

Alert | White Collar Defense & Special Investigations



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FCPA Enforcement: What to Expect in 2021 (White Collar Insights - 2021 Outlook Series - Part 1)

Over the last two decades, U.S. Foreign Corrupt Practices Act (FCPA) enforcement has steadily increased regardless of the political climate or administration in power. FCPA penalties and settlements hit record highs during the last four years, with 2020 and 2019 being the two largest years ever for FCPA enforcement in terms of total penalty amounts. The two previous years were also in the top ten.

We anticipate that the incoming Biden administration will actively pursue enforcement of financial crimes, corporate fraud prosecutions, and increased regulatory oversight. Financial and economic crises, such as the current conditions caused by the COVID-19 pandemic, generally increase corruption. Given the new administration and economic backdrop, we expect a continued increase in FCPA enforcement in the coming years.

Three FCPA enforcement trends will likely continue during the Biden administration:

1. Large Corporate Settlement Amounts

We continue to see a trend towards large corporate FCPA settlement amounts. In 2019, corporate FCPA enforcement set an all-time high with over \$2.65 billion in penalties. Additionally, that year, the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) imposed the two

largest FCPA corporate penalties, including the first billion-dollar settlement in FCPA history. In 2020, corporate FCPA enforcement has already eclipsed the 2019 record for enforcement penalties, and recently a new settlement set the record for the largest single FCPA penalty. Similarly, this year, the DOJ and the SEC announced the largest global anti-corruption settlement in history.

While the total number of FCPA cases per year has remained stable over the last decade and a half, the individual corporate penalties have certainly increased. Almost 90% of the 50 largest FCPA corporate settlements have occurred in the last decade. Even more remarkably, nearly half of the 50 largest FCPA corporate settlements have occurred in just the last four years. The trend towards larger corporate settlement amounts does not appear to be slowing.

2. Continued Multi-Jurisdictional Coordination in FCPA Cases

In recent years, we have seen more multi-jurisdictional FCPA cases. Foreign countries are increasingly adopting and enforcing their own anti-corruption laws similar to the FCPA. Foreign countries are also starting to appreciate the benefits of cooperating with the DOJ and SEC in FCPA cases. Since 2018, foreign governments in Latin America alone have received over \$1 billion in penalties from FCPA investigations. Earlier this year, two European countries received over \$3 billion in settlement amounts related to an FCPA investigation of a European-based company.

Multi-jurisdictional cases are clearly a priority for the DOJ and SEC. During recent public [remarks](#), Acting Assistant Attorney General Brian C. Rabbitt noted that “many of [the DOJ’s] corporate resolutions in 2020 included coordination with one or more foreign enforcement authorities — an increasingly important aspect of our work.” With the recent rise of these cases, as well as the potential geopolitical and financial benefits of cross-border cooperation, we expect to see more multi-jurisdictional cases in future years.

3. Increased Individual Enforcement

The DOJ has also increased individual FCPA enforcement in recent years. As Acting Assistant Attorney General Rabbitt stated, “[e]nsuring individual accountability for corporate wrongdoing has been a hallmark of our white-collar work in recent years, and 2020 was no exception.” The last three years have seen record individual enforcement related to FCPA matters.

Recently, the DOJ charged numerous individuals with non-FCPA charges resulting from both corporate and individual FCPA investigations. Charging individuals with FCPA-related crimes has become more common. First, charging individuals with financial crimes, such as money laundering and wire fraud, is often easier than charging and proving FCPA violations. Second, utilizing FCPA-related financial crimes allows the DOJ to punish bribe facilitators and foreign official bribe recipients, who otherwise could not be charged with direct FCPA violations. Again, we anticipate the DOJ will continue to utilize these enforcement techniques in future years.

Conclusion

As we begin a new year and a new administration, we expect to see an increase in FCPA enforcement. While we do not anticipate a noticeable rise in the number of cases settled in the coming year, the trend of large corporate settlements will likely remain. Additionally, with the U.S. government and foreign governments understanding the importance and the benefits of cross-border cooperation, we expect more multi-jurisdictional FCPA matters in coming years. Finally, as the U.S. government maintains focused on

individual accountability and has discovered the efficacy of using FCPA-related crimes in FCPA investigations, we believe that individual enforcement will also continue to likely rise.

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