch all" provision in 18 U.S.C. §3282 (criminal) and 28 U.S.C. §2462 (civil).
- But remember prosecutors can toll the limitations period while seeking evidence located in a foreign country. 18 U.S.C. §3292
- And if prosecutors charge a conspiracy, the limitations period starts only with the *last* overt act in furtherance of the conspiracy. *See Fiswick v. United States*, 329 U.S. 211 (1946).

Remember the Statute of Limitations

119TH CONGRESS
2D SESSION

S. ______

To reinforce the Foreign Corrupt Practices Act of 1977 by establishing a limitations period of 10 years for antibribery offenses, and for other purposes.

A BILL

To reinforce the Foreign Corrupt Practices Act of 1977 by establishing a limitations period of 10 years for antibribery offenses, and for other purposes.

Consider Self-Disclosure

- Department policy rewards self-disclosure and prosecutors may be more inclined to offer a declination in the current environment.
- Examine the new Department-wide Corporate Enforcement Policy as clients may qualify for an automatic declination.
- Robust compliance programs are key to securing leniency, even with self-disclosure.

Consider Self-Disclosure

U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

June 15, 2026

By E-Mail

Christopher Steskal, Esq.
Melissa Duffy, Esq.
Robert Slack, Esq.
Fenwick & West LLP
1155 F Street NW
Washington, DC 20004

Re: Robert Bosch GmbH

Dear Counsel:

Consistent with the Department of Justice's Corporate Enforcement and Voluntary Self-Disclosure Policy ("CEP")[1] and the National Security Division's messaging on Reporting Voluntary Self-Disclosures of Violations of National Security Laws Under the Department-wide Corporate Enforcement Policy,[2] the Department of Justice, National Security Division Counterintelligence and Export Control Section ("CES" or the "Government") has decided to decline prosecution of your client, Robert Bosch GmbH ("Bosch" or the "Company"), for potential violations of the Export Control Reform Act, 50 U.S.C. § 4819. Based on the information that we have learned to date, we agree to close our inquiry into this matter pursuant to the terms set forth in this agreement.

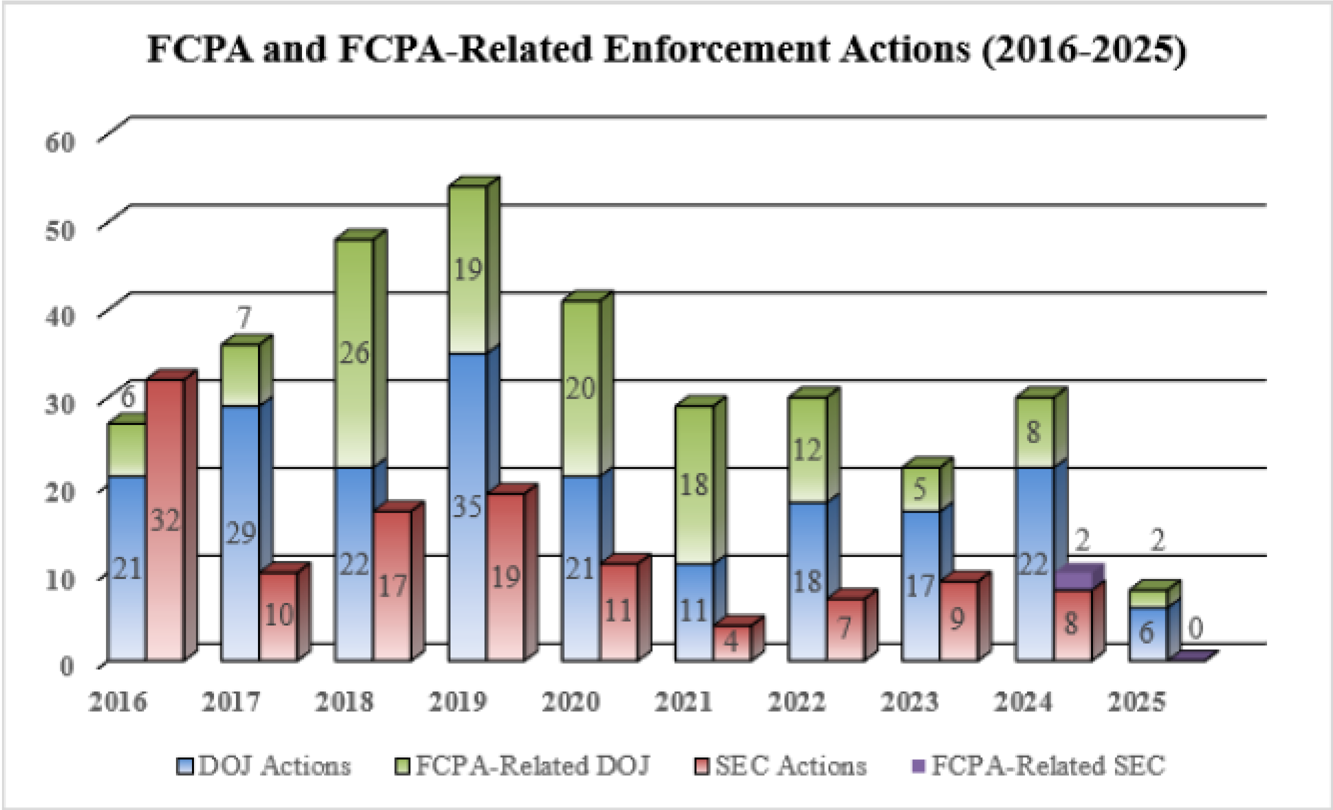
Use New Tools Creatively but Responsibly

Don’t Forget the Basics

- Trust is earned, and it is a two-way street.
- Preserve, preserve, preserve.
- Set clear expectations and act promptly.

Recent Developments

FCPA Enforcement in 2025: By the Numbers



Source: Gibson Dunn

DOJ Review of FCPA Cases

- Cases dropped or curtailed
  - Indictment of two Cognizant executives dismissed
  - Glencore monitorship terminated
  - Early dismissal of informations, DPAs, & NPAs
- Other individual prosecutions proceeding

Liberty Mutual

- August 7, 2025 "declination" letter
  - Declined prosecution "despite evidence of bribery committed by certain employees"
- "Disgorgement" resolution – $4.7 million in profits
- Declination was based on the factors set forth in Criminal Division's Corporate Enforcement and Disclosure Policy, revised May 2025

Indictment of Ramon Rovirosa Martinez

- First FCPA action after DOJ's "pause"
- Indicted and convicted for paying bribes to obtain contracts from PEMEX officials
- Motion on pretrial release alleged Rovirosa has "ties to Mexican cartel members"

TIGO Guatemala DPA

- TIGO paid $118 million and entered two-year DPA
- Alleged to have paid cash bribes to Guatemalan legislators
- Banker who helped generate cash for bribes also laundered money for cartels

Conviction of Charles Hunter Hobson

- Paid bribes to Egyptian government officials in exchange for receiving $140 million in coal supply contracts for Corsa Coal Corp.
- Significant indicia of corruption
- Sophisticated means of concealment, mechanisms for paying bribes and kickbacks

Conviction of Carl Zaglin

- Paid bribes to Honduran officials to secure contracts for Georgia-based supplier of law enforcement uniforms
- Significant indicia of corruption
- Sophisticated means of concealment, mechanisms for paying bribes

Balt SAS, David Ferrera, and Marc Tilman

- Scheme by French medical device company to bribe physicians at a state-owned hospital
- Balt SAS received a declination and paid disgorgement of $1.2 million
- Ferrara and Tilman – Balt executives – charged in California

Questions?

For questions, please contact us at:

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knotter@mololamken.com

The Legal 500

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