

December 14, 2021

Biden Administration Launches U.S. Strategy on Countering Corruption

On December 6, 2021, the Biden administration issued the U.S. Strategy on Countering Corruption (“Anti-Corruption Strategy” or the “Strategy”), which is the first of its kind.¹ The Strategy details an unprecedented government-wide approach to fighting corruption at home and abroad and brings together traditional anti-corruption enforcers such as the Department of Justice and departments and agencies like the Departments of Energy and Defense, less known for their role in addressing corruption and illicit finance. In addition, the Strategy calls for cooperation with foreign governmental, non-governmental, and private sector partners. The announcement of this initiative coincided with International Anti-Corruption Day on Thursday, December 9, and the opening of President Biden’s two-day “Summit for Democracy” on December 9–10. At the summit, leaders from national governments, international organizations, the private sector, and civil society set forth an agenda for confronting the greatest threats faced by today’s democracies, including corruption.²

The Strategy provides a number of significant new initiatives, but it also reiterates the Administration’s commitment to enforcing existing authorities such as the Foreign Corrupt Practices Act (“FCPA”), restates certain actions the administration has already taken, and discusses broad strategic goals that require congressional action or the cooperation of other countries. To combat money laundering, the administration is proposing regulations that will require disclosure of the beneficial ownership of

¹ See The White House, *United States Strategy on Countering Corruption, Pursuant to the National Security Study Memorandum On Establishing the Fight Against Corruption As A Core United States National Security Interest*, (Dec. 2021), available at <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

² Nahal Toosi, *Biden’s Summit for Democracy Gets under Autocrats’ Skins*, POLITICO (Dec. 7, 2021), <https://www.politico.com/news/2021/12/07/biden-democracy-summit-523850>.

corporations and create new reporting obligations and minimum standards for the investment advisory, real estate and antiques industries. The Strategy identifies an increased enforcement focus on “gatekeepers” such as lawyers, accountants and other professional service providers, as well as an increase in actions targeting kleptocrats and their assets due to a proposed whistleblower program. In addition, if Congress and international partners follow the administration’s lead, the Strategy could foreshadow an increase in multilateral sanctions and new legislation criminalizing the receipt of bribes by foreign public officials (in addition to the existing legislative focus on bribe payors).

Background

Since the passage of the FCPA in 1977, the DOJ and Securities and Exchange Commission (“SEC”) have led the U.S. government’s fight against corruption abroad.³ The Department of the Treasury and the Department of State have also targeted corruption through methods including sanctions, international diplomacy, and enforcement of tax laws related to corruption proceeds.⁴

As we have previously noted, President Biden spoke generally during his 2020 presidential campaign about the impact of corruption and the need to elevate efforts to counter corruption.⁵ Once president, he appointed federal law enforcement leadership that signaled a more aggressive approach to white collar and corporate enforcement, including D.C. Circuit Judge Merrick Garland and Lisa Monaco to lead the DOJ as Attorney General and Deputy Attorney General, respectively, and Gary Gensler to lead the SEC.⁶ These developments, along with the recent enactment of the Anti-Money Laundering Act (“AMLA”) of 2020 and the 2021 National Defense Authorization Act (“NDAA”), which included the Kleptocracy Asset Recovery Rewards Act (“KARRA”), served as the backdrop for the administration to begin developing a whole-of-government approach to countering corruption.

On June 3, 2021, President Biden issued a National Security Study Memorandum in which he recognized corruption as “a core United States security interest.”⁷ The Memorandum directed the Assistant to the President and National Security Advisor, in coordination with the Assistant to the President for Economic Policy and the Assistant to the President for Domestic Policy, to lead a 200-day interagency review process. The projected end result was the “creation of a comprehensive strategy that, if fully implemented, would enhance the U.S. Government’s ability to prevent corruption, more effectively combat illicit finance, better

³ See DOJ & SEC Resource Guide to the U.S. Foreign Corrupt Practices Act at 1 (2d ed. 2020), <https://www.justice.gov/criminal-fraud/file/1292051/download>.

⁴ See Transcript of Remarks by Deputy Secretary of the Treasury Wally Adeyemo on Anti-Corruption at the Brookings Institution (Dec. 6, 2021), <https://home.treasury.gov/news/press-releases/jy0516>; Dep’t of State, Policy Issues: Anti-corruption and Transparency (last visited Dec. 13, 2021), <https://www.state.gov/policy-issues/anti-corruption-and-transparency/>.

⁵ See Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Transition to the Biden Administration: FCPA Enforcement in the Near Term (Mar. 1, 2021), at 1-2, https://www.paulweiss.com/media/3980867/transition_to_the_biden_administration_fcpa_enforcement_in_the_near_term.pdf.

⁶ See *id.* at 2-5.

⁷ Joseph R. Biden, Jr., *Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest*, White House Briefing Room (June 3, 2021) available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>.

hold corrupt actors accountable, and strengthen the capacity of activists, investigative journalists, and others on the front lines of exposing corrupt acts.”⁸

The Anti-Corruption Strategy

The Anti-Corruption Strategy “lays out a comprehensive approach for how the United States intends to work domestically and internationally with governmental and non-governmental partners to prevent, limit and respond to corruption and related crimes.”⁹ To fully enact the Strategy, the White House will require the efforts and cooperation of a number of federal agencies and departments, which will be responsible for implementing the Strategy and will be required to report annually on their progress to the White House.¹⁰

The Anti-Corruption Strategy is presented in “five distinct, mutually-reinforcing strategic pillars,” each encompassing “enumerated strategic objectives and specific lines of effort (LOEs).”¹¹ These “pillars” are:

- Modernizing, coordinating and resourcing U.S. Government efforts to fight corruption.
- Curbing illicit finance.
- Holding corrupt actors accountable.
- Preserving and strengthening the multilateral anti-corruption architecture.
- Improving diplomatic engagement and leveraging foreign assistance resources to advance policy goals.

The following are key goals and themes that cut across the five pillars:

Expand Anti-Corruption Resources and Teams

The Anti-Corruption Strategy “outlines a whole-of-government approach to elevating the fight against corruption.”¹² It therefore emphasizes new or recently established task forces and interagency initiatives. These include “a new anti-corruption task force at the Department of Commerce,”¹³ an “Anti-Corruption team” at the Department of the Treasury,¹⁴ an “agency-wide Anti-Corruption Task Force” created within the U.S. Agency for International Development (“USAID”) in June 2021,¹⁵ an “interagency Democracies Against Safe Havens Initiative,”¹⁶ the DOJ’s Procurement Collusion Strike Force launched in 2019,¹⁷ and a “National Cryptocurrency Enforcement Team” within the DOJ.¹⁸ Also consistent with the whole-of-government approach, the Strategy repeatedly emphasizes information-sharing among government agencies and encouraging tips from private actors to the government.¹⁹

⁸ Joseph R. Biden, Jr., *Fact Sheet: U.S. Strategy on Countering Corruption*, White House Briefing Room (Dec. 2021) available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/06/fact-sheet-u-s-strategy-on-countering-corruption/>.

⁹ *United States Strategy on Countering Corruption* at 4.

¹⁰ *See id.* at 16.

¹¹ *Id.* at 9.

¹² *Fact Sheet*.

¹³ *United States Strategy on Countering Corruption* at 10.

¹⁴ *Id.* at 18.

¹⁵ *Id.* at 19.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 21; *see also* Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, DOJ Announces Government Procurement Collusion Strike Force (Nov. 5, 2019), <https://www.paulweiss.com/practices/litigation/antitrust/publications/doj-announces-government-procurement-collusion-strike-force?id=30178>.

¹⁸ *United States Strategy on Countering Corruption* at 25.

¹⁹ *See id.* at 10, 18–19, 31.

Improve Transparency to Combat Illicit Finance

The Anti-Corruption Strategy emphasizes pro-transparency initiatives to combat “transnational illicit finance . . . as well as exploitation of the licit financial system.”²⁰ In particular, the Strategy announces and highlights forthcoming regulations that will target previously opaque industries.

- Perhaps most notably, the Strategy states that, as required by the Corporate Transparency Act (“CTA”),²¹ the Treasury Department will issue regulations to “create a beneficial ownership registry that collects information of the true owners of certain companies” that “make[s] that information accessible” to a variety of regulatory agencies and—with the consent of the company—financial institutions.²² Accordingly, on December 8, 2021, the Financial Crimes Enforcement Network (“FinCEN”), a bureau within the Treasury Department, issued a Notice of Proposed Rulemaking (“NPRM”) soliciting comments on proposed regulations requiring non-exempt companies to submit to FinCEN information including “the name and address of each beneficial owner.”²³ Written comments on the proposed rule are due by February 7, 2022.²⁴
- Identifying the real estate industry as “a significant destination for the laundered proceeds of illicit activity, including corruption,” the Strategy announces that “[t]he Treasury will issue regulations that will include reporting requirements for those with valuable information regarding real estate transactions.”²⁵ Indeed, shortly after the Strategy was released, FinCEN issued an Advance Notice of Proposed Rulemaking “to solicit public comment on potential requirements under the Bank Secrecy Act (BSA) for certain persons involved in real estate transactions to collect, report, and retain information . . . in the consideration and preparation of a proposed rule.”²⁶ Written comments are due by February 7, 2022.²⁷
- Similarly noting the potential for investment advisory services and the art and antiquities trade to “allow corrupt actors to invest their ill-gotten gains,” the Strategy announces that the Treasury “will re-examine the 2015 [NPRM] that would prescribe minimum standards for anti-money laundering programs and suspicious activity reporting requirements for certain investment advisors” and will issue a NPRM proposing to regulate the art and antiquities market under the Bank Secrecy Act.²⁸

Pursue Corrupt Individuals, Organizations and Facilitators

The Anti-Corruption Strategy affirms the administration’s commitment to aggressively pursuing anti-corruption enforcement against a wide range of corrupt actors through the development of information-sharing programs and encouraging enactment of new laws and regulations.

Notably, the Anti-Corruption Strategy calls for the increased use of whistleblowers in seizing kleptocrats’ stolen assets.²⁹ In this vein, Treasury, acting pursuant to authority granted under the NDAA, will establish a pilot Kleptocracy Asset Recovery Rewards Program that encourages whistleblowers to provide “information leading to the identification and recovery of stolen assets linked to foreign government corruption held at U.S. financial institutions.”³⁰ In addition to expanding programs to encourage whistleblowers to come forward, the Anti-Corruption Strategy indicates the Executive Branch’s intention to work with Congress

²⁰ *United States Strategy on Countering Corruption* at 6.

²¹ See 31 U.S.C. § 5336(b)(2).

²² *United States Strategy on Countering Corruption* at 21.

²³ Dep’t of the Treasury, Notice of Proposed Rulemaking: Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 69920, 69921 (Dec. 8, 2021).

²⁴ *Id.* at 69920.

²⁵ *United States Strategy on Countering Corruption* at 22.

²⁶ Dep’t of the Treasury, Advance Notice of Proposed Rulemaking: Anti-Money Laundering Regulations for Real Estate Transactions, 86 Fed. Reg. 69589 (Dec. 8, 2021).

²⁷ See *id.*

²⁸ *United States Strategy on Countering Corruption* at 22, 24.

²⁹ *Id.* at 11-12.

³⁰ *Id.* at 26.

and foreign governments to criminalize the demand side of bribery.³¹ Indeed, there is pending legislation, the Foreign Extortion Prevention Act, that seeks to “prohibit a foreign official from demanding a bribe.”³² Additionally, the Countering Russian and Other Overseas Kleptocracy (“CROOK”) Act was recently re-introduced in both houses of Congress; this proposed legislation seeks to impose additional financial penalties on substantial violators of the FCPA and fund other countries’ anti-corruption efforts.³³

The Anti-Corruption Strategy also spotlights the role of professionals such as lawyers, accountants, and trust and company services providers (“gatekeepers”) who may serve as access points to the U.S. and international financial systems and facilitate the flow and concealment of illicit funds.³⁴ The Anti-Corruption Strategy encourages the Executive Branch’s departments and agencies to evaluate new ways to increase penalties on such gatekeepers, which could take the form of increased coordination with states to establish professional sanctions.³⁵ In Congress, there is pending legislation, the Establishing New Authorities for Business Laundering and Enabling Risks to Security (“ENABLERS”) Act, that seeks to impose substantial anti-money laundering requirements on individuals like accountants, law firms, investment advisors, registered agents, and other non-financial institutions.³⁶

Expand and Fortify the International Anti-Corruption Architecture

Recognizing that any efforts to combat corruption require global partnerships and transnational anti-corruption institutions and frameworks, the Anti-Corruption Strategy discusses plans to:

- Implement ongoing “obligations and commitments under the UN Convention Against Corruption (UNAC), the [Organization for Economic Cooperation and Development] Anti-Bribery Convention, the [Financial Action Trade Task Force], and regional treaties and frameworks”;³⁷
- Push the G20 and G7 to “effectively implement strong transparency and anti-corruption measures” as well as “pursue similar tracks, as appropriate, in other high-level political groupings, such as the [Financial Action Task Force]”;³⁸
- Engage stakeholders in foreign governments, parliament and civil society to “multilateralize economic sanctions and visa restriction tools designed to curtail corruption” in order to deny corrupt actors safe havens and access to critical countries with sophisticated financial systems;³⁹ and
- Provide additional foreign assistance funding to facilitate the development of rapid response tools for emerging areas at increased risk of corruption, including through the new USAID’s Anti-Corruption Response Fund and the new Department of State and DOJ jointly administered Global Anti-Corruption Rapid Respond Fund.⁴⁰

³¹ *United States Strategy on Countering Corruption* at 12, 26.

³² Foreign Extortion Prevention Act, H.R. 4737, 117th Cong. (2021 – 2022).

³³ See Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Transition to the Biden Administration: FCPA Enforcement in the Near Term (Mar. 1, 2021), at 7, https://www.paulweiss.com/media/3980867/transition_to_the_biden_administration_fcpa_enforcement_in_the_near_term.pdf; Countering Russian and Other Overseas Kleptocracy Act, H.R. 402, 117th Cong. (2021 – 2022); Countering Russian and Other Overseas Kleptocracy Act, S. 158, 117th Cong. (2021 – 2022).

³⁴ See *United States Strategy for Countering Corruption* at 11, 23.

³⁵ See *id.*

³⁶ Establishing New Authorities for Business Laundering and Enabling Risks to Security Act, H.R. 5525, 117th Cong. (2021 – 2022). As drafted, the ENABLERS Act would expand the reach of the Bank Secrecy Act (BSA) and impose BSA requirements, including those mandating maintenance of an effective anti-money laundering program, designation of a compliance officer, and filing suspicious activity reports (SARs).

³⁷ *United States Strategy for Countering Corruption* at 32.

³⁸ *Id.* at 33.

³⁹ *Id.* at 27.

⁴⁰ *Id.* at 36.

Engage with the Private Sector

Finally, the Anti-Corruption Strategy emphasizes the administration’s plans to “bolster and promote public-private partnerships to more consistently bring in the private sector as critical actors in the fight against corruption.”⁴¹ In particular, the Strategy announces plans to “encourag[e] the adoption and enforcement of anti-corruption compliance programs by U.S. and international companies” and previews forthcoming FinCEN regulations “that will specify how financial institutions should incorporate [anti-corruption priorities] into their risk-based AML programs.”⁴² Presumably, these will reflect financial institutions’ ability, with consent, to access beneficial ownership information through FinCEN’s registry.

Practical Takeaways

As the Executive Branch works with domestic and foreign partners to implement the strategic objectives of the Anti-Corruption Strategy, companies, including U.S. multinational corporations and non-U.S. corporations with ties to the United States, should consider the following:

- Companies may want to reassess internal controls and compliance programs to ensure effective identification and remediation of corrupt behavior, including, but not limited to, bribery and money-laundering.
- Companies may want to ensure that their internal whistleblower protection programs promptly escalate issues and do not encourage employees to share information externally.
- Companies should maintain rigorous due diligence procedures for partners and third parties, domestic and foreign, in light of the increased potential for U.S. and multilateral sanctions. U.S. financial institutions, in particular, should note for their employees the need to be diligent in conducting KYC and due diligence procedures.
- Professional services providers, such as attorneys, accounting firms, investment advisors, financial services companies, and real estate firms, will face additional scrutiny and may want to take additional steps to conduct thorough due diligence on clients and sources of funds, in addition to keeping close watch on the proposed rulemaking and pending legislation related to the Strategy’s goals and submitting comments to proposed rules where appropriate.
- The Strategy contemplates that new Executive Branch initiatives and legislation will be forthcoming, and requires federal departments and agencies to “report annually to the President on progress made against the Strategy’s goals.”⁴³ Accordingly, companies should monitor the changing anti-corruption and anti-money laundering enforcement landscape.

Conclusion

In sum, the Anti-Corruption Strategy is a comprehensive, aspirational document. It sets forth a strategic framework for the Biden administration’s emphasis on anti-corruption as a core national security interest. However, it remains to be seen to what extent the departments and agencies of the Executive Branch, working alongside Congress and foreign partners, will succeed in implementing the objectives of the Anti-Corruption Strategy. Nonetheless, clients should be alert to the possibility of increased enforcement of existing authorities such as the FCPA, the possibility of new anti-corruption regulations, and the growing arsenal of tools being developed and deployed.

We will continue to monitor these reports, as well as enforcement efforts, forthcoming regulations, and other relevant developments.

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⁴¹ *United States Strategy on Countering Corruption* at 8.

⁴² *Id.* at 12, 31.

⁴³ *Id.* at 16.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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