



# Trends in Anti-Corruption Enforcement

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# Agenda

- ▶ Introductions
- ▶ The Laws
- ▶ Enforcement Trends in the US
- ▶ Recent Enforcement Actions
- ▶ Compliance Controls
- ▶ Case Studies
- ▶ Q&A

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# Introductions



# Jacqueline Peterson, JD

- ▶ Leads Weaver's Anti-corruption, Compliance & Ethics Team
- ▶ More than 25 years of legal experience
- ▶ Began her career as an Assistant State Attorney in Florida,
- ▶ Led anti-corruption, ethics and global compliance efforts at Hewlett-Packard (HP), Hewlett Packard Enterprise, (HPE) and DXC Technology.
- ▶ Assisted HP with the resolution of corruption investigations by DOJ & SEC
- ▶ White-collar crime partner at major, international law firm
- ▶ Joined Weaver in February





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# The Laws



# Foreign Corrupt Practices Act



# What is the Foreign Corrupt Practices Act?

The FCPA is an extraterritorial law with far-reaching jurisdiction. It has two main parts:

1

## Anti-bribery

- ✓ Prohibits bribery of foreign (non-U.S.) public officials
- ✓ Enforced by the Department of Justice

2

## Accounting

- ✓ Books & records
- ✓ Imposes accounting standards & requires internal controls
- ✓ Enforced by the SEC



# Who is a Foreign Official?

Extremely Broad Interpretation

Officials of  
Foreign  
Governments

Foreign  
Political  
Parties

Candidates  
for Foreign  
Political Office

Public  
International  
Organizations

Members of a  
Royal Family

Relatives of  
Foreign Officials  
(spouses/significant  
others/in-laws)



# How does the FCPA apply?



It applies to:

All U.S. citizens and companies

And the vast majority of foreign  
nationals and companies



# Who is subject to the FCPA bribery provisions?

It applies to:

EVERYONE that touches U.S. soil

Physically

Electronically

# Penalties for Violating the FCPA: **Bribery**

## Companies

Criminal fine up to \$2M/violation

Civil penalty up to \$16K/violation

Debarment/suspension from PS business

Reputational harm/shareholder distrust

Revocation of export/import privileges

## Individuals

Jail time – 5 years/violation

Civil penalty up to \$16K/violation

Criminal fine up to \$100K/violation

Injunctions

Forfeiture of assets

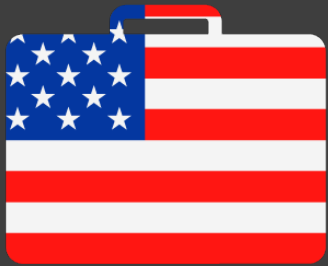
Debarment/suspension from PS business



# How do the FCPA accounting provisions apply?

AKA as the “Books & Records” provision

It applies to:



“Issuers” and anyone acting on their behalf

And the vast majority of foreign nationals and companies



# Who is subject to the FCPA accounting provisions?

It applies to:

All “issuers,” “domestic concerns” and “those acting on behalf of issuers and domestic concerns”

“Issuer” means any business entity that is registered or required to file reports with the SEC

“Domestic concerns” is even broader and encompasses any U.S. citizen, national, or resident, as well as any business entity organized under U.S. laws or with its principal place of business in the U.S.

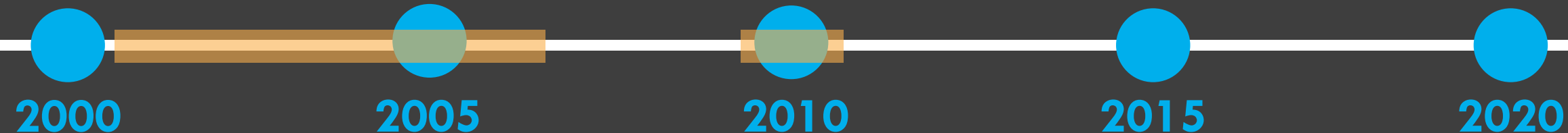
# How do the FCPA accounting provisions apply?

AKA as the "Books & Records" provision

- It includes:
- ▶ Any act of failing to maintain accurate books & records
  - ▶ Any act to create reasonable internal controls

Enforcement ramped up in early 2000s

SEC created a special unit in 2010





# How does the FCPA accounting provisions apply?

AKA as the "Books & Records" provision

- ▶ B&R provisions often used when DOJ cannot establish a bribery case
- ▶ Must maintain accurate records and establish internal controls
- ▶ Strict liability
- ▶ **Does not apply to private companies**

# Penalties for Violating the FCPA: **Books & Records**

## Companies

Criminal:

Fine up to \$25M/violation

Civil:

\$10K/violation

Asset forfeiture

Disgorgement of profits

Injunctions/loss of licenses

Suspension/debarment

## Individuals

Jail time – up to 20 yrs./violation

Criminal fine up to \$5M/violation

Civil penalty up to \$10K/violation

Asset forfeiture

Disgorgement of profits



# The Travel Act





A faded, grayscale image of the United States flag serves as the background for the entire slide. The stars and stripes are visible but light, providing a subtle texture behind the text.

# What is the Travel Act?

The Travel Act allows prosecutors to “federalize” state law violations.

- ✓ Signed into law in 1961 by JFK
- ✓ Initially designed to combat organized crime
- ✓ Not limited to government programs
- ✓ Since 2013, astronomical increase in its use
- ✓ Defendants who use interstate or foreign travel, mail, phones, emails or the internet
- ✓ Enforced by the USAO/DOJ



# The Anti-KickBack Act



# What is the Anti-KickBack Act ("AKS")?

It is a sweeping law that prohibits bribes/kick backs to obtain or retain business.

- ✓ Applies to ALL federal health care programs
- ✓ Prohibits:
  - ✓ Bribery
  - ✓ Referrals from anyone
  - ✓ Any item/service
- ✓ Gov't must prove intent
- ✓ **Criminal** & Civil penalties
  - ✓ **5 yrs/violation**
  - ✓ **\$25k/violation**
  - ✓ FCA liability
  - ✓ \$50k/violation
  - ✓ Treble damages





# The Stark Act





A faded American flag serves as the background for the slide.

# What is the Stark Act?

It is a sweeping law that prohibits doctors from referring Medicare/Medicaid business.

- ✓ Limited to Medicare/caid
- ✓ Prohibits:
  - ✓ Doctor having financial interest in the entity
  - ✓ Referrals from doctors to such entities
  - ✓ Designated health services
  - ✓ Includes immediate family members
- ✓ Strict liability/no intent reqd
- ✓ Civil penalties
  - ✓ FCA liability
  - ✓ \$15k/violation for *known* violations
  - ✓ Treble damages
  - ✓ Overpayment/refund obligation





# Enforcement Trends in the US



# U.S. FCPA Enforcement Trends



## 2017

- Enforcement Actions vs. Corps totaled 28
- Enforcement Actions vs. Indivs totaled 11
- Fines & Penalties paid by Corps totaled \$5,796,513,181
- Fines & Penalties paid by Indivs totaled \$8,590,000
- Jail times for Indivs totaled 397 months

## 2018

- Enforcement Actions vs. Corps totaled 27
- Enforcement Actions vs. Indivs totaled 11
- Fines & Penalties paid by Corps totaled \$3,055,850,000
- Fines & Penalties paid by Indivs totaled \$350,000
- Jail times for Indivs totaled 252 months

Total Fines/Penalties/Disgorgement during 2-year period: **\$8,861,303,181**

# FCPA Stats

One of the largest money-makers for the U.S. Treasury:  
2018 DOJ/SEC Combined Enforcement Actions

**\$3,056,325,000**

Total Fines/Penalties/Disgorgement during two-year period:

**\$8,861,303,181**

2018 second **most prolific** year in history  
(2010 still leads)



# DOJ Enforcement Trend

DOJ's FCPA fraud unit tremendously increased prosecution of non-FCPA cases

- ▶ Significantly increased number of money laundering cases against foreign officials
- ▶ Mere use of U.S. bank account equals jurisdiction in DOJ's eyes
- ▶ Partnering with prosecutors from the \$ Laundering and Asset Recovery Section



# SEC Enforcement Trend

## Electrobras & Petrobras Actions

- ▶ In Petrobras, no allegations of bribery
- ▶ Rather, allegations of inaccurate B&R
- ▶ In Electrobras, allegations of inaccurate B&R
- ▶ Bribes hidden w/n costs of construction projects

## Stryker

- ▶ Action stands out because no gov't official or SOE mentioned in Consent Order
- ▶ Case involved PRIVATE hospitals/healthcare providers in India
- ▶ Improper T&E and consulting fees paid to doctors



# Case Studies



# Case Study – Texas

## School Bus Scandal 2019

- ▶ Cameras in school busses
- ▶ \$4M in bribes & kickbacks
- ▶ Frm Dallas Mayor Pro Tem Dwaine Caray
- ▶ Accepted \$450,000 bribes
- ▶ 56 month sentence

Bribe payer sentence to 7 years

Money Launderer sentenced to 18 months

Judge Lynn:  
“I was disgusted  
by your conduct”



# Case Study – Texas

Former Judge 2019

- ▶ State District Judge Delgado
- ▶ Scheme lasted 2008 – 2016
- ▶ Bribes for favorable treatment
- ▶ \$6000 in bribes cost his job

## Convicted of bribery & obstruction

- ▶ Federal Program Bribery (3)
- ▶ Travel Act Bribery (3)
- ▶ Obstruction (1)

## Sentencing pending

# Case Study – Texas

Former City Commissioner 2019

- ▶ John Cuellar of Weslaco
- ▶ Faces up to 20 years
- ▶ Plead guilty August 2
- ▶ \$4 million in bribes
- ▶ Scheme involved 3 construction companies

## Cuellar plead guilty to

- ▶ Conspiracy
- ▶ Honest Services Wire Fraud
- ▶ Forfeits \$405,000A

\$38 million water treatment plant project

# Case Study – Dallas

## 2019

- ▶ Very large medical center in Dallas – Forest Park
- ▶ \$200M commercial bribery/kickback scheme
- ▶ Allegations involved
  - ▶ Shell companies
  - ▶ Bribes
  - ▶ Use of email to solicit bribes
  - ▶ Doctors & administrators
  - ▶ Bribes disguised as consulting or marketing \$\$

## First case of its kind

- ▶ Prosecutors used the Travel Act
- ▶ 10 have plead
- ▶ 7 others found guilty
- ▶ 1 doc facing up to 65 years

# Case Study – Bay Area

September 6, 2019

## Indictment Unsealed

- ▶ 30 individuals/ \$8M bribes
- ▶ Millions in kickbacks permits
- ▶ Home health center
- ▶ Referrals from drs/nurses
  - ▶ 13 doctors
  - ▶ 5 nurses
- ▶ Alleges \$115M in tainted Medicare billings

## What'd they get?

- ▶ SIX MILLION IN CASH
- ▶ Golden State tickets
- ▶ Louis Vuitton handbags
- ▶ Chanel handbags
- ▶ Expensive dinners
- ▶ Trips to Vegas

Prosecutors used AKS



# Case Study – N Texas

## *Capshaw v. White*

- ▶ Hospices/House Calls
- ▶ Submitted false claims
- ▶ Hospices received referrals
- ▶ Doctors received:
  - ▶ Sham loans
  - ▶ Free rental space
  - ▶ Cash, gift cards

- ▶ Involved 5 separate hospices
- ▶ False claims submitted to Medicaid/Medicare
- ▶ Whistleblower complaint
- ▶ \$12.2 M paid
- ▶ DOJ prosecuting Dr. Bryan White and Suresh Kumar

Prosecutors used the Stark Act

# Case Study – Walmart

## *Background*

- ▶ First reported in 2011
- ▶ NYT broke the story
- ▶ Allegations involved
  - ▶ China
  - ▶ Mexico
  - ▶ Brazil
  - ▶ India
- ▶ All related to permits
- ▶ 2000-2011 time frame

- ▶ **No tone at the top**
- ▶ **Failure to investigate**
- ▶ **Disregarded reports of misconduct**

# Case Study – Walmart Conduct

## Brazil

- ▶ Use of BIs
- ▶ Obtained permits
- ▶ “Weak” internal controls
- ▶ Sub plead guilty

## Mexico, China and India

- ▶ “Weak” internal controls
- ▶ No AC training
- ▶ No AC policies
  - ▶ BIs
  - ▶ JVs
- ▶ Prior Mexico investigation disregarded by HQ
- ▶ HQ disregarded hotline reports in India

# Case Study – Walmart *Resolution*

- ▶ \$282 M Overall
- ▶ DOJ = \$138M criminal fine
- ▶ SEC = \$144.7M disgorgement and prejmt interest
- ▶ Three year consent decree
- ▶ Three year compliance monitor
  - ▶ Louis Freeh, former FBI Director
  - ▶ Hired before settlement reached
  - ▶ Review ltd to certain BUs/Countries

**\$900M  
paid to law &  
accounting firms**

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			95001	0.00	0.
			94011	0.00	0.
			514278	0.00	0.
			518003	99.00	99.
			534941	0.00	0.
			90010	20.00	20.
			90120	0.00	0.

# Compliance Controls





# Compliance Controls

## Policies & Procedures

- ▶ Company Corporate Gov Guidelines
- ▶ Company Code of Conduct
- ▶ AC
- ▶ GBGTE
- ▶ Gov't Relations
- ▶ Grant Making
- ▶ Conflicts of Interest
- ▶ 3dps Code of Conduct - BI/Supplier/Ps/FFs/Distis/ContWs

# Compliance Controls

## Policies & Procedures

- ▶ Political Contributions
- ▶ Charitable Donations
- ▶ M&A
- ▶ Procurement
- ▶ Export/Import
- ▶ Customs
- ▶ Supply Chain/EnvResp
- ▶ Global Human Rights
- ▶ Training – tracked and mandatory
- ▶ Outreach & Advisory

# Compliance Controls

## Policies & Procedures

- ▶ Consequence Management
- ▶ Screening 3dps
- ▶ Internal Investigations
- ▶ Discipline/Termination
- ▶ Hotline – 24/7, multiple languages & confidential
- ▶ Compliance Day(s)/Week
- ▶ Assessments/Audits

# Weaver at a Glance



## Industries

- ▶ Financial services
- ▶ Private equity
- ▶ Financial institutions
- ▶ Oil and gas
- ▶ Technology
- ▶ Healthcare
- ▶ Manufacturing and distribution
- ▶ Oilfield services
- ▶ Renewable energy
- ▶ Construction and real estate
- ▶ Government
- ▶ Higher education
- ▶ Nonprofits

## Services

### Advisory Services

- ▶ Anti-corruption, compliance & ethics services
- ▶ Risk advisory services
- ▶ IT advisory services
- ▶ Financial institutions consulting
- ▶ Transaction advisory services
- ▶ Energy compliance services
- ▶ Forensic and litigation services

### Assurance Services

- ▶ Audit, review and compilation
- ▶ Agreed-upon procedures
- ▶ Employee benefit plan audit
- ▶ SOC reporting
- ▶ Attestation services
- ▶ IFRS assessment and conversion

### Tax Services

- ▶ Federal tax
- ▶ State and local tax
- ▶ International tax
- ▶ Wealth strategies

**At Weaver, there are no  
“one-size-fits-all” solutions.**

We combine leading technical knowledge with specific industry experience to provide highly customized services tailored to private, public and public-sector clients alike.





Q&A

