

**Alert | White Collar Defense & Special Investigations**



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## **Biden Administration Issues New Government-Wide Anti-Corruption Strategy**

**This GT Alert covers the following:**

- Biden administration anti-corruption strategy announced to protect U.S. “national security, economic equity, global anti-poverty and development efforts, and democracy itself.”
- Strategy focuses on both “supply side” and “demand side” of foreign bribery and corruption.
- Promises “aggressive enforcement” against facilitating and perpetuating foreign corruption, with a focus on ill-gotten gains hidden via real estate and other investments.
- Strategy may place an additional premium on corporate anti-corruption compliance.

On Dec. 7, 2021, the White House published a government-wide policy document entitled “[United States Strategy on Countering Corruption](#)” (“Strategy”). The Strategy implements President Biden’s National Security Memorandum from earlier in 2021, which declared international corruption a threat to U.S. national security.

The Strategy is notable for several reasons:

*First*, the Strategy focuses not just on the “supply side” of foreign bribery and corruption—that is, companies acting in violation of the Foreign Corrupt Practices Act (FCPA)—but also on the “demand side” of the equation, namely corrupt foreign officials and those who assist them. It promises to pair vigorous

enforcement of the FCPA with efforts to hold corrupt leaders themselves accountable, via U.S. money laundering laws, economic sanctions, and visa restrictions.

*Second*, the Strategy specifically calls out the role of illicit finance in facilitating and perpetuating foreign corruption, promising “aggressive enforcement” against those who facilitate the laundering of corrupt proceeds through the U.S. economy. Professional gatekeepers such as lawyers, accountants, and trust and company service providers are specifically identified as targets of future scrutiny. The Strategy also promises to institute legislative and regulatory changes to address anti-money laundering (AML) vulnerabilities in the U.S. financial system. These promised changes include:

- Finalizing beneficial ownership regulations, and building a national database of beneficial owners, as mandated by the Anti-Money Laundering Act of 2020.
- Promulgating regulations designed to reveal when real estate is used to hide ill-gotten gains. Contemporaneously with the White House’s issuance of the Strategy, the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) issued an [Advance Notice of Proposed Rulemaking \(ANPRM\)](#), inviting public comment on its plan to apply additional scrutiny to all-cash real estate transactions.
- Prescribing minimum reporting standards for investment advisors and other types of equity funds, which are currently not subject to same AML program requirements as other financial institutions.

*Third*, the Strategy calls for a coordinated, government-wide response to corruption, and it contemplates a role not only for law enforcement and regulatory agencies but also for agencies such as the Department of State and Department of Commerce, which is to establish its own new anti-corruption task force. It remains to be seen if the increased scope of anti-corruption efforts called for by the Strategy will result in new or additional penalties for persons and entities perceived as corrupt or as facilitating corruption, but the Strategy may place an additional premium on corporate anti-corruption compliance.

Individuals and entities operating in sectors traditionally associated with corruption and/or AML risk should consider taking the following steps in response to the Strategy. These considerations apply not only to U.S. persons and businesses but also to anyone who may fall within the broad purview of the FCPA, U.S. money laundering statutes, and other laws with extraterritorial reach:

- Increase due diligence for any pending or future transactions in jurisdictions where potentially corrupt actors or their designees play a role in awarding government contracts. Ensure any payments are the result of arms-length transactions based on legitimate financial arrangements.
- Professional gatekeepers should become familiar with the particular risks associated with the industries in which they operate. While AMLA made it clear that lawyers, accountants, and real estate professionals will come under increased scrutiny based on the risk profile of their clients, the Strategy increases the likelihood that law enforcement will devote additional resources in this sometimes-overlooked area.
- Given the increased role the State Department will continue to play in the anticorruption space based on the National Defense Authorization Act and the Strategy, companies doing business in or with countries vital to U.S. foreign policy goals should remember that in addition to the individual leaders of these countries, government institutions and lower-level officials could create risk and will be closely watched. Though the U.S. government often talks about specific government officials, the Strategy appears to take a broader approach.

- Businesses should continue to examine and reexamine third-party risk with an emphasis on preventing potential problems before they occur. Additional resources and increased cooperation between and among government agencies may lead to additional investigations and enforcement actions, so compliance programs should be updated where necessary.

## Authors

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