

White House Issues Strategy on Countering Corruption

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On December 6, 2021, the Biden Administration issued the “United States Strategy on Countering Corruption” (the “Strategy”). It is the U.S. government’s first-ever comprehensive anti-corruption plan, and “marks a new chapter” in the country’s efforts to curb graft.¹ The Strategy seeks to augment enforcement capabilities against corruption by (i) enhancing collaboration between governments, across governmental agencies and with non-governmental actors, (ii) developing new tools and resources for U.S. anti-corruption enforcement, and (iii) increasing transparency.² It was issued against the backdrop of heightened focus by the Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”) on anti-corruption enforcement. For example, in remarks on October 28, 2021, Lisa Monaco, the Deputy Attorney General, emphasized the DOJ’s efforts to “invigorate” the prosecution of corporate criminal conduct (further discussed [here](#)). Similarly, SEC Chair Gary Gensler has said the SEC would take a tougher stance on corporate crime.³ Statements from other government officials reinforce the Biden Administration’s commitment to tougher anti-corruption enforcement.⁴

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¹ Press Release, The White House, [Fact Sheet: U.S. Strategy on Countering Corruption](#) (Dec. 6, 2021).

² The White House, [United States Strategy on Countering Corruption](#) (Dec. 6, 2021) [hereinafter the Strategy].

³ See, e.g., Gary Gensler, Chair, Sec. & Exch. Comm’n, [Remarks at the Securities Enforcement Forum](#) (Nov. 4, 2021).

⁴ For instance, in a recent interview, the DOJ’s Principal Associate Deputy Attorney General John Carlin warned that “‘you’ll see cases in the weeks to come’ involving ‘some of largest corporations,’” indicating that the DOJ was poised to take significant enforcement action. Stefania Palma, [DoJ Warns of Impending Corporate Crime Crackdown](#), Financial Times, Nov. 10, 2021.



I. Background

On June 3, 2021, President Biden issued the “Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest” (the “Memorandum”). The Memorandum directed White House officials to conduct a 200-day interagency review across fifteen federal agencies, with the aim of developing a blueprint for a more robust, U.S.-led global anticorruption infrastructure.⁵ The Strategy is the culmination of that process.

The Strategy establishes the fight against corruption as one of the Biden Administration’s top national security priorities. Echoing the Memorandum, it declares that corruption threatens not only U.S. national security and the rule of law, but democracy itself. As such, the Strategy reflects an attempt to counter “anti-democratic aims” and “secure a critical advantage for the United States and other democracies.”⁶

The document centers on nineteen Strategic Objectives organized around five pillars:

- **Pillar 1: Modernizing, coordinating, and resourcing U.S. government efforts to fight corruption.** This Pillar identifies ways in which the United States can improve its ability to fight corruption by increasing its collection and use of data; enhancing information sharing and coordination both within the U.S. government and internationally; and ensuring that sufficient resources and efforts are devoted to anti-corruption work. It also seeks to integrate anti-corruption efforts into international priorities, such as for example by incorporating anti-corruption conditions on foreign aid.⁷
- **Pillar 2: Curbing illicit finance.** This Pillar focuses on augmenting the current anti-money laundering (“AML”) regime, including by strengthening AML regulations and working with partners and allies to limit the flow of the proceeds of corruption.⁸

- **Pillar 3: Holding corrupt actors accountable.** The central aim of this Pillar is to more effectively hold corrupt actors accountable, both by enhancing enforcement of existing AML and anti-corruption laws and by developing new tools, such as assisting foreign governments in developing and enforcing laws that address the “demand side” of corruption and by strengthening regulations that apply to private sector actors, like financial institutions.⁹
- **Pillar 4: Preserving and strengthening the multilateral anti-corruption architecture.** This Pillar highlights the Administration’s intention to work with allies and partners, including by taking active part in international conferences and helping develop policies and standards, in order to support and strengthen existing anti-corruption frameworks.¹⁰
- **Pillar 5: Improving diplomatic engagement and leveraging foreign assistance resources to advance policy goals.** This Pillar seeks to use diplomatic engagement, foreign aid, and multilateral lending efforts as an important element of the fight against corruption.¹¹

II. Likely Impact of the Strategy

We expect that the Strategy, if aggressively and effectively implemented, will result in a number of changes to anticorruption enforcement in the United States and abroad.

A. Enhanced Collaboration Among Governments and U.S. Agencies

One important result of the Strategy is likely to be enhanced collaboration on anti-corruption enforcement between governments, across U.S. agencies and with non-governmental actors and the private sector, leading to more investigations. First, the Strategy emphasizes multilateral investigations as integral to combatting the transnational nature of corruption.¹²

⁵ Press Release, The White House, [Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest](#) (June 3, 2021).

⁶ Strategy, *supra* note 2, at 4.

⁷ *Id.* at 9–10, 17–19.

⁸ *Id.* at 10–11, 20–24.

⁹ *Id.* at 11–12, 25–31.

¹⁰ *Id.* at 13, 32–33.

¹¹ *Id.* at 13–15, 34–37.

¹² In aggregate, the words “global,” “international,” and “transnational” appear 126 times across the 38-page Strategy document. *Id.*

The Strategy places particular emphasis on deepening partnerships that facilitate information sharing.¹³ In addition, the Strategy commits the U.S. government to “bolster[ing] existing anti-corruption frameworks and institutions” such as the United Nations Convention Against Corruption and the OECD Anti-Bribery Convention.¹⁴ With the Strategy, the U.S. government appears intent to reclaim its leadership role on anti-corruption efforts in organizations such as the G7 and G20.¹⁵

Similarly, the Biden Administration plans to expand diplomatic engagement and to tie foreign assistance more closely to corruption prevention.¹⁶ For example, the Administration is considering incorporating anti-corruption efforts into its criteria for government-to-government assistance.¹⁷ The Strategy combines collaborative efforts, like the proposed “Democracies Against Safe Havens” initiative, with more punitive measures like sanctions and visa restrictions.¹⁸

In addition, the Strategy elevates anti-corruption within the U.S. government to a “whole-of-government” national security priority. To date, the DOJ and the SEC have been the principal enforcers of anti-corruption statutes. The Strategy mobilizes thirteen additional government departments and agencies in the fight against corruption. New anticorruption task forces at the Department of Commerce, United States Agency for International Development (“USAID”), the Department of the Treasury and the Department of State reflect this shift.¹⁹

Finally, the Strategy also seeks to support efforts by non-governmental institutions and the private sector to detect and expose corruption.²⁰ The government has said it is committed to protecting anti-corruption actors such as whistleblowers, investigative journalists and other activists fighting corruption.²¹

B. New Tools and Resources For Enforcers

As a result of the Strategy, we also expect the Administration to devote more resources, both human and financial, to fight corruption. President Biden has pledged to ask Congress for more funding for law enforcement and plans to integrate anti-corruption programs into priorities such as Build Back Better and the COVID-19 recovery.²² The Administration also has said it will work with partner countries to help them build their enforcement capacity.²³

In terms of legislative priorities, the Administration plans to target the “demand” side of graft. Currently, the DOJ does not typically pursue those who receive bribes under the anti-bribery provisions of the Foreign Corrupt Practices Act (“FCPA”), although it has prosecuted government actors for other offenses, such as money laundering.²⁴ Expanding the FCPA to cover foreign officials who accept bribes would mark a major shift in the scope of enforcement efforts. The government has also pledged to “aggressively pursue foreign bribery cases,” and to “work with other governments to enact similar laws and regulations regarding enforcement.”²⁵

Furthermore, the government will seek additional authority from Congress to police so-called “gatekeepers” (e.g., accountants, lawyers) and require them to know their clients’ sources of income.²⁶ It also plans to work more closely with allies and partners to target gatekeepers and “key facilitators” within industries that are at greater risk for corruption, such as the transportation, logistics, and construction industries.²⁷

Finally, the Biden Administration has also said it will refine policies and regulations on digital assets, which can be used as a way to make illicit payments, “as needed.”²⁸ According to the Strategy, the newly

¹³ *Id.* at 29–31.

¹⁴ *Id.* at 32.

¹⁵ *Id.* at 33.

¹⁶ *Id.* at 25.

¹⁷ *Id.* at 15.

¹⁸ *Id.* at 27–28.

¹⁹ *Id.* at 10.

²⁰ *Id.* at 30.

²¹ *Id.* at 34–35.

²² *Id.* at 10.

²³ *Id.* at 27–30.

²⁴ The Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§78dd-1, et seq.

²⁵ *Id.* at 25.

²⁶ *Id.* at 23.

²⁷ *Id.* at 24.

²⁸ *Id.* at 23.

established National Cryptocurrency Enforcement Team will enable the DOJ to more proactively investigate misuses of crypto instruments and exchanges.²⁹

C. Increased Transparency

The Strategy also seeks to increase financial transparency. First, the U.S. is building a beneficial ownership database to track anonymous shell companies. According to the Strategy, certain federal agencies and even appropriate foreign authorities will have access to the database.³⁰ Second, federal contractors and grantees will face greater scrutiny to ensure they disclose beneficial ownership information in procurements under the National Defense Authorization Act (“NDAA”).³¹ Third, the Department of the Treasury will issue reporting requirements on real estate transactions to reduce the laundering of proceeds from illicit activity through U.S. real estate.³²

Relatedly, the government plans to increase its capacity to recover stolen assets. To begin, the government will strengthen the DOJ’s Kleptocracy Asset Recovery Initiative. In addition, the Treasury Department will establish a pilot program, pursuant to the NDAA, to provide bounties for information leading to the identification and recovery of stolen assets linked to foreign government corruption held at U.S. financial institutions.³³ According to the Strategy, the Administration will also leverage technology to better trace money laundering, including by launching the “Anti-Corruption Solutions Through Emerging Technology” initiative.

III. Key Takeaways

While the Strategy is largely just a blueprint for enhanced U.S. and multi-national enforcement efforts, and it will take time to execute, if the Administration is successful in doing so it will likely spur a significant increase in anti-corruption investigations and actions. Companies potentially subject to U.S. jurisdiction, including U.S. issuers or entities that have a presence in the United States, should take steps to ensure that

their compliance programs reflect best practices for detecting and preventing misconduct.

Given that the Strategy relies in significant part on increased use of data, companies should mine their own data to assess corporate risks and identify suspicious activity. A strong compliance program will, through continuous assessment and review, take that data into account in implementing internal controls and then assessing the effectiveness of those controls. Companies should assume that their peers are engaging in such best practices, and, particularly in the event of an industry-wide investigation or sweep, having a strong compliance program will put a company in the best position to identify any wrongdoing as early as possible. Likewise, the authorities, when conducting an investigation, will be familiar with these best practices. As such, they will expect to see them in assessing a company’s ethics and culture and in deciding whether to impose a compliance monitor.

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²⁹ *Id.* at 25.

³⁰ *Id.* at 22.

³¹ *Id.* at 20–21.

³² *Id.* at 22.

³³ *Id.* at 26.