



White Collar, Government & Internal Investigations ADVISORY ■

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Expanding U.S. Prosecutors' Anti-Corruption Toolkit: FEPA Is Signed into Law

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On December 22, 2023, President Biden signed into law the Foreign Extortion Prevention Act (FEPA), which was passed by the U.S. Congress as part of the National Defense Authorization Act for Fiscal Year 2024.

FEPA addresses the “demand side” of foreign bribery, making it unlawful for a foreign official “to corruptly demand, seek, receive, accept, or agree to receive or accept, directly or indirectly, anything of value” from any person while in the territory of the United States, any issuer of U.S.-listed securities, or any U.S. “domestic concern” in exchange for performing or omitting to perform any official act or otherwise conferring an improper business advantage. Offenders may face up to 15 years of imprisonment, fines up to \$250,000 or three times the value of the bribe received, or both.

FEPA and the FCPA

The U.S. Foreign Corrupt Practices Act (FCPA) has long addressed the “supply side” of foreign bribery, prohibiting U.S. persons and entities from offering bribes to foreign officials. By targeting foreign officials who receive such bribes, FEPA significantly enhances U.S. prosecutors’ ability to pursue such officials, something that had been typically accomplished only through the use of FCPA-adjacent U.S. statutes, such as those prohibiting money laundering.

FEPA does not amend the FCPA, but rather adds “foreign officials” to the class of persons covered by the statute prohibiting bribery of domestic public officials, 18 U.S.C. § 201. FEPA’s definition of “foreign official” closely follows that of the FCPA but expands upon it to include (1) “senior foreign political figures” (including senior executives of foreign state-owned enterprises); and (2) individuals acting in official *and unofficial* capacities for, or on behalf of, governments, departments, agencies, instrumentalities, or public international organizations. FEPA’s jurisdictional contours also align with those of the FCPA, requiring a U.S. nexus in the form of conduct occurring in the United States or bribes solicited from U.S.-listed companies (“issuers”) or “domestic concerns,” such as U.S. citizens and non-issuer U.S. companies.

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Key Takeaways

FEPA is yet another reflection of the U.S. government's elevation of anti-corruption enforcement to a matter of national security. While the U.S. Department of Justice may find that it faces logistical and diplomatic challenges in enforcing FEPA, particularly when the targeted foreign official sits beyond the reach of U.S. courts, U.S. prosecutors are not unfamiliar with such challenges and have shown an ability to successfully navigate them in previous FCPA-related cases.

FEPA's enactment, along with the Biden Administration's continued focus on foreign corruption, suggest that companies should prepare for increased U.S. anti-corruption enforcement activities, including by reviewing and updating their anti-bribery/anti-corruption compliance programs, supplementing training for those officers and employees who may interact with a now more expansively defined universe of foreign officials, and ensuring that third-party due diligence is yet further intensified to identify and assess any involvement with or related to this broader universe of foreign officials.

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