

US Announces Formal Strategy To Counter Corruption

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On December 6, 2021, the White House released “United States Strategy on Countering Corruption” (the Strategy Paper), which outlines the Biden administration’s focus on fighting corruption as a core national security interest of the United States. The paper describes an interagency, cross-border approach to fight corruption, including:

- additional resourcing for and coordination among federal agencies charged with addressing corruption issues;
- increased scrutiny of bribe recipients (in addition to payors) and gatekeepers who facilitate corruption;
- leveraging existing anti-money laundering and asset recovery regimes in the fight against corruption; and
- more coordination with international partners.

Companies should expect increased Foreign Corrupt Practices Act (FCPA) enforcement efforts from the U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC) and that those efforts increasingly will be supported with data and resources from other government agencies, including the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN), the U.S. Department of Commerce, the U.S. Agency for International Development (USAID), the U.S. State Department and U.S. intelligence agencies.

Companies should revisit their compliance programs in light of this renewed enforcement focus to ensure that they (1) identify areas of risk for corruption and (2) deploy appropriate measures to address such risks.

Background

On June 3, 2021, President Biden released National Security Study Memorandum-1, which directed the Federal government to conduct an interagency review of existing anti-corruption efforts and develop a strategy to “significantly bolster the ability of the United States government to” fight corruption.¹ The Strategy Paper is the result of this interagency review, and it set out areas where the federal government intends to increase resources and focus on anti-corruption efforts.

The Strategy Paper notes that “in parallel with this review, departments and agencies have begun to accelerate and amplify their efforts to prevent and combat corruption at home and abroad.” This pronouncement dovetails with Deputy Attorney General Lisa Monaco’s recent announcement of changes to DOJ’s corporate enforcement policies, including the expectation that companies that seek cooperation credit will disclose (1) nonprivileged information about all individuals involved in the misconduct, regardless of seniority, and (2) all prior criminal, civil and regulatory misconduct. Monaco also made clear that there is no default presumption against the imposition of monitors in corporate resolutions. These priorities were reiterated by DOJ officials at the recent American Conference Institute’s 39th Annual FCPA Conference in Washington, D.C. (the FCPA Conference). See our November 2, 2021, client alert on Monaco’s announcement, “Practical Steps To Address DOJ Changes to Corporate Enforcement Policies.”

The Strategy Paper sets out five strategic pillars with specific “lines of efforts” on which the federal government is directed to take action.

¹ “Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest, 2021 Daily Comp. Pres. Doc. 202100467 (June 3, 2021), available at <https://irp.fas.org/offdocs/nsm/nssm-1.pdf>.

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Pillar One: Modernizing, Coordinating and Resourcing US Government Efforts To Better Fight Corruption

The first pillar focuses on improving information sharing and organization, as well as increased resourcing for coordinated anti-corruption efforts domestically and internationally. It signals that the Biden administration intends to increase anti-corruption resources, including by directing additional federal agencies, such as the U.S. Department of Commerce, USAID, the U.S. State Department and the U.S. Department of the Treasury, to focus on anti-corruption efforts. The Biden administration is also directing the intelligence community to prioritize the collection and analysis of data regarding corrupt actors and communication in their networks.

Specific initiatives include the creation of a new anti-corruption task force at the U.S. Department of Commerce to coordinate with a recently established task force at USAID and the recently established anti-corruption coordinating body at the U.S. Department of the Treasury and the U.S. Department of State. The latter's mission is to increase diplomatic outreach, multilateral engagement and the alignment of policy, diplomacy and foreign assistance around anti-corruption efforts. The Strategy Paper also notes that the president's budget request for FY 2022 included a significant increase in resources in support of FinCEN to build a new beneficial ownership registry system that can be used by law enforcement to track the proceeds of corruption.

Pillar Two: Curbing Illicit Finance

The second pillar addresses current vulnerabilities in the U.S. and international financial systems that can be exploited by those seeking to launder assets or obscure the proceeds of crime. The Strategy Paper specifically highlights purported deficiencies in the U.S. regulatory frameworks that do not require professionals and service providers (*e.g.*, lawyers and accountants) who may facilitate or be complicit in corrupt schemes "to understand the nature or source of income of their clients" These same professionals "provide advice on investments, structure transactions, and can serve as an access point to the U.S. and international financial systems, including by facilitating the creation of opaque structures." The Strategy Paper calls for federal agencies to "consider ways to increase penalties" on gatekeepers, "including by working with states to levy professional sanctions." At the FCPA Conference, Gurbir Grewal, the director of the SEC's Division of Enforcement, emphasized the importance of trusting gatekeepers, noting their role on the frontlines and that the SEC would like them to be its allies.

Pillar Three: Holding Corrupt Actors Accountable

This pillar highlights efforts to address the demand side of corruption. It seeks to address issues around the enforcement of existing statutes like the FCPA, which prohibits bribing or attempting to bribe foreign officials but does not provide for prosecutions of bribe recipients. Importantly, the Strategy Paper outlines the establishment of a pilot Kleptocracy Asset Recovery Rewards Program at the U.S. Department of the Treasury, allowing payments to whistleblowers who provide information leading to the identification and recovery of stolen assets linked to foreign government corruption. This appears to be modelled on the SEC's whistleblower program, which in FY 2021 resulted in 258 tips to the SEC regarding potential FCPA violations.²

This pillar also highlights the use of sanctions and visa restrictions, such as the Global Magnitsky Sanctions program, to block corrupt foreign officials from visiting the United States or using the proceeds of corruption in the U.S. financial system.

Pillar Four: Preserving and Strengthening the Multilateral Anti-Corruption Architecture

Pillar four outlines a commitment to strengthening multilateral initiatives, agreements and standards for anti-corruption efforts. This includes a commitment to preserving and strengthening existing programs enacted by the United Nations, the Organization of Economic Cooperation and Development (OECD), and NATO, as well as an expansion of support for key global partnerships that enhance transparency.³

² SEC, "2021 Annual Report to Congress, Whistleblower Program," (November 15, 2021), available at, https://www.sec.gov/files/2021_OW_AR_508.pdf.

³ This pillar also reflects the OECD's new Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (the Recommendation), which was released in November 2021. The Recommendation encourages OECD member countries to proactively approach the investigation and prosecution of bribery of foreign public officials and specifically recommends that member countries address not only the supply side but also the demand side of corruption, coordinating where appropriate with other member and nonmember countries. The Recommendation also encourages "direct coordination" between countries engaged in concurrent or parallel investigations and prosecutions, and suggests that member countries consider the risk of prosecuting the same person or entity in different jurisdictions for the same conduct. Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, OECD (Nov. 26, 2021), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378#mainText>.

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Pillar Five: Improving Diplomatic Engagement and Leveraging Foreign Assistance Resources To Advance Policy Objectives

The final pillar emphasizes anti-corruption as a focus for U.S. foreign relations. In order to address the global reach of corruption, the Strategy Paper calls for expanding diplomatic engagement and foreign assistance in anti-corruption efforts, a commitment to protect anti-corruption actors, the use of innovation and technological tools to promote transparency, and the use of joint analytics with foreign assistance to better understand global corrupt networks.

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Conclusion

Companies operating internationally should be aware of the Biden administration's increased focus on anti-corruption efforts. The best defense against corruption-related liability is a strong compliance program. Companies should revisit their risk assessments and compliance programs to ensure they identify and address corruption related risk in their operations. For additional information on the DOJ's guidance around compliance programs, please see our client alert "Key Takeaways From Updated DOJ Corporate Compliance Evaluation Guidance."