



President Trump's 2012 criticism of the Foreign Corrupt Practices Act (FCPA) is well-documented.

At the time, news outlets reported that business mogul Trump commented on Wal-Mart's alleged facilitation payments in Mexico to obtain various licenses and permits, opining that FCPA was a "horrible law and it should be changed," and adding that it put U.S. businesses at a "huge disadvantage." Trump went on to say, "[w]e are like the policemen for the world, it's ridiculous." **FCPA Under Previous Administrations** The FCPA was enacted nearly 40 years ago, but its enforcement only really began under President George W. Bush. The Obama administration stepped up enforcement further, opening more FCPA cases than all prior administrations combined. While the DOJ under Obama averaged 12 corporate FCPA resolutions each year from 2011 to 2015, 2016 was a record year for FCPA enforcement with a record [25 corporate resolutions](#) and \$2.43 billion in corporate fines and penalties collected by the DOJ and the SEC. **The FCPA Under President Trump** Looking

at President Trump's first 100 days in office, one could argue that his views from 2012 have not changed. For example, in February, Republican lawmakers invoked the Congressional Review Act to kill a rule that would have required oil, gas and mining companies listed on U.S. stock exchanges to disclose how much they paid to foreign governments. President Trump signed this measure. Moreover, Trump's new head of the Securities and Exchange Commission (SEC), Jay Clayton, was part of a committee that wrote a [paper](#) in 2011 criticizing the FCPA that nearly echoed President Trump's 2012 statements. The paper, which was submitted by the International Business Transactions Committee of the New York City Bar, called the United States' current enforcement of the law "unilateral and zealous," recommended "the reevaluation of the United States' strategy in fighting foreign corruption," and questioned the direct and indirect costs of continued enforcement efforts. Finally, Kara Brockmeyer, Chief of the SEC's FCPA Unit for the past six years, announced earlier this month that she was leaving the agency. While departures like this are not always newsworthy, the fact that President Trump has been slow to fill top enforcement agency positions simply heightens uncertainty as to whether the FCPA will be a priority for this administration. While pre-candidate Trump had critical words for the FCPA, and some of his early actions may indicate that the FCPA will not be a priority of this administration, recent speeches by DOJ Acting Principal Assistant Attorney General Trevor McFadden may indicate otherwise. At the 10th Anti-Corruption, Export Controls & Sanctions Compliance Summit in Washington, D.C. on April 18, 2017, [McFadden stated](#) unequivocally that "the department remains committed to enforcing the FCPA and to prosecuting fraud and corruption more generally." McFadden emphasized that the department would continue "to prioritize prosecutions of individuals," noting that Attorney General Sessions has highlighted "the importance of individual accountability for corporate misconduct." His speech emphasized the importance of voluntary self-disclosures, cooperation and remedial efforts. McFadden also highlighted the DOJ's "concerted effort to move corporate investigations expeditiously," stating that his intent was "for our FCPA investigations to be measured in months, not years." McFadden's public statements convey continued commitment to FCPA enforcement. His statements also reaffirmed the importance of cooperation, and the role individuals play in FCPA prosecutions, consistent with the FCPA Pilot Program and Yates memo. The FCPA Pilot Program, which has been the subject of prior [posts](#), was rolled out in April 2016, and offers companies a path to potentially avoid FCPA sanctions by self-disclosing a violation, cooperating fully, and remediating their problems. Full cooperation could sharply reduce penalties, and in cases where the company does everything right, the DOJ might decline to prosecute. In fact, several prominent companies have recently received [declinations](#) from the DOJ. **Enforcing the FCPA Aligns With President Trump's Campaign Message** Candidate Trump campaigned on the slogan "Make America Great Again." He vowed, among other things, to negotiate fair trade deals and to level the playing field for U.S. companies doing business abroad. Arguably, aggressively enforcing the FCPA is consistent with these goals. As McFadden stated in his speech, "FCPA prosecutions are intended to level the playing field for honest businesses that are undercut by businesses that engage in corrupt behavior." In fact, aggressive enforcement of the FCPA has resulted in large monetary settlements, with seven of the ten largest FCPA settlements levied against foreign companies. There is anecdotal evidence that America's commitment to the FCPA applies pressure on other countries to strengthen their own anti-corruption laws and increase their level of prosecutions, further leveling the playing field for U.S. companies abroad. In his speech, McFadden highlighted the department's role in "encouraging and assisting other regulators around the world to fight corruption where it arises," noting that "[c]ountries around the world have strengthened their domestic laws and central authorities, and have increasingly prioritized anti-corruption prosecutions." Countries like China, which candidate Trump singled out in his campaign, have recently taken steps to update their commercial bribery and unfair competition laws. **Conclusion** While Trump's historical statements and some of President Trump's actions during his first 100 days imply a departure from the Obama administration's enforcement of the FCPA, McFadden's statements signify maintenance of the status quo. As in many areas, it is difficult to predict what the Trump administration will do, but there are signs that FCPA will not drop from the enforcement radar.

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