


EXAMINING THE **IMPACT** OF THE  
**Foreign Corrupt Practices Act**





In 1977, the Foreign Corrupt Practices Act (FCPA) was **established to regulate the way companies operate in foreign affairs**. The act's anti-bribery and accounting provisions work together to prevent bribery of foreign officials and the falsification of records to cover up such payments as legitimate business expenses.

The FCPA was enacted to address the widespread problem of **corrupt practices in international business transactions**. Prior to the FCPA, bribery was often seen as a necessary cost of doing business overseas. However, the act changed that perception and made it illegal for companies to offer or make payments to foreign officials to obtain or retain business.

The internal controls provision of the Exchange Act, also known as Section 13(b)(2)(B) (15 U.S.C. § 78m(b)(2)(B)), aims to **prevent unethical bookkeeping practices by promoting accountability, monitoring, and a system of checks and balances within a corporation**. Issuers are required to establish internal accounting controls that ensure the reliability and accuracy of financial records, including:

- Obtaining **proper managerial authorization** before transactions are made
- Recording transactions in a manner that allows for the **accurate preparation of financial statements**
- Recording transactions in a way that **enables accountability evaluation and enforcement**
- Allowing access to accounts and assets **only with appropriate managerial authorization**
- Comparing recorded assets with existing assets periodically to **identify and address any discrepancies**.

The FCPA's anti-bribery provisions apply to all U.S. companies, as well as foreign companies that are listed on U.S. stock exchanges or that conduct business in the U.S. The accounting provisions apply to publicly traded companies and require them to maintain accurate books and records and to establish and maintain effective internal controls.

Since its enactment, the FCPA has been frequently violated, leading to stronger enforcement by the Securities Exchange Commission (SEC) and United States Department of Justice (DOJ) to hold accountable those who engage in corrupt business dealings with foreign officials. According to a report by TRACE International, a non-profit organization that provides anti-bribery compliance support, the SEC has brought more than 500 enforcement actions under the FCPA since 1977, resulting in **more than \$4 billion in penalties**.

The consequences of violating the FCPA can be severe. Companies found guilty of such violations can face fines in the millions, as well as **other criminal penalties, such as imprisonment**. Individuals found guilty of violating the FCPA can also be subject to significant fines and imprisonment.

In addition to the monetary and criminal penalties, the **damage to a company's reputation can be catastrophic**. A company found guilty of FCPA violations can face a loss of investor confidence, which can lead to a drop in stock prices and a loss of revenue. It can also cause a loss of customer trust and loyalty, as well as a damaged reputation within the industry.

According to Section 13(a) of the Exchange Act, issuers must file an annual report that provides a comprehensive overview of their business operations. This includes financial information such as revenue, profits, assets, and expenses, as well as any liabilities related to bribery of foreign officials. **If an issuer fails to file an accurate and thorough report, they may face violations of anti-fraud and reporting provisions**. It is often seen that companies engaged in bribery of foreign officials are also involved in anti-fraud and reporting violations to conceal their illicit financial activities.

According to a survey conducted by the Association of Certified Fraud Examiners (ACFE), companies that have implemented anti-bribery compliance programs are less likely to experience FCPA violations. The survey found that **companies with anti-bribery compliance programs experienced 50% fewer violations** than those without such programs.

One of the most common ways that companies violate the FCPA is through the mischaracterization and falsification of high-value bribes or consistent fraudulent reporting of a systematic pattern of smaller-value bribes. Even when all elements are not in place to prosecute corrupt behavior under the anti-bribery provision, fraudulent book- and record-keeping is evidence of the issuer's knowledge that their transactions were illicit and improper. **Falsified records can also provide evidence of corrupt intent, which may be sufficient to pursue prosecution for an anti-bribery violation.**

Another common way that companies violate the FCPA is through inadequate due diligence in vetting third-party partners. **Companies may unknowingly engage third-party partners that have a history of corrupt practices, which can expose them to FCPA liability.** Therefore, it is important for companies to conduct thorough due diligence on third-party partners before engaging in business with them.

To avoid these consequences, **it is important for companies to implement strong compliance programs to prevent and detect potential violations of the FCPA.** This includes regular training for employees, due diligence in vetting third-party partners, and implementing robust monitoring and auditing processes. Due to a large number of organizations or related organizations, politically exposed people or organizations or government entities that enterprises deal with, a manual review process is not sufficient or accurate. Your ERP and Travel & Expense Management Platforms do not protect you from the substantial fines or reputational damages that follow regulatory compliance violations.

**Oversight's automated continuous monitoring solution** ensures your organization has the necessary real-time and comprehensive coverage to achieve FCPA compliance. This coverage encompasses various areas, including travel and expense, purchase cards, and accounts payable.

## How can Oversight help?

### TAKE CONTROL, MITIGATE RISK

Our solutions provide a defensible audit trail by maintaining a permanent, tamper-proof audit log to document the steps taken to resolve and mitigate issues automatically. Oversight safeguards your spend by analyzing 100% of invoices, expenses, and vendor records to identify compliance risk. We spot potential violations, saving our clients millions of dollars annually in fines and penalties.

### IDENTIFY RISK

The Oversight platform proactively identifies compliance risk by analyzing every transaction and vendor record, recognizing payment activities that could be indicative of bribery, corruption, or other regulatory issues.

### SET PRIORITIES

Our platform highlights and prioritizes actionable patterns with overall confidence and risk scoring, allowing you to quickly address the issues with the greatest risk.

### SEE IT ALL

Our AI-led platform uses machine-learning, data analytics, and fuzzy matching to efficiently sort through data, identify compliance "red flags," and detect similarities with vendor records and sanctioned vendor lists.

### NOTHING GETS BY YOU NOW

Oversight continuously monitors and analyzes your data, addressing the DOJ's guidelines for compliance monitoring, communication with employees, compliance evidence, and audit trails.

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