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### U.S. House Wants to Reform the FCPA; Is That A Good Thing?



The Foreign Corrupt Practices Act has become a gold standard for anti-bribery laws worldwide. However, as other nations follow the United States' lead and strengthen their anti-corruption laws, some legislators are considering taking a step back.

Some politicians—mostly majority Republicans, but a few Democrats as well—in the House of Representatives warn that too-stringent enforcement of the FCPA may harm businesses in the fragile, recovering economy. Rep. James Sensenbrenner (pictured) is drafting a bill that he says will provide better and clearer guidance regarding the 1977 law. According to Sensenbrenner (R-Wisconsin), the vague, dated wording puts American companies at a disadvantage when competing against international firms without such restrictions. In addition, it may be discouraging the growth of U.S. businesses overseas.

Since most U.S. firms have chosen to settle bribery cases out of court, as opposed to going to trial, the limits of the FCPA are based more in the federal government's prosecutorial discretion than a judge's ruling. Many companies are confused on several key factors that constitute an FCPA violation, such as:

- The monetary value of a gift that constitutes a bribe.
- The definition of a foreign official under the act.
- The percentage of state ownership that causes a foreign company to be considered an instrument of the state.

However, many fear that this attempt at reform will create loopholes that allow violators to avoid tougher enforcement of the FCPA by the Securities and Exchange Commission, as well as the Justice Department. Deputy assistant attorney general Greg Andres emphasized to the House's Judiciary Committee subcommittee on crime, terrorism, and homeland security that foreign corruption continues to be a significant—\$1 trillion—problem, making up nearly 3% of the world's economy. He also defended the Obama administration's increased enforcement of the FCPA, claiming that prosecutions are carefully considered and not arbitrary or petty. According to Andres, specifying exact exemptions would imply that the U.S. approves of certain forms of bribery, and that companies that do not pay bribes are not in danger of violation. Still, this has done relatively little to assuage concerns.

**(Source: Reuters)**