

Businesses in Louisiana and Texas Could Benefit from a New Policy on Enforcement of International Business Bribery Rules

Author: Kurt Stanberry

Kurt Stanberry serves as Professor of Business Law and Ethics in the Marilyn Davies College of Business at the University of Houston Downtown. He has also held visiting international positions in London, Bonn, Tokyo, and Seoul. He holds a BA from Yale University, an MBA from the Temple University Fox Graduate School of Business, and a JD from the University of Houston Law School. He has co-authored two recent textbooks for OpenStax at Rice University: Entrepreneurship (2020) and Business Ethics (2018). He has also published numerous articles in peer-reviewed academic journals. Kurt is a licensed Texas attorney.

Abstract:

This is a policy paper analyzing the effect of a recent change in government policy related to international business bribery. It specifically addresses a new Executive Order on a modified enforcement approach for the Foreign Corrupt Practices Act. Of particular interest is the potential benefit to businesses located in Louisiana and Texas because of the relatively high percentage of these businesses which are involved in international transactions.

Key Phrases: International Business, Bribery, Louisiana-Texas economy

Introduction

A new development in government policy related to business bribery could potentially benefit thousands of U.S. companies involved in international transactions, including many in the Louisiana/Texas region. On February 10, 2025, President Trump signed an executive order that directs the Department of Justice (DOJ) to temporarily stop enforcement of the Foreign Corrupt Practices Act (FCPA), the law that prohibits American companies from bribing officials of foreign officials.

The new executive order directs the DOJ, and U.S. Attorney General, to propose revised FCPA enforcement guidelines. Likely this executive order means new and/or amended rules will be implemented that will be more flexible in allowing U.S. companies to effectively compete for international business.

Louisiana and Texas would be two of the states that could benefit the most from a new and/or revised enforcement policy because they have a very significant number of firms involved in international business. According to the Office of the U.S. Trade Representative (USTR), Texas was the largest state exporter of goods in the U.S. in 2023, and Louisiana was the third largest.

Problem Statement

There is an ongoing debate about the appropriate level of enforcement of the FCPA against U.S. companies doing business in foreign countries. Should the U.S. remain the world's most stringent enforcer of antibribery policies or dial back on the rigid enforcement policies that have been in effect? The Trump administration has decided to implement a temporary 180-day halt in enforcement of the FCPA, especially criminal prosecutions. The pause is being implemented to study how best to avoid putting U.S. businesses at a relative economic disadvantage compared to foreign competitors. According to the current administration, strict enforcement of the FCPA hurts U.S. companies and the economy, with White House officials explaining that a pause in enforcement is necessary to better understand how to streamline the FCPA to make sure it's in line with economic interests, and national security. The law puts U.S. firms at a disadvantage to overseas rivals because they can't engage in practices that are common among international competitors, according to the White House.

The FCPA has a recent twenty-year history of being vigorously enforced, with both individuals and corporations facing criminal prosecutions under the law. FCPA violators face a possible criminal sentence of up to 15 years in prison, as well as very significant fines. The DOJ in 2024 pursued enforcement actions in 24 FCPA criminal cases, but this number could be drastically reduced under the revised provisions. The FCPA civil penalties can also be significant and are enforced by the SEC (Securities and Exchange Commission). For example, a unit of Goldman Sachs pleaded guilty in 2020 over its bankers' involvement in a bribery probe and paid \$2.9 billion to settle the charges.

Criticism of the FCPA isn't coming only from the White House, U.S. businesses and their lawyers have for many years asserted that U.S. enforcement was far more vigorous in targeting overseas corruption than are their counterparts in Europe, Asia and elsewhere.

Overview of Antibribery Provisions

Passed by Congress in 1977, the FCPA was intended to prevent American firms from being part of public corruption problem that undermined the rule of law in many nations all over the world. The FCPA prohibits Americans from paying bribes to foreign officials. The broadly written law applies not only to direct bribes that are paid, but also to bribes that are offered or planned or authorized by a company's management.

The FCPA has two main provisions, the anti-bribery rules and accounting rules related to discovering bribery. The anti-bribery provisions prohibit individuals and businesses from offering or paying "anything of value" to foreign officials to gain business. That includes indirect bribes where a payment is made to someone who knows it will be passed on to a foreign official

Regulatory compliance with FCPA regulations is an expensive undertaking for U.S. companies. This includes costs related to employee training, accounting software, and professional services such as attorneys and accountants. For companies that encounter potential violations,

investigations often take years and involve dozens of lawyers and CPAs in the U.S. and overseas. U.S. companies often end up spending millions of dollars on internal investigations.

Review of Data: Why Businesses in Louisiana and Texas Would Benefit

The USTR, responsible for developing and implementing trade policies to promote economic growth and create opportunities for U.S. businesses, also collects detailed state-specific trade data. The USTR current data indicates that in 2023, Louisiana exported over \$100 billion of goods to the world, and exports from Louisiana supported approximately 160,000 jobs. Related data indicates that exports accounted for almost one-third (32.4%) of Louisiana GDP in 2023.

Furthermore, small and mid-sized companies (SME) are helped very significantly by international trade. Over 3,500 companies exported goods from Louisiana locations in 2023, and of those, over 3,000 were small and medium sized enterprises (84%) with fewer than 500 employees.

A similar scenario exists in Texas, where the state exports almost \$450 billion of goods to the world, and exports support an estimated 1.0 million jobs. Texas was the nation's largest state exporter of goods, as of 2023.

As in Louisiana, exports sustain thousands of Texas businesses many of which are SMEs. Approximately 40,000 companies export from Texas locations, and of those, over 90% were small and medium sized enterprises with fewer than 500 employees.

Based on this USTR data, a new direction for U.S. enforcement policy might help many small and mid-size businesses as well as large corporations. The state economies of Louisiana and Texas are likely to benefit from policies that facilitate international trade such as a more relaxed approach to enforcement of the FCPA because it will increase their ability to compete with foreign companies.

Broad Support for Changes

Among the reasons for the calls for relaxed enforcement of the FCPA are case examples where U.S. businesses are punished for doing exactly what their competitors routinely do without punishment in their home country.

Criticism of the law has been bipartisan. For example, Democratic Senators Amy Klobuchar (D., Minn.) and Chris Coons (D., Conn.) are on record as saying the law is too vague about what may lead to a FCPA charge. Klobuchar and Coons have said some companies were targeted for a relatively harmless activity, like buying lunches.

The law broadly defines what types of gifts may trigger a violation as anything of value, so it may include not only cash payments, but also non-cash gifts or other benefits, including travel, meals, entertainment, education, training, scholarships, internships, employment, conference and event scholarships, and even charitable donations.

The question is whether U.S. businesses should be prohibited from doing what their competitors do? A survey conducted by the international accounting and consulting firm KPMG found that while 80 percent of respondents agreed that anti-corruption laws may be good in theory, almost 60% said that in the real-world bribery is an accepted way of doing business in many countries.

Businesses are also critical of the FCPA law as hypocritical considering the American practice of legally allowing large ‘donations’ to the campaigns of politicians running for office, who may then make decisions and cast votes on laws affecting those same businesses.

Conclusion

The recent shift in policy regarding the FCPA could reduce the number of cases pursued by U.S. authorities. After the Executive Order was issued, Attorney General Pam Bondi issued a memo stating that the Justice Department’s FCPA unit will prioritize cases involving cartels and transnational criminal organizations, rather than U.S. companies.

One might reasonably conclude that the recent rigid enforcement of the law is likely to be replaced by a more modest approach, one that business owners and executives prefer. History shows us that while the FCPA has been the law for almost fifty years, over the past twenty years enforcement has increased. A return to the more modest enforcement approach of the 1970’s - 1990’s is almost certain to follow the President’s Executive Order. If that does indeed come true, it portends well for that segment of the economy of the Louisiana-Texas region involved in international trade.

References

Bose, N., 6/20/2019. *Walmart to pay \$282 million to settle seven-year global corruption probe*, Reuters, [https://www.reuters.com/article/business/walmart-to-pay-282-million-to-settle-seven-year-global-corruption-probe-idUSKCN1TL27I/#:~:text=WASHINGTON%20\(Reuters\)%20%2D%20Walmart%20Inc,U.S.%20Foreign%20Corrupt%20Practices%20Act.](https://www.reuters.com/article/business/walmart-to-pay-282-million-to-settle-seven-year-global-corruption-probe-idUSKCN1TL27I/#:~:text=WASHINGTON%20(Reuters)%20%2D%20Walmart%20Inc,U.S.%20Foreign%20Corrupt%20Practices%20Act.)

Foreign Corrupt Practices Act of 1977, (FCPA) (15 U.S.C. § 78dd-1, et seq.)

KPMG, 2023, *Global Compliance Risk Benchmarking Survey*, <https://kpmg.com/us/en/articles/2023/2023-global-compliance-risk-benchmarking-survey.html>

Michaels, D., 2/11/2015. President Backs Off Enforcing Corporate Bribery Law, *Wall Street Journal*, <https://www.cnbc.com/2025/02/10/trump-doj-foreign-corrupt-practices-act-pause.html>

Office of the United States Trade Representative, State Benefits of Trade, Texas, <https://ustr.gov/map/state-benefits/tx>

Office of the United States Trade Representative, State Benefits of Trade, Louisiana,
<https://ustr.gov/map/state-benefits/la>

Strom, R. 2/13/2025. *Trump Bribery Order Threatens Big Law Anti-Corruption Practices*,
Bloomberg Law, <https://news.bloomberglaw.com/business-and-practice/trump-bribery-order-threatens-big-law-anti-corruption-practices>