

## DOJ/SEC Release New Edition of FCPA Resource Guide

Article By:

Olivia S. Singelmann

David W. Simon

John E. Turlais

Lewis Ziropiannis

---

On July 3, 2020, the U.S. Department of Justice (DOJ) Criminal Division and the Securities and Exchange Commission (SEC) released the second edition of [\*A Resource Guide to the U.S. Foreign Corrupt Practices Act\*](#) (the “FCPA Resource Guide”).

The first edition of the Guide was released in November 2012, which was the first time the enforcement agencies had published such a compilation of detailed information about the FCPA and the agencies’ enforcement of the statute. The updates to the second edition reflect many developments in FCPA enforcement since the FCPA Resource Guide was first published, including discussion of policy changes, such as the 2017 DOJ Corporate Enforcement Policy, and more recent court decisions, more of which have been handed down in recent years while defendants have increasingly challenged FCPA prosecutions. The second edition also includes discussion of numerous enforcement actions brought in the intervening years and, helpfully, updates the hypotheticals in the Guide to reflect fact patterns and issues raised by these recent investigations and prosecutions.

Among the more notable updates in the second edition:

- There is now updated guidance and additional information elaborating on interpretations of the statutory language, updating guidance on the definition of “foreign official,” “instrumentality,” and “agent” in light of judicial opinions of the last several years, such as *United States v. Hoskins*, in which the Second Circuit clarified the applicability of the statute to individuals not directly covered by the FCPA.
- The Guide has also been updated to reflect policy changes since its initial 2012 publication,

including: the DOJ FCPA Corporate Enforcement Policy, which, among other things, formalized the process for obtaining leniency in investigations; Selection of Monitors in Criminal Division matters, which provided guidance to prosecutors in determining whether to impose a monitor as part of a corporate resolution; Coordination of Corporate Resolution Penalties, also known as the “Anti-Piling on Policy;” and the Criminal Division’s Evaluation of Corporate Compliance Programs, which provided guidance for prosecutors in evaluating the effectiveness of a company’s compliance program.

- The discussion of corporate successor liability has been updated to include additional detail in the context of mergers and acquisitions. The additions reflect public statements made by DOJ and SEC officials, and offer practical advice about due diligence and additional considerations regarding disclosure of violations uncovered during due diligence.
- The discussion of disgorgement in SEC enforcement actions has been updated to include case law from the Supreme Court, including last month’s decision in *SEC v. Liu*.
- The Guide also updates the chapter explaining the principles that guide enforcement by the SEC and DOJ, explaining factors the agencies consider in evaluating how to resolve an investigation, including with examples of matters that were resolved by declination.

The release of this second edition of the FCPA Resource Guide reflects a continuing effort by the DOJ and SEC to provide transparency around the agencies’ enforcement regime. The updates and additional guidance are useful for private practitioners, in-house legal and compliance professionals, and others who wish to understand better how DOJ and SEC investigate and enforce the FCPA.

© 2025 Foley & Lardner LLP

---

National Law Review, Volume X, Number 188

Source URL: <https://natlawreview.com/article/dojsec-release-new-edition-fcpa-resource-guide>