

# Congress Passes Foreign Extortion Prevention Act, Targeting “Demand Side” of Foreign Bribery

December 15, 2023

On December 14, 2023, the U.S. Congress approved the Foreign Extortion Prevention Act (“FEPA”), which will make it a federal crime for any foreign government official to demand or receive a bribe from a U.S. citizen, resident or company in exchange for taking or omitting to take official action or conferring any improper business-related advantage.<sup>1</sup> This legislation, which is part of the National Defense Authorization Act and expected to be signed into law by President Biden, substantially expands U.S. enforcement authority with respect to foreign bribery and aligns with the Biden Administration’s elevation of anti-corruption enforcement to a national security priority.

For decades, U.S. enforcement authorities have focused principally on the “supply side” of foreign bribery, charging companies and individuals with violating the Foreign Corrupt Practices Act (the “FCPA”) by offering, promising, authorizing or paying bribes to foreign government officials. FEPA’s enactment enables the Department of Justice to target more directly the “demand side,” the foreign officials who seek and accept bribes. Although both U.S. and non-U.S. authorities have charged government officials for this conduct under other laws (like money laundering), the availability of a criminal statute directly analogous to the FCPA likely will increase the frequency and effectiveness of such enforcement. This legislation received bipartisan support in Congress and has been lauded by groups as disparate as Transparency International and the U.S. Chamber of Commerce, reflecting broad-based interest in investigating and prosecuting corrupt foreign officials.

FEPA will establish a new federal criminal offense in terms similar to the FCPA’s anti-bribery provisions. Specifically, FEPA will make it a crime for a foreign government 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, or from any U.S. issuer or domestic concern, in exchange for taking or omitting

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<sup>1</sup> National Defense Authorization Act for Fiscal Year 2024, H.R. 2670, Section 5101, available at <https://www.congress.gov/118/bills/hr2670/BILLS-118hr2670enr.pdf>.

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to take official action or conferring any improper advantage. Several parallels to the FCPA stand out:

- The legislation defines “foreign official” very broadly, just as courts and enforcement authorities have done in the FCPA context: according to FEPA, a foreign official includes any official or employee of a foreign government or “instrumentality”; any “senior foreign political figure”; “any official or employee of a public international organization”; and any person acting in an official or unofficial capacity on behalf of a foreign government, instrumentality or public international organization.
- In defining the circumstances in which demands for bribes have a sufficient nexus to the United States to trigger criminal liability, FEPA uses the same categories as the FCPA: demands made to issuers of U.S.-listed securities or to U.S. domestic concerns, or to any person while within the territory of the United States, will be unlawful, provided the other elements of the offense also exist. Indeed, FEPA expressly cross-references and incorporates the FCPA’s definition of “domestic concern,” which includes U.S. citizens, residents and companies.
- Like the FCPA, FEPA also requires a corrupt *quid pro quo*: the bribe must be in return for influencing official government action or otherwise conferring an improper business-related benefit.

The creation of a criminal offense specifically targeting demands from foreign officials for bribes could be the harbinger of new anti-corruption enforcement activity, reaching beyond the usual targets of FCPA cases. It remains to be seen, however, whether DOJ will use this new authority to investigate and prosecute cases that otherwise would not have been brought or instead will use FEPA largely to enhance their enforcement of the FCPA (including by charging additional individual defendants). FEPA’s enforcement also could encounter significant jurisdictional challenges, including foreign officials charged under the statute who may remain beyond the reach of U.S. authorities and never see the inside of a U.S. courtroom. From a political perspective, charging foreign officials also may invite diplomatic repercussions and even spark international conflict.

We will monitor closely developments relating to FEPA and its prospective enforcement.



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