

Biden highlights anti-money laundering as a tool to combat corruption

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JANUARY 19, 2022

The Biden administration concluded 2021 by announcing its comprehensive U.S. Strategy on Countering Corruption (the Strategy), an initiative that emphasized two of its key enforcement priorities: anti-corruption and anti-money laundering. Notable among the main components of the Strategy is its focus on curbing illicit finance.

In its effort to “follow the money” to root out corruption, the Biden administration plans to issue regulations to improve transparency in regard to beneficial ownership and real estate transactions; increase the obligations of gatekeepers; and strengthen collaboration and grant new powers to law enforcement that will greatly enhance money laundering enforcement efforts at home and abroad.

Increased transparency in corporate structures and select transactions

The Strategy lays out several areas for increased regulation to bring transparency to corporate structures and transactions that have historically permitted money launderers and corrupt actors to evade detection. The transparency components of the Strategy build upon efforts that are already underway, both through requirements enacted at the beginning of 2021 with the passage of the National Defense Authorization Act (NDAA) and steps the Financial Crimes Enforcement Network (FinCEN) has taken to combat money laundering in real estate transactions.

The Strategy highlights enhanced regulations “to identify bad actors hiding behind opaque corporate structures,” such as shell companies, a favored vehicle for corruption-related money laundering. The Corporate Transparency Act (CTA), passed as part of the NDAA, addresses this problem. It requires certain corporate entities, including limited liability companies, to register with FinCEN and disclose their ultimate, natural person beneficial owners.

FinCEN is forging ahead in implementing the beneficial ownership registry. The day after the Biden administration announced the Strategy, FinCEN issued a Notice of Proposed Rulemaking to implement the beneficial ownership information reporting requirements. While FinCEN’s proposed rulemaking would exempt some entities in heavily regulated industries, such as certain registered investment companies, it applies to a broad swath of corporate entities.

The beneficial ownership registry will be an important tool for anti-corruption investigators, who previously had to rely on costly and time-consuming investigative tools to obtain beneficial ownership information for closely held corporate entities.

Real estate transactions, commonly used to shield corrupt actors’ assets, are also a focus of the Strategy. The Strategy promises to enact new regulation of professionals and parties involved in real estate transactions to prevent the use of such transactions for money laundering. FinCEN undertook the same mission in 2016 by issuing Geographic Targeting Orders that required title insurance companies to disclose the natural person for shell companies for any all-cash real estate purchase over \$300,000 in a subset of major metropolitan areas.

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Notably, the same day that the Biden administration announced the Strategy, FinCEN took steps that indicate it may expand reporting requirements to other parties, including real estate developers, managers, lenders, investment advisers, and investment companies, nationwide, and make these requirements permanent.

The Strategy also recognizes that the art and antiquities market, long known for its anonymity and lack of regulation, has long been exploited by corrupt actors seeking to launder and shelter ill-gotten gains. The Anti-Money Laundering Act of 2020 (AMLA), also passed as part of the NDAA, made antiquities dealers’ sales subject to reporting requirements under the Bank Secrecy Act. Language in the legislation suggests that expansion of such regulations to the broader art market may be imminent.

The Strategy also recognizes that digital assets may pose a risk for facilitating corruption. While the Strategy does not detail the specific steps the administration will take to counter the use of digital assets in corruption schemes, it notes that it will harness the resources of the Department of Justice's (DOJ) newly formed National Cryptocurrency Enforcement Team, a task force that will focus on complex investigations of criminal activity facilitated with cryptocurrency.

New AML reporting obligations for gatekeepers

In addition to increasing reporting obligations for parties involved in real estate transactions, the Strategy seeks to increase the obligations of a broad array of gatekeepers to the financial system such as lawyers, accountants, and trust and company service providers.

One prominent feature of the Strategy's "follow the money" component is increased coordination between the United States and its partner countries to strengthen anti-money laundering regimes and accountability through enforcement.

Historically, law enforcement has had difficulty holding these gatekeepers accountable for facilitating transactions that mask illicit funds because regulations did not require gatekeepers to have an understanding of the nature and source of their clients' funds. The administration appears intent on remedying that fact. Among other steps, the Strategy indicates that the Treasury Department will re-examine its 2015 Notice of Proposed Rule Making that sought to impose anti-money laundering requirements for investment advisers such as hedge funds and private equity funds.

With expanded reporting requirements comes greater accountability. The Strategy contemplates establishing greater obligations through legislation and working with states to impose penalties through professional sanctions. Regulators had already previewed this enforcement priority. In an October 2021 speech, Securities and Exchange Commission (SEC) Director of Enforcement Gurbir Grewal highlighted the SEC's intent to increase gatekeeper accountability for auditors and lawyers to protect investors from fraudsters and kleptocrats globally.

New enforcement tools and collaborative law enforcement

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and its partner countries to strengthen anti-money laundering regimes and accountability through enforcement.

The AMLA facilitates this objective in several key ways: sharing suspicious activity reports with foreign partners; deploying Treasury Department attachés and FinCEN foreign intelligence unit liaisons to U.S. embassies or foreign government facilities to help strengthen anti-money laundering legal frameworks; and granting federal prosecutors the power to subpoena foreign banks that maintain correspondent accounts in the United States.

This expanded subpoena power is a particularly powerful tool for federal prosecutors investigating money laundering in the international financial system, as it allows prosecutors to avoid what was previously a lengthy process for accessing bank records of foreign financial institutions.

The Strategy also aims to ensure that assets plundered by corrupt actors will be repatriated to their home country. It announced that DOJ's 2010 pilot program, the Kleptocracy Asset Recovery Initiative, would remain a priority. The program empowers DOJ to seek forfeiture of "stolen assets" — that is, funds traceable to foreign government corruption — that are held at U.S. financial institutions and found in the United States or in the possession of U.S. persons.

A new pilot program that will complement the DOJ's program — the Kleptocracy Asset Recovery Rewards program — is a whistleblower program enacted under the NDAA that is designed to encourage reporting of information to help recover stolen assets.

At the heart of the anti-money laundering component is the specter of increased enforcement. In addition to the investigative tools provided by the AMLA described above, increased transparency in financial transactions and enhanced reporting requirements for gatekeepers will result in a greater breadth of information that law enforcement can use to investigate and root out bad actors' and kleptocrats' efforts to hide their illicit gains.

The Strategy is not the first time the administration has publicly highlighted anti-money laundering as an important tool for fighting corruption. Recently, at the American Conference Institute's 2021 Foreign Corrupt Practices Act (FCPA) Conference, David Last, the chief of the DOJ Fraud Section's unit, noted that the DOJ will "follow the money" to root out misconduct, confirming that money laundering is top of mind for the FCPA Unit. The FCPA Unit's enforcement efforts, combined with the DOJ's Money Laundering and Asset Recovery Section and SEC's focus on these issues, portend increased enforcement activity in the area of corruption-related money laundering.

In all, the Strategy emphasizes the Biden administration's two major priorities: combating corruption and increasing prosecution of money laundering offenses. In particular, actors in the real estate and art markets, investment advisers, and other gatekeepers to the financial system should be prepared for increased regulation.

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This article was first published on Reuters Legal News and Westlaw Today on January 19, 2022.