

Biden administration releases U.S. Strategy on Countering Corruption report

December 15, 2021 | Client Update | 8-minute read

The Biden administration issued the first United States Strategy on Countering Corruption on December 6, 2021, as directed in President Biden's June 3, 2021, National Security Study Memorandum. The Strategy resulted from an interagency review, and provides insight into the Biden administration's areas of focus for anti-corruption efforts, including increased use of data analytics to combat corruption, heightened focus on specific high-risk countries and regions, and specific regulation and enforcement of corrupt activity by private equity firms, investment advisers, and other professional financial service providers.

On June 3, 2021, President Biden issued the [Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest](#) (the Anti-Corruption Memo). The Anti-Corruption Memo directed senior figures from the administration's national security team to oversee an interagency review to take stock of existing U.S. government anti-corruption efforts and to identify and seek to rectify perceived gaps in the fight against corruption.

On December 6, 2021, the Biden administration released the [United States Strategy on Countering Corruption](#) (the Strategy) as the first major step pursuant to the Anti-Corruption Memo. The Strategy outlines the administration's plans to elevate and modernize its fight against corruption, and in doing so, provides insights into certain methods and areas of focus of enforcement.

The key takeaways, described more fully below, include: (1) the Biden administration's increased focus on corruption, (2) enforcement authorities' increased use of corruption-related data analytics, (3) heightened focus on the role played by private equity, investment advisers, and other professional financial service providers in corrupt transactions, (4) heightened focus on "priority," high-risk countries (though those countries have yet to be identified by the administration), (5) bolstering capacity of foreign countries and multilateral initiatives to combat corruption, (6) continued suspension and debarment of federal contractors who engage in corrupt activities, (7) boosting anti-money laundering (AML) enforcement linked to corruption, and (8) establishing rewards for information to help recover assets linked to corruption.

1. Increased focus on corruption

It is notable that the Biden administration continues to study, analyze, and issue pronouncements related to anti-corruption efforts, this Strategy being the latest such pronouncement. The Strategy echoes recent statements by, among others, Deputy Attorney General (DAG) [Lisa Monaco](#), Principal Associate Deputy Attorney General (PADAG) [John Carlin](#), DOJ's Criminal Division Chief [Kenneth Polite](#), and Chief of DOJ's Foreign Corrupt Practices Act (FCPA) Unit David Last about ramped up enforcement in this area, among other white collar enforcement more generally.

Continued messaging from the Biden administration around anti-corruption signals that enforcement in this area will continue—and likely increase—in the future. The Strategy points towards the use of new investigatory and prosecutorial tools to assist in increased enforcement, such as the [Anti-Money Laundering Act of 2020's](#) (AMLA) recent expansions of subpoena power over financial records maintained abroad. Additionally, the Strategy reiterates the administration's focus on the potential of cryptocurrency to facilitate illicit payments by noting the DOJ's newly established National Cryptocurrency Enforcement Team, which focuses exclusively on investigations and prosecutions of criminal misuses of cryptocurrency.

2. Data analytics

In order to further prioritize and amplify anti-corruption efforts, the Strategy highlights the need to enhance corruption-related research and data analytics in order to more effectively map corruption networks, proceeds, and dynamics. In line with its objective to modernize corruption-related research, the Strategy seeks to improve information-sharing both domestically and with international partners. The Strategy, as a whole, places heavy emphasis on both international cooperation and the use of modern data analytics in executing its anti-corruption plans.

These dual emphases also mirror themes that were evident in the recent statements of DAG [Monaco](#), PADAG [Carlin](#), and Criminal Division Chief [Kenneth Polite](#) about the use of data to detect and investigate corruption and other corporate crimes. All three DOJ officials alluded to the Biden administration's utilization of data analysis tools to better detect fraud and evaluate compliance programs.

Additionally, the administration emphasizes the need to leverage technological innovations in combating corruption, including through an Anti-Corruption Solutions through Emerging Technology program, which will engage diverse stakeholders to collaborate on tracking, developing and applying technological solutions to the prevention and detection of corruption. The Strategy spotlights the State Department's project to create an open platform that will assist foreign partners through the use of distributed ledger technology and data analytics in enhancing transparency and oversight of illicit assets, detection of money laundering trends, and identification of suspicious transactions and sanctioned entities.

3. Curbing illicit finance and focus on private equity, investment advisers, and other professional financial service providers

The Strategy notes the potential roles played in facilitation of corrupt activity by private equity and investment advisors, and forecasts additional regulation and reporting requirements in these sectors. To that end, the Strategy announces that Treasury will re-examine its 2015 Notice of Proposed Rule Making that would prescribe minimum standards for anti-money laundering programs and suspicious activity reporting requirements for certain investment advisors. The Strategy's focus on investment advisers and private equity funds demonstrates the administration's push toward additional regulation across historically more opaque segments of the financial services industry.

Significantly, the Strategy also highlights plans to heighten scrutiny (and expand investigative and enforcement authority where necessary) of professional financial service providers, including lawyers, accountants, trust and company service providers, and others typically retained as registered agents or nominees.

4. Focus on particular countries

The Strategy announces that the administration will develop anti-corruption action plans targeting "priority countries," as part of enhanced country-specific and regional strategies. Although the Strategy does not name specific "priority" countries, anti-corruption enforcement has been particularly active in Latin America, Asia, and Africa. Given these signals that the administration plans to focus its anti-corruption efforts on high-risk countries and regions, expectations for companies operating in such areas will be correspondingly high. While it is unclear what methodology the administration will use to identify "priority countries," several organizations already index countries by corruption risk, such as Transparency International, the international Financial Action Task Force (FATF), and the World Bank.

5. Bolstering capacity of foreign countries and multilateral initiatives

The administration highlights its international focus by emphasizing its aim to bolster the capacity of foreign partners and to enhance support to civil society initiatives and projects. To that end, the Strategy expands the use of diplomacy and foreign assistance as leverage in seeking international cooperation to bolster partner governments' capacities and willingness to counter corruption, for instance, through the consistent application of transparency and accountability criteria in evaluating foreign government assistance. Specifically, the administration pledged through the DOJ and State Departments, among others, to "deepen cooperation with and assistance to countries with the political will for meaningful anti-corruption efforts ... including, where appropriate, partnering with countries in joint investigations and prosecutions." For instance, the Strategy indicates plans to coordinate multilaterally on sanctions, law enforcement, and detecting and disrupting kleptocracy. These plans include establishment of an interagency Democracies Against Safe Havens Initiative, led by the State Department, to engage with foreign partners in these areas.

The Strategy also announces the administration's commitment to strengthening the international anti-corruption "architecture," which includes bolstering multilateral initiatives, agreements, and standards. In advancing its objective, the Strategy commits the U.S. to assist international partners, including through financial support, in strengthening their implementation of existing anti-corruption frameworks and institutions, such as the UN Convention Against Corruption (UNCAC), the Organization for Economic Cooperation and Development's (OECD) Anti-Bribery Convention, and the FATF. Notably, the OECD released new anti-bribery recommendations last month, which promoted heightened law

enforcement and international cooperation, revision of tax regulations, strengthening of corporate accounting and internal controls functions, and the use of suspension and debarment in public procurement programs.

The Strategy also expands new and existing rapid response capabilities for emerging areas of corruption risk. Among other programs, the DOJ and State Department will co-administer a Global Anti-Corruption Rapid Response Fund, with the aim of facilitating mentorship and assistance to foreign anti-corruption counterparts.

Lastly, the Strategy aims to integrate corruption considerations into security assistance and military operations. Of note to clients that serve as security or military contractors, the Strategy announces that the government will conduct more frequent security cooperation evaluations in countries with significant risk of corruption.

These efforts would follow increased cooperation and coordination more generally in the anti-corruption space, as demonstrated by a host of coordinated resolutions between the DOJ, SEC, and foreign authorities in Brazil, France, and the U.K., among others. Notably, while the Strategy promises expanded partnerships with foreign countries and increased diplomacy, it does not set forth a specific plan to counter the advent of blocking statutes restricting the provision of information to the Department of Justice, such as the International Criminal Judicial Assistance Law in China.

6. Implications for suspension and debarment

The Strategy also offers potential implications for federal contractors, including through continued efforts to remove corrupt individuals, companies, and other entities from the federal marketplace and supply chain by suspending or debarring such actors from federal procurement and subcontracting programs.

Given the Deputy Attorney General's recent indication that companies may more frequently face the prospect of a guilty plea, the Strategy's reference to continued use of suspension and debarment could portend significant effects on government contractors.

7. Boosting AML enforcement linked to corruption

The administration elaborates on its strategic objective to significantly boost existing AML laws and enforcement tools. This critical focus on AML enforcement as a vector for anti-corruption enforcement activity comes on the heels of the most extensive revisions to AML law in recent decades, AMLA, and the June 30, 2021 [publication of national AML/CFT priorities](#) by Treasury's Financial Crimes Enforcement Network (FinCEN). Coordinated with the Strategy's release were the issuance of two notable FinCEN Notices of Proposed Rulemaking. On December 6, FinCEN [issued an Advanced Notice of Proposed Rulemaking](#) regarding the expansion of reporting requirements for real estate transactions, and the following day, a [Notice of Proposed Rulemaking](#) to implement Treasury's planned corporate beneficial ownership registry (both subjects were addressed in the Strategy). The Strategy likewise seeks to substantially increase funding for FinCEN, among other things, to facilitate the creation of this beneficial owner database.

8. Rewards for information to help recover kleptocracy assets

The Strategy also places emphasis on enhancing the government's capacity to enhance, track, and disrupt kleptocracy. Notably, it announces the pilot establishment of the Kleptocracy Assets Recovery Rewards Program, which will provide payments to individuals for information leading to the identification and recovery of stolen assets held at U.S. financial institutions that have been linked to foreign government corruption.

For reference, 2021 was a record-breaking year for the Securities and Exchange Commission's (SEC) whistleblower program, marked by the highest number of awards, both in terms of dollars and individuals awarded, and the largest number of whistleblower tips received. More specifically, the SEC made more whistleblower awards in 2021 than in all prior years combined. Given the SEC's increased payouts pursuant to its Dodd-Frank whistleblower program and corresponding resolutions, this could serve to further incentivize individuals to come forward to identify potentially corrupt conduct.

The United States Strategy on Countering Corruption report can be found [here](#).

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Greg D. Andres

+1 212 450 4724
greg.andres@davispolk.com

Martine M. Beamon

+1 212 450 4262
martine.beamon@davispolk.com

Angela T. Burgess

+1 212 450 4885
angela.burgess@davispolk.com

Robert A. Cohen

+1 202 962 7047
robert.cohen@davispolk.com

Daniel S. Kahn

+1 202 962 7140
daniel.kahn@davispolk.com

Tatiana R. Martins

+1 212 450 4085
tatiana.martins@davispolk.com

Fiona R. Moran

+1 202 962 7137
fiona.moran@davispolk.com

Paul J. Nathanson

+1 202 962 7055
+1 212 450 3133
paul.nathanson@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.