

White House Announces New U.S. Strategy on Countering Corruption

International Alert

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On December 6, 2021, the Biden-Harris administration released the first-ever " [United States Strategy on Countering Corruption](#) " (SCC). This strategy document is the result of the White House's national security staff actions and coordination across the U.S. government over the past six months, as directed by President Biden in his [June 3, 2021 National Security Study Memorandum](#) (NSSM) which designated corruption as a "core U.S. national security interest."

The SCC issued by the White House "lays out a comprehensive approach for how the United States will work domestically and internationally, with governmental and non-governmental partners, to prevent, limit, and respond to corruption and related crimes." This approach establishes "five mutually reinforcing pillars" of actions to be taken by the U.S. government:

- "Modernizing, coordinating, and resourcing U.S. government efforts to fight corruption"
- "Curbing illicit finance" by "addressing vulnerabilities in the U.S. and international financial systems"
- "Holding corrupt actors accountable...through a combination of diplomatic engagement, foreign assistance, and enforcement actions" and "bolstering international best practices, regulations and enforcement efforts"
- "Preserving and strengthening the multilateral anti-corruption architecture" and the actions of non-governmental actors
- "Improving diplomatic engagement and leveraging foreign assistance resources to advance policy goals"

Of perhaps most interest to corporate compliance professionals is the SCC's statement that the U.S. government "will continue to vigorously enforce the Foreign Corrupt Practices Act (FCPA) and other statutory and regulatory regimes via criminal and civil enforcement actions." The strategy does not signal any imminent changes to the FCPA or the related laws that directly cover the actions of bribe payors.

By contrast, one of the SCC's main goals is to "update the tools available to hold corrupt actors accountable at home and abroad including by working with the Congress to *criminalize the demand side of bribery by foreign public officials*" (emphasis added). Even a cursory review of the SCC's five pillars suggests that many of the proposed actions that are likely most relevant to companies are focused on the recipients of improper payments, such as foreign public officials, and the intermediaries that assist them in obtaining and hiding assets.

The SCC contains numerous action items and plans (referred to as lines of effort or LOEs), some of which are focused on diplomatic and other government-to-government activities. We will summarize and discuss the LOEs that are most likely to directly impact companies' operations in the anti-corruption sphere, as well as related areas such as anti-money laundering (AML) and international sanctions. We will examine items in each of the five "pillars" and then provide summary observations as to potential risks and effects for companies.

Pillar 1: Modernizing, Coordinating, and Resourcing U.S. Government Efforts to Better Fight Corruption

Emphasizing that combatting corruption requires significant institutional and human resources, the first pillar focuses on the administration's increasing effort to gather, analyze, and share intelligence and coordinate enforcement and diplomatic efforts among relevant U.S. agencies and with international partners. The SCC highlights the activities and resources that will be given to

the following intra-agency task forces:

- Creating "a new anti-corruption task force at the Department of Commerce"
- Bolstering "the recently established (June 2021) [task force](#) at the United States Agency for International Development (USAID)"
- Ramping up "the recently established anti-corruption coordinating body at the Department of the Treasury" that includes agency units focusing on "financial crimes and financial intelligence, economic sanctions, financial transparency policy, criminal tax investigations, tax policy, and international finance"
- "In the Department of State, adopting new measures to enhance coordination and elevate diplomatic outreach, multilateral engagement, and alignment of policy, diplomacy, and foreign assistance"

The SCC also highlights the Federal Bureau of Investigation's (FBI) International Corruption Unit, operating in conjunction with the U.S. Department of Justice (DOJ) since 2016, noting that such efforts have contributed to 172 convictions, 33 non-trial resolutions, and the collection of over \$18 billion in civil and criminal penalties.

Finally, this pillar directs the U.S. intelligence community to "work to increase intelligence prioritization, collection, and analysis on corrupt actors and their networks." While the focus of this work will likely be on foreign state actors, corporate activities overseas may be observed during the course of these intelligence efforts.

Pillar 2: Curbing Illicit Finance

The SCC explicitly notes that deficiencies in the U.S. AML regime and related laws regarding financial transparency allow corrupt actors to escape detection and transfer illicitly obtained money and assets to financial "safe havens." The SCC aims to close gaps with several initiatives:

- **Beneficial Ownership Disclosure Regulations.** First, the administration will finalize "effective beneficial ownership regulations [per the 2021 [Corporate Transparency Act](#) (CTA)], and build[] a database of the beneficial owners of certain companies, in order to help domestic and international partners identify bad actors." The Financial Crimes Enforcement Network (FinCEN) issued an [advanced notice of proposed rulemaking](#) regarding these regulations and the resulting government database in April 2021 and a "Proposed Rule for Beneficial Ownership Reporting" on December 7, 2021, the day after the public release of the SCC. Miller & Chevalier is preparing a separate alert on these regulations.

Another section of the fiscal year (FY) 2021 National Defense Authorization Act (NDAA) requires federal contractors (both prospective contractors and grantees) to disclose certain beneficial ownership information; the SCC notes that implementing regulations will be issued soon. The SCC also suggests that various federal contracting agencies will "work with interested domestic and international stakeholders...as part of broader discussions on gatekeeping and encouraging clean corporate governance" in the federal contracting community. There are no further details as to what additional requirements or standards might result from such discussions.

- **Reporting Requirements on Certain Real Estate Transactions.** On December 6, 2021, at the same time the SCC was released, the U.S. Department of the Treasury (Treasury) issued an [advanced notice of proposed rulemaking](#) regarding the drafting of new regulations aimed at revealing "when real estate is used to hide ill-gotten cash or to launder criminal proceeds." The administration contemplates new reporting requirements that build on prior oversight actions such as FinCEN "geographic targeting orders (GTO) requiring the identification of natural persons behind all cash purchases" of certain real estate.
- **Investment Advisor/Equity Fund Reporting Standards.** The SCC states that the administration will reconsider an earlier effort to "prescribe minimum standards for anti-money laundering [AML] programs and suspicious activity reporting [SAR] requirements for certain investment advisors." The SCC also hints at a more significant potential expansion of AML standards to a broader

universe of "private placement funds, including investments offered by hedge funds and private equity firms."

- **Potential Expanded Know Your Customer (KYC) Requirements for Certain Gatekeepers in Financial Transactions** . The SCC includes plans to exercise and expand authorities to hold certain gatekeepers, such as lawyers, accountants, and trust and company service providers, accountable as potential facilitators of transfers of illicit money. The SCC notes that some of these gatekeepers are not currently required to "understand the nature or source of income of their clients or prospective clients" and that the U.S. government will seek to require additional gatekeeper due diligence/ "know your customer" activities and to increase penalties, including professional sanctions, on gatekeepers who facilitate illicit transactions.
- **Regulation in Response to Corruption Risks from "Digital Assets."** The SCC states that appropriate U.S. government agencies will continue to assess potential corruption risks from new and emerging "digital assets" and will consider appropriate regulation in response. According to the SCC, a key player in this effort will be the newly created DOJ National Cryptocurrency Enforcement Team, [announced by Deputy Attorney General Lisa O. Monaco](#) on October 6, 2021, which is focused on "complex investigations and prosecutions of criminal misuses of cryptocurrency, particularly crimes committed by virtual currency exchanges, mixing and tumbling services, and money laundering infrastructure actors."

Pillar 3: Holding Corrupt Actors Accountable

In Pillar Three, the SCC commits to creating new enforcement mechanisms, as well as using available tools, to hold various types of corrupt actors accountable. Specifically, the SCC notes multiple lines of effort, including the following:

- **Direct Criminalization of Receipt of Bribes by Officials** . The DOJ has successfully pursued foreign public officials who have received bribes from corporate entities (for example, [Jose Luis De Jongh Atencio](#), a former official at Petróleos de Venezuela S.A. (PDVSA)'s Houston subsidiary Citgo Petroleum Corporation, and [Mahamoud Adam Bechir and Youssouf Hamid Takane](#), former officials from the Republic of Chad). However, those efforts have depended on sometimes creative use of laws related to money laundering, wire fraud, and other laws and regulations. The SCC states that the administration will work with Congress "to criminalize the demand side of bribery by foreign public officials." A bill to accomplish this goal, titled the [Foreign Extortion Prevention Act](#) (FEPA), was introduced in the current legislative session in the House of Representatives in July 2021 and in the Senate in early November 2021. The bill has bipartisan support but has failed in the past to clear various legislative hurdles. The SCC also notes that the administration will support similar laws in other countries, "including in the countries where the bribery occurs."
- **Continued "Vigorous" Enforcement of the FCPA and Related Laws** . The SCC states that U.S. agencies will continue to "vigorously pursue the enforcement of foreign bribery cases through the FCPA, money laundering charges, and forfeitures [including via the DOJ Kleptocracy Asset Recovery Initiative] for promoting corrupt schemes and laundering corruption proceeds as appropriate." The DOJ announced changes to its corporate enforcement policies related to the FCPA in October 2021 through what is now being referred to as the Monaco Memorandum; these changes are discussed in detail in [this alert](#). The SCC also discusses re-emphasizing suspension and debarment of corrupt actors from U.S. government contracting.
- **Implementation of KARRA**. The FY 2021 NDAA authorized Treasury to establish a pilot Kleptocracy Asset Recovery Rewards Act (KARRA) program that, per the SCC, "will enhance the U.S. government's ability to identify and recover stolen assets linked to foreign government corruption held at U.S. financial institutions" by "provid[ing] payments to individuals for information leading to the identification and recovery of [such] stolen assets." [As discussed here](#), KARRA is a three-year program designed to reward whistleblowers who help identify and recover foreign corruption-linked assets illegally stored in the United States. Payouts are capped at \$5 million per individual and there is a total budget of \$25 million per year.
- **Expanded Use of Sanctions and Visa Restrictions Against Corrupt Actors** . The SCC emphasizes the goal of continued expansion of U.S. and multilateral economic sanctions and visa restrictions against corrupt officials and other actors, in coordination with other governments (citing, for example, the Global Magnitsky Act sanctions program, as implemented by Executive Order 13818, and "strong [U.S.] coordination with the United Kingdom on their Global Anti-Corruption Sanctions (GACS).") [In a speech on](#)

December 6, 2021, Deputy Treasury Secretary Wally Adeyemo noted that Treasury "has designated 216 targets with our anti-corruption sanctions authority to date" and "plan[s] to use new resources like beneficial ownership data to...enhance the targeting and efficacy of our sanctions actions."

- **Promotion of Corporate Anti-Corruption Compliance Programs.** The SCC notes that U.S. authorities will be "[w]orking with the private sector to improve the international business climate by encouraging the adoption and enforcement of anti-corruption compliance programs by U.S. and international companies, and promoting relevant anti-corruption provisions in trade agreements." No other details are provided in the strategy document, though of course the U.S. authorities continue to encourage companies to adopt effective programs in their [corporate enforcement policies](#).

Pillar 4: Preserving and Strengthening the Multilateral Anti-Corruption Architecture

The SCC states that the U.S. government "will bolster anti-corruption institutions and implementation of existing frameworks, including by implementing existing agreements, pushing partners to live up to their obligations, and holding accountable those who fail to do so." Lines of effort under this pillar of potential interest include:

- "Preserving and strengthening the international anti-corruption architecture in organizations such as the Organization for Economic Cooperation and Development (OECD), the Organization of American States (OAS), and the United Nations, including through *enhanced implementation* of the United Nations Convention Against Corruption (UNCAC)" (emphasis added). Many countries have signed the UNCAC but have taken few, if any, steps to implement the convention's obligations effectively.
- "Reinvigorating U.S. participation in the Open Government Partnership and Extractive Industries Transparency Initiative" (EITI). Given the SEC's past challenges in implementing EITI-related regulations on disclosures by extractive industry companies, it will be interesting to see the tack taken by the administration on these efforts.
- "Redoubling efforts" at various multilateral fora, such as the G7, G20, and Financial Action Task Force (FATF), to focus on anti-corruption and AML efforts, and pushing international development and financial institutions to "strengthen anti-corruption guardrails and to enhance, when needed, oversight over procurement and overall use of funds."

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

Pillar Five notes that the U.S. government "will elevate and expand the scale of diplomatic engagement and foreign assistance, including by enhancing partner governments' capacities to fight corruption in cooperation with U.S. law enforcement authorities." Efforts discussed under this pillar include:

- "Elevating corruption as a diplomatic priority in a manner tailored to local conditions"
- "Substantially expanding anti-corruption focused U.S. assistance, and monitoring the efficacy of this assistance"
- Protecting and supporting reformers, journalists, and whistleblowers in other countries, including by countering strategic lawsuit against public participation (SLAPP) suits in the U.S. against journalists
- "Developing anti-corruption integration tools and resources for practitioners in technical Sectors"

Annual Reporting

In addition to the Five Pillars, the SCC includes information on the Biden-Harris administration's mechanism for holding the government accountable: "[t]o hold ourselves accountable, Federal departments and agencies, coordinated by the National Security Council, and in consultation with the National Economic Council and Domestic Policy Council, will report annually to the President on progress made against the Strategy's goals." The timing of this report is not clear, but compliance practitioners may wish to calendar the report, as it likely will be a useful summary of recent U.S. anti-corruption efforts that can inform a company's

investigative and other risk profiles.

Some Key Takeaways for Companies

The following takeaways from the SCC and other recent actions taken in coordination with the release of the SCC may be most relevant for corporate compliance personnel.

- The panoply of new AML initiatives by Treasury discussed in the SCC represent the most immediate changes for covered corporate entities and bear watching now. A passing statement that contains no further details, but potential significant implications, notes that enhanced AML efforts will include "relevant tax enforcement against money launderers and those who enable launderers as appropriate." The SCC notes that the government is "considering new legislation expanding criminal substantive law as needed" – but other than the announced initiatives noted above, there are no immediate legislative proposals.
- The SCC does not contain proposals for new laws, regulations, or amendments to existing laws related to the "supply side" of corruption, including the FCPA. Instead, the focus is on better coordination among U.S. and international authorities and the continued and expanded use of pendant laws, such as AML laws.
- The SCC portends more significant action on enforcement related to the "demand side" of corruption – which is not surprising given the strategy's key goal of disrupting the financial networks of corrupt officials who the SCC alleges can use illegal gains to pursue actions contrary to U.S. national security interests. The passage of FEPA, for example, would add a new legal tool to U.S. authorities' current arsenal, and while not targeted at companies, FEPA and similar "demand side" enforcement efforts could entangle companies in new lines of potential liability.
- The SCC incorporates many pre-existing initiatives that support the various "pillars" of anti-corruption efforts (*e.g.*, FBI's International Corruption Unit, the FinCEN beneficial ownership registry, the FY 2021 NDAA (Section 885) transparency requirements for disclosing beneficial owners of government contracts, a recommitment to old proposed Treasury regulations on investment advisors, KARRA, FEPA). By providing a national security rationale for linking these efforts together, it is possible that the SCC might assist the White House in maintaining its political focus on pushing these various efforts to completion.
- There is a strong emphasis on coordinating bodies that are better able and willing to share intelligence on corrupt activities and to coordinate enforcement or regulatory actions – both within the U.S. government and among enforcement authorities in other countries. Increasing intra-agency coordination may result in the need for companies under investigation to respond to inquiries from more agencies than has previously been the case (some of which may have different rules regarding key issues such as due process, attorney-client privilege, and data privacy) and to manage resolutions with multiple authorities.
- The focus on expanding and coordinating U.S. and international economic sanctions against corrupt actors within the Global Magnitsky Act authorities and other programs will require continued vigilance by companies in connection with due diligence on third parties and customers. Unlike Treasury's country-based program, these sanctions can affect entities and individuals anywhere in the world. It is more likely that prosecutors investigating potential corruption will ask for specific information related to how companies manage these sanctions.
- The SCC contains many efforts directed toward building capacity in or incentivizing other countries to fight corruption, including by passing new laws (such as laws criminalizing the demand side of bribery), pushing to better UNCAC implementation, pursuing greater coordination and cooperation under existing mutual legal assistance (MLA) authorities, and technical assistance and funding for increased enforcement capabilities. Over time, these efforts likely will both reduce the incidence of corruption overall but will also potentially expose companies to investigative/enforcement risk in countries that are currently not active in this area. The linkage to U.S. aid conditions may push countries to adopt at least some new measures in the shorter term.

Miller & Chevalier will continue to monitor the progress of various lines of effort in the SCC.

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