

Investigations, Compliance and Defense

The Biden Administration's Aggressive Policy Changes to Combat Corruption

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This week, the Biden Administration took a series of steps showing that anti-corruption issues across the globe will be among its highest priorities.

On December 6, 2021, the Biden Administration unveiled the first ever “United States Strategy on Countering Corruption.” While corruption has long been viewed by the US as a top criminal threat that federal agencies attempt to combat, the Strategy is notable for many reasons. First, the Administration discusses a “whole-of-government” approach to fighting corruption that will rely on engagement with the private sector, federal prosecution of corrupt actors, and more aggressive efforts by foreign countries and state and local governments. Second, the Administration labels corruption as a “national security concern,” which may cause agencies to shift some of the vast resources they ordinarily devote to more traditional national security threats, such as terrorism and espionage, to investigating and prosecuting bribes to foreign and domestic public officials.

The Administration already has begun implementing the Strategy. On December 9, it announced the funding of up to \$424 million to meet some of the objectives of the Strategy through the Presidential Initiative for Democratic Renewal. The same day, it started its diplomatic efforts and coordination on anti-corruption efforts at the inaugural “Summit for Democracy,” which is being held with other nations and members of the private sector.

The Strategy is built on what the Administration terms five mutually reinforcing pillars. Those pillars are:

Pillar 1: Modernizing, coordinating, and resourcing US Government efforts to fight corruption

Pillar 1 emphasizes that the Administration plans on increasing resources to counter corrupt activities. Consistent with its view that corruption is a national security threat, the Administration will prioritize gathering intelligence on corrupt actors and will “bolster[] information sharing between the Intelligence Community and law enforcement.” It will also create an anti-corruption task force at the Department of Commerce and devote more law enforcement resources to anti-corruption efforts.

Pillar 2: Curbing illicit finance

Pillar 2 focuses on the Administration's plans to target illicit financing in the US and abroad. The strategic objectives outlined in this pillar target current deficiencies in US anti-money laundering laws and enforcement. In particular, through new regulations and intelligence gathering, the Administration will attempt to collect information and build databases on corporate ownership, including shell companies, and real estate transactions. The goal is for the US and foreign governments to learn whether assets and transactions are used to hide ill-gotten cash or launder criminal proceeds. If the US can successfully obtain this information, it would lead to more corruption and money laundering prosecutions and the US bringing additional criminal and civil proceedings to try to have allegedly tainted proceeds forfeited to the government.

Pillar 3: Holding corrupt actors accountable

Pillar 3 outlines how the Administration will more aggressively investigate and prosecute individuals and corporations engaged in corrupt activity in the US and abroad. The Strategy discusses how it will advance its objectives by “vigorously pursuing the enforcement” of the Foreign Corrupt Practices Act,

money laundering laws, and forfeiture statutes. But the Administration is not going to settle with enforcing existing laws. Notably, the Administration states that it will work with Congress to enact statutes that will enable the prosecution, in US federal courts, of foreign public officials who demand bribes. Even if such laws are enacted, there of course would be diplomatic issues that would need to be addressed before the US would bring allegedly corrupt foreign public officials to court.

The Administration will also establish a pilot kleptocracy asset recovery program through the Department of Treasury, coordinate international law enforcement actions through the Department of State, and work with the private sector to adopt anti-corruption compliance programs.

Pillar 4: Preserving and strengthening the multilateral anti-corruption architecture

Pillar 4 focuses on the Administration's attempts to increase international anti-corruption enforcement. Under this pillar, the Administration highlights its current efforts to bring anti-corruption priorities before NATO, the G20, and G7, and pledges to strengthen those efforts. As stated above, days after issuing the Strategy, the Administration began these efforts by bringing anti-corruption issues to the forefront at the Summit for Democracy.

Also in this pillar, the Administration issued a mild warning that it will "hold[] accountable" partners who fail to live up to their existing anti-corruption obligations.

Pillar 5: Improving Diplomatic Engagement and Leveraging Foreign Assistance Resources to Advance Policy Objectives

The Strategy's fifth and final pillar focuses on ensuring that the assistance given to foreign governments is substantial and effective. The Administration will "elevate and expand" foreign assistance and anti-corruption diplomacy. This will include bolstering foreign governments' oversight and corruption-preventing capacities. The Administration also will attempt to ensure that money devoted to foreign assistance is not "diverted" or used to "inadvertently reinforce corrupt power structures." The Strategy also commits the Administration to protecting anti-corruption actors, including investigative journalism coalitions. The Administration is putting significant funding behind this pillar. In announcing its \$424 million funding of the Presidential Initiative for Democratic Renewal, the Administration made clear that the money would be supporting many of the objects of this pillar.

Takeaways

Many of these objectives and pillars in the Strategy contain few specifics and will require further implementation measures. The Administration began detailing some of those measures this week. The articulated objectives represent a more aggressive posture for anti-corruption enforcement and intelligence gathering. Some of these efforts are likely to be meaningful, such as the increase in resources that will be devoted to anti-corruption, including the \$424 million funding of the Presidential Initiative. Others are more aspirational, such as enacting laws in the US to criminalize the taking of bribes by foreign public officials. But by calling corruption a national security concern and emphasizing anti-corruption efforts as key to strengthening democracy, the Administration is signaling how important it views the issue to be.

While the Administration begins to implement these goals, corporations should take proactive action to ensure compliance with anti-corruption laws in the jurisdictions where they operate, including by reviewing and updating their compliance programs, training, and whistleblower protection policies. The Strategy and the Administration's focus on corruption this week shows that the failure by corporations to root out corruption will be more costly.

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