SmartSuite

Framework / Risk Management / Other

U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §§ 78dd-1, et seq.) with the DOJ/SEC Resource Guide, Second Edition (2020)

The FCPA (15 U.S.C. §§ 78dd-1 to 78dd-3, 78m(b)) prohibits corrupt payments to foreign officials to obtain or retain business and requires issuers to keep accurate books and controls.



What it is

The Foreign Corrupt Practices Act of 1977 (FCPA), 15 U.S.C. §§ 78dd-1 to 78dd-3 and 78m(b), is the U.S. federal law that prohibits issuers, domestic concerns and persons acting in U.S. territory from corruptly paying or offering anything of value to a foreign official to obtain or retain business, and that requires issuers to keep accurate books and records and adequate internal accounting controls. It was enacted on December 19, 1977 (Pub. L. 95-213) and amended in 1988 (Pub. L. 100-418) and 1998 (Pub. L. 105-366).

The anti-bribery provisions sit in three parallel sections: § 78dd-1 for issuers, § 78dd-2 for domestic concerns and § 78dd-3 for other persons acting within the United States. Each contains an exception for facilitating payments for routine governmental action (§ 78dd-1(b)) and two affirmative defenses: payments lawful under the foreign country's written law, and reasonable and bona fide expenditures such as travel and lodging (§ 78dd-1(c)).

At a glance

PUBLISHER U.S. Congress; enforced by the Department of Justice and the Securities and Exchange Commission	TYPE Regulation	VERSION 15 U.S.C. §§ 78dd-1 to 78dd-3 and 78m(b), as amended 1988 and 1998; DOJ enforcement guidelines of June 9, 2025
EFFECTIVE December 19, 1977	DOMAIN Risk Management	FAMILY Other
REGION United States	ADOPTION MODEL Regulatory Compliance	IMPLEMENTATION COMPLEXITY High

Source: justice.gov/criminal/criminal-fraud/foreign-corrupt-practices-act

Why it matters

- **Clear statutory lines** The anti-bribery elements, the routine governmental action exception in § 78dd-1(b) and the affirmative defenses in § 78dd-1(c) give the program concrete tests for gifts, hospitality and third-party payments.
- **Accounting discipline** § 78m(b)(2)(A) and (B) require books and records in reasonable detail and internal accounting controls that give reasonable assurances, the same controls that serve financial reporting.
- **Third-party coverage** Payments made indirectly through intermediaries fall within § 78dd-1(a)(3) when the company knows that all or part of the value will go to a foreign official.
- **A documented program as evidence** The Resource Guide's Hallmarks of Effective Compliance Programs and the DOJ ECCP are the benchmarks prosecutors and the SEC apply to a program.

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How SmartSuite supports FCPA

FCPA Provisions and Hallmarks Library

Load the anti-bribery provisions, the § 78dd-1(b) exception and (c) defenses, the § 78m(b)(2) accounting provisions and the eleven Resource Guide hallmarks as requirements with owners and evidence.

Gifts, Hospitality and Payment Approvals

Route gifts, travel, entertainment, donations and facilitating-payment requests through approvals that test the § 78dd-1(b) and (c) conditions and record the decision.

Third-Party and Intermediary Due Diligence

Use Third Party Risk Management to assess agents, distributors, consultants and joint venture partners, record red flags and renewals, and link contracts with anti-corruption terms and audit rights.

Books and Records Control Testing

Plan tests of the § 78m(b)(2)(B) internal accounting controls with Internal Audit Management, attach results and track remediation of recording and authorization failures.

Investigations and Self-Disclosure Decisions

Manage allegations, investigation scope, findings and the 2025 guideline factors for each matter, with the record counsel needs for disclosure decisions.

Board and Regulator Reporting

Report by provision, region and third-party tier on program status, open investigations and remediation for the board, auditors and counsel.

Common framework mappings

UK Bribery Act 2010 · DOJ ECCP · USSG §8B2.1 · SOX · COSO IC 2013 · COSO ERM 2017 · ISO 31000:2018 · OCEG Red Book 3.5 · IIA Three Lines Model · ISO 37301:2021

Official resources

DOJ: Foreign Corrupt Practices Act

The Criminal Division's FCPA page describing the anti-bribery and accounting provisions, covered persons, and the 1998 amendments.

justice.gov/criminal/criminal-fraud/foreign-corrupt-practices-act

DOJ: FCPA Resource Guide

The page for A Resource Guide to the U.S. Foreign Corrupt Practices Act, Second Edition (July 2020), with the Spanish edition and the December 2024 addendum.

justice.gov/criminal/criminal-fraud/fcpa-resource-guide

A Resource Guide to the U.S. FCPA, Second Edition (PDF)

The joint DOJ and SEC guide covering the statute, enforcement principles, compliance program hallmarks, penalties, and the opinion procedure.

justice.gov/criminal/criminal-fraud/file/1292051/dl

DOJ: FCPA statutes and regulations

The Criminal Division's page linking the statutory text of the FCPA and related regulations.

justice.gov/criminal/criminal-fraud/statutes-regulations

Frequently asked questions

Who is covered by the FCPA's anti-bribery provisions?

Three sections cover three groups: § 78dd-1 applies to issuers, meaning companies with securities registered under § 78l or reporting under § 78o(d), including foreign issuers; § 78dd-2 applies to domestic concerns, meaning U.S. citizens, nationals and residents and businesses organized under U.S. law or with their principal place of business in the United States; and § 78dd-3 applies to any other person who acts in furtherance of a corrupt payment while in U.S. territory. Officers, directors, employees, agents and stockholders acting on behalf of a covered entity are covered too.

Do the accounting provisions apply even if no bribe is paid?

Yes. § 78m(b)(2)(A) and (B) require every issuer to keep books, records and accounts that in reasonable detail accurately and fairly reflect its transactions and to maintain internal accounting controls that provide reasonable assurances, independently of the anti-bribery provisions. § 78m(b)(7) sets the standard at the level of detail and assurance that would satisfy prudent officials in the conduct of their own affairs. The SEC enforces these provisions civilly and the DOJ criminally where violations are knowing.

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What payments does the FCPA except or defend?

§ 78dd-1(b) excepts facilitating or expediting payments whose purpose is to expedite or secure the performance of a routine governmental action, which § 78dd-1(f)(3) limits to actions ordinarily and commonly performed by an official and never to decisions to award or continue business. § 78dd-1(c) provides two affirmative defenses: the payment was lawful under the written laws and regulations of the foreign official's country, or it was a reasonable and bona fide expenditure, such as travel and lodging, directly related to promoting products or services or to performing a contract.

What did the 2025 Executive Order and DOJ guidelines change?

Executive Order 14209 of February 10, 2025 directed the Attorney General, for 180 days, to cease initiating new FCPA investigations and enforcement actions absent an individual exception, review existing matters and issue updated guidelines. The Deputy Attorney General's memorandum of June 9, 2025 now requires every new FCPA investigation or enforcement action to be authorized by the Assistant Attorney General for the Criminal Division or a more senior official, and directs prosecutors to focus on individual misconduct and on four factors: cartels and transnational criminal organizations, harm to identifiable U.S. companies, national security, and serious misconduct rather than routine business courtesies. The statute itself is unchanged.

What is the Foreign Extortion Prevention Act and how does it relate to the FCPA?

FEPA, 18 U.S.C. § 1352, makes it unlawful for a foreign official, or a person selected to be one, to corruptly demand, seek, receive, accept or agree to accept anything of value from an issuer, a domestic concern or a person covered by § 78dd-3, using the mails or interstate commerce, in return for official action or in connection with obtaining or retaining business. The DOJ page describes it as the demand side of foreign bribery that complements the FCPA's supply side; it carries no civil remedy and gives the SEC no enforcement role.

License included / downloadable: Yes The statute, the Resource Guide, Executive Order 14209 and the June 9, 2025 guidelines are U.S. Government publications available free of charge from the Department of Justice and the Federal Register; the provisions and hallmarks are included with the platform as a requirement set.

Full framework page and mappings: smartsuite.com/frameworks/us-foreign-corrupt-practices-act-fcpa