

Biden Memorandum on Combating Corruption Likely Means Increased FCPA Enforcement

June 11, 2021

Earlier this month, the Biden Administration formally announced that combating corruption is a core United States national security interest. On June 3, 2021, the Biden Administration issued a "Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest." The memorandum declares that the Biden Administration "will lead efforts to promote good governance; bring transparency to the United States and global financial systems; prevent and combat corruption at home and abroad, and make it increasingly difficult for corrupt actors to shield their activities."

In order to accomplish these [1]goals, the memorandum directs the Assistant to the President and National Security Advisor, in coordination with other White House officials, to conduct a 200-day interagency review process with representatives from 15 federal agencies and offices to strengthen the U.S. government's ability to achieve 10 objectives focused on preventing and combating corruption both domestically and on a global basis. These objectives include modernizing, increasing, coordinating and improving the ability of key executive departments and agencies, including the departments of Justice, State, Defense, Commerce, Treasury, Energy, and Homeland Security, as well as the office of the Director of National Intelligence (DNI), the Central Intelligence Agency (CIA), the office of the Chairman of the Joint Chiefs of Staff, and the National Security Agency (NSA), "to promote good governance and prevent and combat corruption...." The objectives also include enhancing efforts to quickly increase U.S. and partner investigative, financial, technical, and political resources and other assistance to foreign countries that desire to reduce corruption; assisting and strengthening the capacity of domestic (including state and local) authorities and institutions, as well as foreign governments, to implement transparency, oversight, and accountability measures to combat corruption; and promoting "partnerships with the private sector and civil society to advocate for anti-corruption measures and take action to prevent corruption...."

These objectives portend the likelihood of increased enforcement of the Foreign Corrupt Practices Act (FCPA) by the Biden Administration going forward, not only by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) operating with increased enforcement resources, but also with the coordinated assistance of other federal departments and agencies including the Departments of State, Commerce, Defense and Treasury, as well as the DNI, CIA, and NSA. They also foreshadow increased anti-corruption investigative and enforcement cooperation between the U.S. Government and foreign government authorities, operating with enhanced resources, to investigate and enforce compliance with the FCPA and foreign anti-corruption laws.

Finally, the memorandum points to increased emphasis [2]on the part of U.S. enforcement authorities on efforts being taken by the private sector to prevent corruption. This likely means continued and increasing emphasis by the DOJ and SEC on the effectiveness of companies' anti-corruption compliance programs. As indicated in "A Resource Guide to the U.S. Foreign Corrupt Practices Act," Second Edition, issued in July 2020, the DOJ and SEC will continue to evaluate a company's anti-corruption compliance program based on three questions;

- Is it well-designed?

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- Is it effectively implemented?
- Does it work in practice?

Given the Biden Administration's increased emphasis on combating corruption as stated in the memorandum, it would be prudent for companies to undertake a holistic review of their anti-corruption compliance programs to make sure that they can satisfactorily answer these three questions in order to protect themselves and their employees from liability under the FCPA and prepare for the increased prominence of their anti-corruption programs in terms of corporate governance and finance.