

Anti-Corruption Recommendations for the Administration



Coalition for Integrity





The Coalition for Integrity is a non-profit, non-partisan 501(c)(3) organization. We work in coalition with a wide range of individuals and organizations to combat corruption and promote integrity in the public and private sectors. www.coalitionforintegrity.org

Every effort has been made to verify the accuracy of the information contained in this report.

© 2021 Coalition for Integrity. All rights reserved.

Anti-Corruption Recommendations for the Administration

Researched and Produced By
Coalition for Integrity ©2021



Table of Contents

Introduction	1
The Domestic Agenda	2
▶ Conflicts of Interest by the President, Vice President, and Family Members...2	
▶ Our Recommendations.....	4
▶ Abuses of Presidential Powers.....	6
▶ Our Recommendations.....	7
▶ Strengthening the Office of Government Ethics	9
▶ Our Recommendations.....	10
▶ Protecting Federal Whistleblowers	11
▶ Our Recommendations.....	13
The International Agenda	15
▶ Reasserting Leadership in International Anti-Corruption.....	15
▶ Our Recommendations	16
▶ Tackling Transnational Bribery	17
▶ Our Recommendations	18
▶ Tackling the Demand Side of Foreign Bribery	19
▶ Our Recommendations	19
▶ Beneficial Ownership Disclosure and Addressing Illicit Financial Flows.....	23
▶ Our Recommendations	25
▶ Extractive Industry Transparency	27
▶ Our Recommendations	28
Closing	29

Introduction

President Biden begins his administration amidst unprecedented crises—economic, health, political and social. Nothing is more important than ending the COVID pandemic and restarting economic growth. At the same time, however, the Executive and Legislative Branches must take immediate steps to promote honesty and transparency in government, address the gaps in U.S. law that allowed conflicts of interest and self-dealing to flourish, rein in excessive Presidential powers, and strengthen federal agencies charged with overseeing ethics, campaign finance, and political activities. Trust in the federal government has been on a steady decline for decades and has hovered at all-time-lows for years. According to a 2020 Pew Research study, only 20% of Americans say they trust the government to mostly “do the right thing.”¹ While the new administration faces several pressing concerns, changing attitudes toward the federal government will be crucial to long-term success. By taking actions to promote transparency and strengthen enforcement of ethics laws, the Executive and Legislative Branches can begin to regain public trust.

Beyond the inherent values of promoting trust in government, corruption is not a victimless crime. Conflicts of interest and self-dealing divert funds, benefitting those in power and burdening those most in need public funds. Addressing these profound issues domestically can form the basis of a renewed commitment to address corruption on an international scale.

As a candidate, President Biden offered a plan² to reform the government, addressing independence of government agencies from political interference, strengthening campaign finance laws, overhauling ethics oversight, and restricting the influence of lobbyists. While some of these proposals need refinement, and, in certain respects, do not go far enough, the Coalition for Integrity supports a number of them as discussed below. This paper lays out our views of the key domestic issues that must be addressed to promote honesty and transparency in the Executive and Legislative Branches of the U.S. government—and efforts to address anti-corruption issues on an international level.

¹ *American's View of Government: Low Trust, But Some Positive Performance Ratings*, PEW RESEARCH (Sept. 7, 2020), <https://www.pewresearch.org/politics/2020/09/14/americans-views-of-government-low-trust-but-some-positive-performance-ratings/>.

² *The Biden Plan to Guarantee Government Works for The People*, BIDEN HARRIS, <https://joebiden.com/governmentreform/> (last visited Feb. 4, 2021).

The Domestic Agenda

The last four years have seen a continuation of a decades-long trend that centralized government power in the hands of the President and weakened Congressional oversight of the Executive Branch. We saw actions taken by a sitting president that amounted to an abuse of the powers of the office. These actions included unprecedented intertwining of the government with the president's private businesses; rampant conflicts of interest in actions taken by the President, his extended family, and associates; an extreme lack of transparency by refusing to release tax returns, failing to maintain and publish White House visitors' logs and the cancelation of normal press briefings; failure to enforce Hatch Act violations by government employees and other ethics standards; and use of the pardon power to reward loyalists and those with connections, rather than remedy injustice.³

What made these actions so jarring, and what makes addressing them necessary, was not that they were illegal, but that they were mostly legal. For years, these existing holes in the law were placed on the backburner, as presidents came and went with enough reverence for the office to abide by higher standards than the minimum legal requirements and a commitment to enforcing the law. Now that we have seen the depths to which one can take advantage of gaps in the law, it is our responsibility to fortify the legal system, so it does not happen again.

Conflicts of Interest by the President, Vice President, and Family Members

Federal law relating to conflicts of interest has significant loopholes.⁴ The existing statute addressing this issue, the aptly-named Conflict of Interest Statute, 18 U.S.C. § 208, contains a wide variety of limitations on conduct based on conflicts of interest—either personal to the federal official or to a member of their family.⁵ The Conflict of Interest Statute provides a long list of actions that officials and employees are prohibited from participating in if they

³ [The Hatch Act, 5 U.S.C. § 7321-26, \(2020\)](#). The Hatch Act restricts federal employee participation in certain partisan political activities, such as soliciting, accepting, or receiving political contributions while on duty.

⁴ *Leading from the Top: An Ethics Plan for Presidential Candidates*, COALITION FOR INTEGRITY (2020), https://www.coalitionforintegrity.org/wp-content/uploads/2020/06/Presidential_Ethics_Paper_FINAL_compressed.pdf.

⁵ [Conflict of Interest Statute, 18 U.S.C. § 208 \(2020\)](#).

know of a conflict of interest involving themselves or their family. Regulations adopted by the Office of Government Ethics⁶ sets out requirements to avoid conflicts of interest, such as divestiture of conflicting assets or recusal from involvement in a matter in which the official has a financial interest. Currently, officials may place their assets in a trust but this does not preclude serious conflicts of interest as can be seen by the former president's trust, which was administered by his son and obviously contained his known real estate assets.

While the proscribed conduct in 18 U.S.C. § 208 is fairly robust, the definition of the law specifically exempts it from applying to the President, Vice President, members of Congress, and federal judges. Other laws and regulations cover members of Congress and judges⁷, but no provisions cover the President and Vice President.

In the past, this has not been a major issue. Either presidents avoided conflicts of interest on their own initiative or they simply did not have extensive enough business connections for conflicts of interest to be a major issue. The Trump Administration has raised this issue to a prominent position. A president with a large business empire and multiple different partners exposes the holes in existing conflict of interest law.

There were numerous examples in the past four years of Presidential conflicts of interest—use of the Trump Hotel in Washington DC by foreign government officials and lobbyists, use of the Trump golf resorts to house US military personnel, and promotion of those golf resorts by actions of the President and family members, to name a few.⁸

The experience of the past four years demonstrates the need to further discourage conflicts of interest on the part of the President, Vice-President, and their family. Current law relies

⁶ [5 C.F.R. Part 2635.402](#).

⁷ See e.g., Committee on Standards of Official Conduct, [House Ethics Manual](#), 110th Congress (2008); Select Committee on Ethics, [Senate Ethics Manual](#), 110th Congress (2008); [Code of Conduct for U.S. Judges](#) (2019). We note that conflicts of interest issues remain a problem in the Legislative Branch. Many members of Congress own stock in publicly-traded companies, as well as interests in privately-held companies. While the [STOCK Act](#) addresses individual members trading stocks based on insider information and requires some transparency, it does not address all potential sources of legislative conflict of interest.

⁸ See e.g., Erik Larson, *Trump Hotel Profits Back in Spotlight with Court Reversal*, BLOOMBERG LAW (May 14, 2020), <https://news.bloomberglaw.com/us-law-week/trumps-emoluments-victory-is-reversed-by-full-appeals-court?context=article-related> (highlighting use of Trump's D.C. hotel for foreign officials); Natasha Bertrand & Bryan Bender, *Military has spent nearly \$200,000 at Trump's Scottish resort since 2017*, POLITICO (Sept. 18, 2019), <https://www.politico.com/story/2019/09/18/military-trumps-scottish-resort-1501877>; David Fahrenthold et al., *When Trump visits his clubs, government agencies and Republicans pay to be where he is*, WASHINGTON POST (June 20, 2019), https://www.washingtonpost.com/politics/when-trump-visits-his-clubs-government-agencies-and-republicans-pay-to-be-where-he-is/2019/06/20/a4c13c36-8ed0-11e9-adf3-f70f78c156e8_story.html.

on three mechanisms to discourage conflicts of interests on the part of other government officials: transparency, divestiture of the interest, or recusal from involvement in decisions that could be affected by that interest.⁹ Recusal, the easiest solution to avoid conflicts of interest, raises issues on the Presidential level. Specifically, critics have said these officials' status as the heads of the Executive Branch makes recusal from matters functionally impossible.

In addition to issues of practicality, recusal also raises other issues. According to a Department of Justice analysis from 1974,¹⁰ recusal by a President also raises constitutional issues and "conflict of interest problems of the President and Vice President as individual persons must inevitably be treated separately from the rest of the executive branch." In that analysis, the DOJ concluded that the requirement to disqualify executive employees from participating in any matters which might raise a conflict of interest could only be applied to officials appointed by the President and "those subordinate officials who are employed by departments and agencies in the Executive Branch."¹¹

Our Recommendations

Under current law, a government official avoids conflicts of interest through the divestiture of the interest or recusal from involvement in decisions that could be affected by that interest.¹² If it is true that recusal is constitutionally impermissible and functionally impossible for the President and Vice President then it is vitally important that each of them show their respect for conflict of interest norms through:

⁹ Office of Government Ethics established regulations allowing eligible government officials to seek a Certificate of Divestiture to defer capital gains taxes associated with the sale of property that is "reasonably necessary to comply with 18 U.S.C. § 208 . . ." [26 U.S.C. § 1043; 5 C.F.R. § 2634](#); Memorandum from David J. Apol, Acting Dir. & Gen. Counsel, Office of Government Ethics, to Designated Agency Officials, (Feb. 18, 2018) [https://www2.oge.gov/web/oge.nsf/Legal%20Advisories/7E8FCE6955A972778525822F00535A55/\\$FILE/LA-18-03.pdf?open](https://www2.oge.gov/web/oge.nsf/Legal%20Advisories/7E8FCE6955A972778525822F00535A55/$FILE/LA-18-03.pdf?open).

¹⁰ Memorandum from Laurence Silberman, Acting Att. Gen. to Howard Cannon, Chairman on Rules & Admin, U.S. Senate, (Sept. 20, 1974) <https://fas.org/irp/agency/doj/coi-1974.pdf>.

¹¹ A recent review of the issue by the Congressional Research Service discussed the constitutionality of applying Section 208 to the President and Vice President, noting that the Supreme Court had never ruled on the question. Congressional Research Service, Cynthia Brown, [Executive Branch Ethics and Financial Conflicts of Interest: Disqualification](#) (Jan. 31, 2019).

¹² Office of Government Ethics established regulations allowing eligible government officials to seek a Certificate of Divestiture to defer capital gains taxes associated with the sale of property that is "reasonably necessary to comply with 18 U.S.C. § 208 . . ." [26 U.S.C. § 1043; 5 C.F.R. § 2634](#); Memorandum from David J. Apol, Acting Dir. & Gen. Counsel, Office of Government Ethics, to Designated Agency Officials, (Feb. 18, 2018) [https://www2.oge.gov/web/oge.nsf/Legal%20Advisories/7E8FCE6955A972778525822F00535A55/\\$FILE/LA-18-03.pdf?open](https://www2.oge.gov/web/oge.nsf/Legal%20Advisories/7E8FCE6955A972778525822F00535A55/$FILE/LA-18-03.pdf?open).

- ▶ enhanced transparency, including the release of tax returns for the last ten years
- ▶ divestment of business interests (no matter what form those interests take) or creation of a trust which is controlled by an independent financial institution (not family members or friends) and whose assets are transparent to the public¹³
- ▶ disclosure of their immediate family's private financial interests

There are several legislative initiatives introduced in January 2021 to limit conflicts of interest by the President and Vice President that the Coalition of Integrity supports. We strongly urge passage of the following:

- ▶ Title X, § 1001, of HR 1 (For the People Act of 2021), requiring candidates for President and Vice President to make ten years of tax returns publicly available and imposing almost the same requirement once elected as President or Vice President.¹⁴
- ▶ Title VIII, § 8001 et. seq., of HR 1, (1) prohibiting the expenditure of federal funds on contract with a business owned or controlled, directly or indirectly, by the President, Vice President or any family member of such an individual and criminalizing the execution of such a contract; (2) requiring approval by the Office of Government Ethics for the creation of a legal defense fund for the President, Vice President and any employee, contractor, consultant or volunteer of the campaign of the President or Vice President and limiting the amount of contributions allowed to such a fund; (3) requiring divestiture of assets by the President and Vice President and related persons or creation of a blind trust, as well as disclosure of beneficial owners of assets in which the person holds an interest.

¹³ Currently officials may place their assets in a blind trust but this does not preclude serious conflicts of interest as can be seen by the former president's trust, which was administered by his son and obviously contained his known real estate assets. *Id.*

¹⁴ For the People Act of 2021, [H.R. 1](#), 117th Cong. (2021); The For the People Act of 2021 became one step close to law on March 3, 2021 when the bill passed the House of Representatives. [Press Release, Del. John Sarbanes, Sarbanes Lead House Efforts to Pass H.R. 1, the For the People Act \(Mar. 3, 2021\)](#).

In the prior Congress, legislation was introduced to clarify enforcement of the Emoluments Clause of the Constitution.¹⁵ Title III of the Protecting Our Democracy Act, introduced in the prior Congress clarified the application of the prohibition to cover gifts or emoluments provided directly or indirectly by a government of a foreign country, whether provided to the official or private business interest of that person, except in cases where Congress consented in advance. Title III also gave the House of Representatives power to enforce this prohibition through a civil suit.¹⁶ We would support similar legislation if introduced in the new Congress.

Abuses of Presidential Powers

Many of the abuses of the past were possible because of ambiguities in relevant law and a concerted refusal to enforce laws that do exist. The most obvious one is the outrageous use of the Presidential pardon power to exonerate persons with close ties to the President or his family, as well as persons convicted of felonies related to investigations involving the President. Almost all of these pardons were made without following existing Department of Justice guidance or procedures.¹⁷

Other abuses include the failure of the White House to enforce the Hatch Act prohibitions¹⁸ on political activity by government employees;¹⁹ the interpretation that employees of the Executive Office of the President were not subject to certain ethics rules; the failure to publish visitors' logs or waivers of conflict of interest that were granted to Executive Office personnel; political use of government agencies; employing family members (paid and unpaid); and indiscriminate firing of Executive Branch inspectors general without cause. In each of the cases, the White House took advantage of legal ambiguities, ignored standard

¹⁵ Enforcing the Domestic Emoluments Clause is still an unsettled area of law according to the Congressional Research Service. *The Emoluments Clauses of the U.S. Constitution*, CONGRESSIONAL RESEARCH SERVICE (2021), <https://fas.org/sgp/crs/misc/IF11086.pdf>.

¹⁶ [Protecting Our Democracy Act](#), H.R. 8363, 116th Cong. (2020).

¹⁷ *Pardon Information & Instructions*, DEPT. OF JUSTICE, <https://www.justice.gov/pardon/pardon-information-and-instructions>; Joe Walsh, *Trump Pardons And Commutes 143 People On His Last Day—But Doesn't Pardon His Family*, FORBES (Jan. 20, 2021, 6:10 AM), <https://www.forbes.com/sites/joewalsh/2021/01/20/trump-pardons-and-commutes-on-his-last-day—but-doesnt-pardon-his-family/?sh=276415a91f79>.

¹⁸ <https://osc.gov/Services/Pages/HatchAct-Federal.aspx#tabGroup12>.

¹⁹ *Federal Employee Hatch Act Information*, U.S. Office of Special Counsel, <https://osc.gov/Services/Pages/HatchAct-Federal.aspx#tabGroup12>.

safeguard procedures which had been followed for years, or simply acted unethically (though technically legally).

Our Recommendations

Circumscribing presidential power in all these areas, through closing loopholes or enacting binding and enforceable legal norms, is required to restore trust in the Presidency and avoid any possible repetition in the future.

The Coalition for Integrity believes that the following actions must be taken:

- ▶ It must be explicit that granting a pardon in return for anything of value (broadly defined), whether received directly or indirectly, is a criminal act.
- ▶ The application of the Hatch Act and the Ethics in Government Act to persons working in the Executive Office of the President must be made explicit and the Anti-Nepotism statute should explicitly apply to the President and Vice President.²⁰
- ▶ Enforcement provisions of the Hatch Act must be strengthened.
- ▶ Inspectors general should not be removed without cause and vacancies in those positions must be filled expeditiously.
- ▶ Transparency of Executive Branch actions cannot be discretionary and must be mandated by law.
- ▶ As a general rule, pardons and commutations should follow a careful deliberative process and not be supplanted by an overtly political process, particularly when pardons and commutations disproportionately benefit those convicted of crimes such as bribery, corruption, and fraud.²¹

²⁰ [5 U.S.C. § 3110](#).

²¹ *Protect the Rule of Law and Judicial Independence*, COALITION FOR INTEGRITY, <https://www.coalitionforintegrity.org/wp-content/uploads/2020/02/Protect-the-Rule-of-Law-and-Judicial-Independence.pdf>.

While these actions can be accomplished through legislative means, it is difficult to limit the Presidential power to pardon or outlaw political interference with executive agencies. In these cases, transparency is the major remedy. At least transparency may inhibit a Presidential action if the President is required to disclose the reasons for issuing a pardon or a communication with a government agency seeking a change in policy or requesting the agency undertake or refrain from undertaking an action.

Legislative proposals to address many of these issues were introduced in the previous Congress and have so far not been introduced in the new Congress. One exception is HR 1, For the People Act, which does clarify the application of the Ethics in Government Act to persons working in the Executive Office of the President, whether paid or unpaid, by including that Office as a “covered agency” for purposes of the Act (§§ 8003, 8034(e) and 8006). The Coalition strongly supports these proposed amendments.

We urge members to reintroduce relevant proposals from prior sessions for Congress to act on during the current session. Specifically, the Protect Our Democracy Act, HR 3683,²² introduced in September 2020 included the following relevant provisions:

- ▶ Allowing the President to remove an Inspector General only for enumerated reasons and requiring notice to Congress if the President fails to fill a vacant position as Inspector General within 210 days (Title VII—Protecting Inspector General Independence)
- ▶ Giving the Office of Special Counsel the authority to enforce the Hatch Act if the relevant executive agency fails to take action; clarifying that the Hatch Act applies to all persons working in the White House and Executive Office of the President and increasing the penalty for violations by political appointees (Title X—Strengthening Hatch Act Enforcement and Penalties); and

²² [Protecting Our Democracy Act, H.R. 3863, 116th Cong. \(2020\)](#).

- ▶ Adding Congressional oversight to Presidential pardons by requiring a report within 30 days of the grant of a pardon containing all information upon which the pardon was based and amending the Bribery statute to include the President and Vice President as covered officials and expanding bribery to include the grant of a pardon (Title I—Abuse of the Pardon Power Prevention)

Strengthening the Office of Government Ethics

The Office of Government Ethics (“OGE”), created by the Ethics in Government Act, is the federal agency charged with overseeing federal conflict of interest laws, as well as providing guidance on those laws to federal officials and employees.²³ Currently, the OGE cannot accept complaints about ethical violations—the Office may neither investigate, nor punish ethical lapses. In other words, the OGE has a mandate, but it does not have the power to enforce that mandate.

Further, the OGE’s jurisdiction has been questioned. The enabling statute states that the OGE must review financial disclosure reports from executive branch employees, prevent conflicts of interest by executive branch employees, and develop rules related to the Executive Branch. Under the Trump Administration, there was a push by some White House lawyers to advance the theory that some OGE regulations did not apply to executive employees.²⁴

Finally, the Director of the OGE is not protected from removal without cause. The Director is appointed by the President for a five-year term with the advice and consent of the Senate. However, there are no clearly stated means of removal. As a result, a President could easily remove an OGE Director, creating a chilling effect on the Director’s job performance. After the Supreme Court’s decision in *Selia Law v. Consumer Financial Protection Bureau*, it is unconstitutional for an independent agency to have a single agency-head who is protected

²³ Ethics in Government Act of 1978, 92 Stat. 1824–27 (1978) ([current version at 18 U.S.C. § 208 \(2020\)](#)).

²⁴ Danielle Kurtzleben, *U.S. Ethics Official to White House: No, These Rules Definitely Apply to You*, NPR (Mar. 9, 2017), <https://www.npr.org/sections/thetwo-way/2017/03/09/519554307/u-s-ethics-official-to-white-house-no-these-rules-definitely-apply-to-you>.

from removal at will by the President.²⁵ Removal protections may still exist for inferior officers (*i.e.* lower-level employees) and multi-director or commissioner-headed agencies.

Our Recommendations

- ▶ The OGE must have adequate power to enforce its mandate. As stated, at the moment it cannot sanction, or even investigate suspected ethical wrongdoing. Investigative and sanctioning authority are both essential powers for the OGE to possess.
- ▶ To avoid a future White House trying to evade the application of OGE rules, the law should clearly state that OGE jurisdiction covers employees of the Executive Office of the President.
- ▶ Finally, the OGE Director should be protected from removal without cause. The prospect of being removed at the whim of the president creates a real barrier to an OGE Director performing work that must be done to fulfill the Office's mandate. Given the Supreme Court decision in *Selia Law*, it may no longer be possible to add for cause removal protections for the OGE Director. Therefore, it is important that the President show commitment to ethical governance and respect for the OGE's independence by publicly committing to only remove the Director for cause.

Title VIII of HR 1, For the People Act, contains a number of provisions to strengthen the Office of Government Ethics, all of which the Coalition strongly supports. These include:

- ▶ Giving OGE investigative authority (including the ability to issue subpoenas) and modest sanctioning authority.

²⁵ The Supreme Court issued a ruling in *Seila Law* on whether the Consumer Financial Protection Bureau's structure violates the Constitution's separation of powers because it is an independent agency headed by a single Director. The Director was a single-head exercising substantial executive power, but could only be removed by the President for cause. Under the Supreme Court's precedent, the power to remove officers is vested only with the President, even if the officer in question is confirmed by the Senate. The Court held removal protections for a single-agency head violates separation of powers as "executive power is vested solely to the President." *Seila Law v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183, (2020).

- ▶ Removing consultation requirements with the Office of Personnel Management and the Attorney General and stiffens the authority of the Director to act.
- ▶ Giving OGE the authority to review and approve conflict of interest and similar determinations by agency ethics officials, as well as all waivers of conflict of interest rules and requiring the OGE to make them publicly available.
- ▶ Clarifying the application of the Ethics in Government Act to persons working in the Executive Office of the President, whether paid or unpaid.

Title VIII of HR 1 also has a provision clarifying that the Director may only be removed prior to the expiration of his or her term “only for inefficiency, neglect of duty, or malfeasance in office,” though this may no longer be possible after the Supreme Court’s decision in *Selia Law*, as discussed above.

This bill does not clarify the existence of jurisdiction over all Executive Branch employees. This should be addressed in the reintroduced legislation.

Protecting Federal Whistleblowers

Protection for whistleblowers is critical to any anti-corruption framework. Whistleblowing is often done at great personal risk, which is why ensuring adequate protections is crucial to monitoring and enforcing wrongdoing. Congress in the past has enacted robust legislative actions in the Whistleblower Protection Act of 1989²⁶ and the Whistleblower Protection Enhancement Act in 2012²⁷. These laws prohibit federal employees from having adverse personnel actions taken against them in response to the whistleblower as well as providing whistleblowers some legal remedies. Despite these legislative actions, there are still significant gaps in protection for whistleblowers. Some of these gaps must be changed by amending current law, others are related to the practical enforcement of the laws.

²⁶ [The Whistleblower Protection Act of 1989, S. 20, 101st Cong. \(1989\).](#)

²⁷ [The Whistleblower Protection Enhancement Act of 2012, S. 743, 112th Cong. \(2012\).](#)

The Whistleblower Protection Act (“WPA”) designates avenues for federal whistleblowers to receive protection, including the Office of Special Counsel and the Merit Systems Protection Board (“MSPB”).²⁸ For some personnel actions, such as performance evaluations, reassignments, or significant changes in work conditions or duties, whistleblowers can file an “independent right of action” with the Office of Special Counsel.²⁹ However, if the Office does not take corrective action the whistleblower must appeal to the MSPB. For an “otherwise appealable action”, including removals, furloughs, and demotions, the whistleblower may choose to go through the Office of Special Counsel or the MSPB itself. The Office of Special Counsel will then attempt to resolve the issue, or appeal to the MSPB if action is not taken.³⁰ Therefore, regardless of the path of a whistleblower complaint, it will end at the MSPB.

As all complaints are either addressed or appealed to the MSPB, the current state of the agency is most troubling. The MSPB has a backlog of several thousand cases and no sitting members due to a lack of Senate confirmation of nominees.³¹ As a result, federal employee whistleblowers are left with effectively minimal to no protections from retaliation. To fully protect whistleblowers, the Board must be restored to a fully functioning state.

An additional complication in the state of recourse for whistleblowers is the fact that they cannot seek recourse until and unless they are the victim of an adverse personnel action, and whistleblowers cannot seek recourse through a jury. This leaves only an administrative remedy through the MSPB, which as stated, has significant problems.

More importantly, an adverse personnel action does not include retaliatory investigations that can wreak a terrible toll on the whistleblower, and cost a tremendous amount of time and money. Such investigations send a message that whistleblowing will be punished, and employees should therefore keep silent about wrongdoing.³² Retaliatory investigations should be curtailed by including retaliatory investigations within the definition of “adverse

²⁸ Federal employees are protected under the Whistleblower Protection Act (“WPA”) against retaliation for any disclosure that the employee reasonably believes, among other things, evidences: (i) a violation of any law, rule, or regulation; (ii) a gross mismanagement; (iii) a gross waste of funds; or (iv) an abuse of authority.

²⁹ Questions and Answers about Whistleblower Appeals, U.S. Merit Systems Protection Board <https://www.mspb.gov/appeals/whistleblower.htm>.

³⁰ *Id.*

³¹ Norah O’Donnell, *Appeals Board Protecting Federal Workers Unable to Function Because of Vacant Positions*, CBS News (June 14, 2020), <https://www.cbsnews.com/news/merit-systems-protection-board-appeals-backlog-60-minutes-2020-06-14/>.

³² [5 U.S.C. § 2302\(a\)\(2\)\(A\)](#).

personnel action,” thereby giving whistleblowers the right to bring a claim for protection from an adverse personnel action.

Another area related to whistleblowers where federal law is somewhat underdeveloped is anonymity. There are no specific anonymity protections for federal whistleblowers. The explicit right to anonymity only applies to Inspectors General and their staff.³³ There are protections against retaliatory personnel actions, including “changes in working conditions,” which some have claimed could be used to protect a whistleblower’s identity. Beyond that, however, federal whistleblowers lack a clear legal avenue to protect their identity from disclosure.³⁴ This issue was explored during the 2019 impeachment investigation where there was some debate as to whether the intelligence community whistleblower was entitled to anonymity as a statutory right. However, beyond the “changes in working conditions” provision, federal whistleblowers lack a clear legal avenue to protect their identity from disclosure.³⁵

Our Recommendations

- ▶ It is vital for the administrative remedy—what is currently the sole remedy—to be a legitimate avenue of relief for whistleblowers. To achieve this, the Merit Systems Protection Board must be returned to its full strength, with the Senate confirming its requisite three members. However, it would also be helpful for there to be additional remedies to help cut down the massive backlog before the MSPB.
- ▶ Whistleblowers should also be able to bring their claims before a jury, as is permitted for corporate whistleblowers under other statutes such as the Sarbanes Oxley Act.

³³ 5 U.S.C. § 7(b); Matthew B. Tully, *Can a Whistleblower Expect the Right to Remain Anonymous?*, FedSmith.com (Dec. 10, 2019), <https://www.fedsmith.com/2019/12/10/whistleblower-expect-right-remain-anonymous/>; Eugene Kiely, *Legal Implications of Outing the Whistleblower*, FactCheck.org (Nov. 20, 2019), <https://www.factcheck.org/2019/11/legal-implications-of-outing-the-whistleblower/>.

³⁴ Jessie Burr, *Feds have fewer whistleblower rights than the private sector*, FEDERAL TIMES (Jan. 28, 2020), <https://www.federaltimes.com/management/hr/2020/01/28/feds-have-fewer-whistleblower-rights-than-in-the-private-sector/>.

³⁵ Salvador Rizzo, *Schiff’s claim that the whistleblower has a ‘statutory right’ to anonymity*, THE WASHINGTON POST (Nov. 20, 2019), <https://www.washingtonpost.com/politics/2019/11/20/schiffs-claim-that-whistleblower-has-statutory-right-anonymity/>.

- ▶ The definition of adverse personnel action should be changed to include retaliatory investigations.
- ▶ Federal whistleblower identities must be protected by allowing the person to remain anonymous.

There are no current legislative proposals to enhance whistleblower protections.

- ▶ The Protecting Our Democracy Act does address some whistleblower shortcomings of current federal whistleblower protections. In particular, it specifically protects the anonymity of whistleblowers. Additionally, it classifies retaliatory investigations as adverse personnel actions, bringing them under the umbrella of whistleblower protections; strengthens and protects rights of petition to Congress; and provides rights of private action.³⁶
- ▶ While the Coalition strongly would support legislative proposals if reintroduced, they, alone will not suffice. Unless measures are also taken to restore the Merit Systems Protection Board to a fully functioning agency and alleviate the backlog of cases, additional protections for whistleblowers will remain functionally inadequate.

³⁶ [H.R. 8363 § 802\(c\)](#).

The International Agenda

Like a cancerous tumor, corruption has a habit of spreading to all facets of society. Whether it begins in government, business, financial markets, or civil society, if left unchecked it will soon permeate them. It entrenches those at the top of the income brackets, stifling competition and dooming the millions at the bottom to lifetimes of poverty. The stakes are too high, and the consequences of not acting too great, for the Biden Administration not to make anti-corruption a top priority.

In the past year, the world has seen significant protests by citizens in various parts of the world—Bulgaria, Venezuela, and now Russia, all fueled by corruption.³⁷ Whether the spark is overt electoral manipulation, systemic corruption, or abuse of power, the fight for accountable governments has mobilized protestors *en mass*.

While the Biden campaign pledged a number of measures to curb domestic corruption, the plan did not include robust measures to ensure the United States leads in international anti-corruption efforts. Corruption weakens economies and governments, and where high levels of corruption exist, authoritarianism and fragile states often coincide. Corruption remains an obstacle to peace, equity, and human rights all around the world.³⁸ To make progress on the most challenging issues of our times—the health crisis, the economy, issues of racial inequity, and climate change—the Biden Administration must address global corruption.

Reasserting Leadership in International Anti-Corruption

The United States historically has been an international leader in anti-corruption efforts, with some of our policies and laws serving as blueprints for other nations to follow suit. Anti-corruption efforts continue to be popular with the general public around the world and U.S. support for anti-corruption initiatives is likely to be welcome in many quarters. Consequently, renewing U.S. global anti-corruption efforts would align well with the Biden

³⁷ Benjamin Press & Thomas Carothers, *Worldwide Protests in 2020: A Year in Review*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Dec. 21, 2020), <https://carnegieendowment.org/2020/12/21/worldwide-protests-in-2020-year-in-review-pub-83445>.

³⁸ [Press Release, Sen. Ben Cardin, Cardin, Young Introduce Combating Global Corruption Act to Make Anti-Corruption a National Security Priority](#) (Jan. 22, 2021).

Administration's foreign policy goals of diplomacy and cooperation.³⁹ After four years of the Trump Administration's inward-looking, "America First" foreign policy that sought to reduce international cooperation in favor of a domestic focus, the Biden foreign policy team is placed in a unique position. They can set an agenda from the beginning that places international anti-corruption high on the priority list.

Bipartisan legislation in the Senate has already started to aim for policy changes prioritizing international anti-corruption measures. The Combating Global Corruption Act, Senate Bill 14, was introduced by Senators Ben Cardin and Todd Young in January.⁴⁰ It focuses the State Department's attention on global corruption by requiring them to publicly rank each country on a three-tiered scale of corruption. In addition, it creates an anti-corruption point of contact in the two lowest tiered countries and establishes minimum standards for the State Department's anti-corruption efforts.

The bill will also require the Secretary of State, in coordination with the Secretary of the Treasury, to evaluate foreign persons engaged in grand corruption in all countries identified as tier-three countries for the imposition of sanctions under the Global Magnitsky & Human Rights Accountability Act.⁴¹ The bill would also set forth a procedure to conduct risk assessments, create mitigation strategies and investigate allegations of misappropriated foreign assistance funds to increase the transparency and accountability of foreign assistance to tier-three countries.

Our Recommendations

- ▶ As the Combating Global Corruption Act raises the profile of efforts to fight international corruption, the Coalition for Integrity supports this legislation.

³⁹ [President Joseph Biden, Address to White House Press \(Feb. 4, 2021\)](#).

⁴⁰ Combating Global Corruption Act, [S. 1309, 116th Congress \(2020\)](#); Press Release, Sen. Ben Cardin, Cardin, Young Introduce Combating Global Corruption Act to Make Anti-Corruption a National Security Priority (Jan. 22, 2021) <https://www.cardin.senate.gov/newsroom/press/release/cardin-young-introduce-combating-global-corruption-act-to-make-anti-corruption-a-national-security-priority>.

⁴¹ *United States Takes Action Against Corruption and Serious Human Rights Abuses*, (Dec. 10, 2019), <https://2017-2021-translations.state.gov/2019/12/10/united-states-takes-action-against-corruption-and-serious-human-rights-abuse/index.html>.

Tackling Transnational Bribery

Combating foreign bribery requires cooperative international efforts and stringent enforcement. In a global economy, with sophisticated networks, it is not just corporations seeking a competitive edge that participate in the transfer of bribes. Foreign government officials also solicit bribes. Without efforts to prosecute both the demand-side and supply-sides, transnational bribery will continue to funnel large sums of money to corrupt officials.

The harm caused by transnational bribery of public officials is significant as it erodes public confidence in government, contributes to larger fiscal deficits, increases income inequality, and leaves developing nations especially vulnerable to these harms. Foreign bribery also undercuts U.S. companies that operate with integrity and impedes economic growth. It is vital to our economic stability and recovery following the COVID pandemic that there are international enforcement mechanisms to hold nations participating in bribery accountable. The United States has a long history, across administrations of both parties, of showing leadership against international corruption. Our passage and enforcement of the Foreign Corrupt Practices Act in the 1970s has served as an example for other countries to adopt their own transnational anti-bribery laws, many of which were patterned after the FCPA.⁴² Our enforcement efforts, particularly over the past ten years demonstrates U.S. commitment. It has enabled the United States to champion international anti-bribery efforts in multilateral organizations and worked to build coalitions to root out all types of corruption.

Laws that successfully prosecute transnational bribery have almost exclusively focused on the supply side—or the party paying the bribe. One example, the OECD Anti-Bribery Convention, to which over forty countries (including the United States) are party, has been viewed by many as the most effective supply-side” instrument in combatting bribery in international business transactions.⁴³ Other treaties have also furthered the anti-corruption agenda.. For example, the United Nations Convention Against Corruption includes provisions relating to recovery of stolen assets and restitution.⁴⁴ Investigations and enforcement have

⁴² The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, *et seq.*; *Foreign Corrupt Practices Act*, U.S. Dept. of Justice, <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>.

⁴³ *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD, <http://www.oecd.org/corruption/oecdantibriberyconvention.htm> (last visited Feb. 16, 2021).

⁴⁴ U.N. Office on Drugs & Crime, *U.N. Convention against Corruption*, (Oct. 31, 2003) <https://www.unodc.org/unodc/en/treaties/CAC/>.

been facilitated not only by specialized anti-corruption treaties but also by other multilateral and bilateral instruments.

Treaty-based efforts are works in progress: Not all countries are enforcing as they should. A recent report reveals that half of all G20 countries and eight of the top 15 global exporters have limited to little or no enforcement of foreign bribery cases.⁴⁵ Furthermore not all key capital-exporting countries are party to the OECD Convention (or should be, as the Convention requires a commitment to a rigorous peer-review process). Yet they need to be at the table if major gaps in the system are to be avoided. There is also an imbalance between supply and demand-side enforcement,⁴⁶ as a recent OECD study has shown.⁴⁷ Public official accountability, largely left to the home countries, requires political will, expertise and resources to tackle, particularly when it involves high-level officials. In the past, the United States drove much of the international agenda, pushing for better laws, enhanced enforcement, international cooperation on prosecutions.

Our Recommendations

Multilateral efforts have brought important benefits and should be supported and reinvigorated. Standing against bribery on the world stage has been a U.S. strength, one that we must reengage in.

- ▶ The Biden Administration, as part of its multilateral re-engagement, should support efforts of the OECD Anti-Bribery Convention in maintaining effective peer review, developing additional tools to facilitate cooperation among countries, and multijurisdictional enforcement.

⁴⁵ *Exporting Corruption: Progress Report 2020: Assessing enforcement of the OECD Anti-Bribery Convention*, TRANSPARENCY INTERNATIONAL (2020), <https://images.transparencycdn.org/images/A-slim-version-of-Exporting-Corruption-2020.pdf>.

⁴⁶ *Anti-Kleptocracy Initiatives Supported by the Helsinki Convention*, COMMISSION ON SEC. & COOPERATION IN EUROPE, <https://www.csce.gov/international-impact/anti-kleptocracy-initiatives-supported-helsinki-commission> (last visited Feb. 15, 2021),

⁴⁷ *Foreign Bribery Enforcement: What happens to the Public Officials on the Receiving End?*, OECD (2018) <https://www.oecd.org/corruption/Foreign-Bribery-Enforcement-What-Happens-to-the-Public-Officials-on-the-Receiving-End.pdf>.

- ▶ The Biden Administration should also press major economic competitors such as China and India to become parties to the OECD Anti-Bribery Convention and be subject to strong implementation standards.⁴⁸ Foreign bribery undercuts U.S. companies that operate with integrity and impedes economic growth. It is vital to our economic stability and recovery following the COVID pandemic that there are international enforcement mechanisms to hold nations participating in bribery accountable. This is not a trivial undertaking, as it involves the submission to peer review, and membership of these countries should not be pursued if it puts at risk dilution of those standards.

Tackling the Demand Side of Foreign Bribery

In the field of foreign bribery, much focus has been placed on the supply-side of bribery—that is, the offering or payment of a bribe to a government official. An underserved and underenforced aspect of foreign bribery is the demand side—solicitation and acceptance of bribes by government officials. By cracking down on foreign government officials who demand bribes, the U.S. government can send two important messages: that we are focused on all aspects of foreign bribery, and that foreign government officials are not immune from punishment just because they hold high positions.

Our Recommendations

Some stepping up of enforcement against demand for foreign bribery must be done through legislation—of which there have been many proposals in the past Congress. Some of the specific provisions of these proposals include: exposing the names and conduct of kleptocrats around the world (The Kleptocrat Exposure Act, H.R. 3441); shining a light on ill-gotten gains hidden in the United States (The Justice for Victims of Kleptocracy Act, H.R. 4361); banning entry to the United States of individuals who engage in, support, or conspire to engage in acts of corruption against U.S. persons

⁴⁸ Letter from Coalition for Integrity to Lawrence Kudlow, Assist. to Pres. for Econ. Policy and Dir., Nat'l Econ. Policy, (Jan. 21, 2020), <https://www.coalitionforintegrity.org/wp-content/uploads/2020/01/Coalition-letter-to-LKudlow1.21.2020.pdf> (urging the White House to pressure global competitors to join the OECD Anti-Bribery Convention).

(The Foreign Corruption Accountability Act (FCAA), H.R. 2167), and; criminalizing demands for bribes by corrupt foreign officials(The Foreign Extortion Prevention Act (FEPA), H.R. 4140). While we have discussed all of these proposed bills in our recent comments to the OECD on the Anti-Bribery Convention,⁴⁹ we have included comments on two bills below, the CROOK Act which has been reintroduced in the current session of Congress, and the Foreign Extortion Prevention Act, which to date has not been reintroduced:

- ▶ The Foreign Extortion Prevention Act (FEPA) if reintroduced would criminalize bribery demands (*i.e.*, extortion) by corrupt foreign officials. In particular, any “foreign official” or “person selected to be a foreign official” may face a monetary fine and/or prison term of up to two years for corruptly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value (personally or for any other person/entity) in return for (1) being influenced in the performance of any official act or (2) being induced to do or omit to do any act in violation of the official duty of such official or person.
- ▶ The Countering Russian and Other Overseas Kleptocracy (CROOK) Act, H.R. 402/S. 158 which has been reintroduced in this Congress, would establish an Anti-Corruption Action Fund, funded through taking five percent of each civil and criminal fine or penalty imposed pursuant to actions brought under the FCPA, to “aid foreign states to prevent and fight public corruption and develop rule of law-based governance structures.” An interagency task force would be established to evaluate the effectiveness of programs funded by the Anti-Corruption Action Fund that have an impact on promoting good governance in foreign states and enhancing the ability of foreign states to combat public corruption.

Both FEPA and the CROOK Act build on the passage and implementation of the 2016 Global Magnitsky Human Rights Accountability Act (“Global Magnitsky Act”).⁵⁰ The

⁴⁹ *Evaluation of U.S. Foreign Bribery Enforcement*, COALITION FOR INTEGRITY (2020), https://www.coalitionforintegrity.org/wp-content/uploads/2020/06/C4I_Evaluation-of-US-Foreign-Bribery-EnforcementFINAL-2_compressed.pdf.

⁵⁰ [Global Magnitsky Human Rights Accountability Act, Title XII, Subtitle F of P.L. 114-328; U.S.C. § 2656.](#)

Global Magnitsky Act allows the executive branch to impose visa bans and targeted sanctions on individuals anywhere in the world responsible for committing human rights violations or acts of significant corruption. Sanctions available to the Government include the denial of entry into the United States and blocking of all transactions in all property and interests in property that are within the United States' jurisdiction. The Global Magnitsky Act has been used to sanction hundreds of individuals and entities—97 in 2019 alone.⁵¹ Those sanctioned include a diverse range of individuals, such as former heads of state and other government officials as well as those with varying positions in the private sector.

The Coalition for Integrity has been supportive of Global Magnitsky Act and we were disappointed to see the US Treasury Department's Office of Foreign Assets Control (OFAC), grant a license to businessman Dan Gertler, who was sanctioned for corruption in the Democratic Republic of Congo (DRC) under the Global Magnitsky sanctions program.⁵² The January 2021 license allows Gertler to resume transactions with U.S. persons for one year and unblocks his frozen property. We are pleased that the Biden Administration reversed this decision.⁵³

Additionally, the proposed legislation discussed above complements DoJ policies and programs already in. For instance, in late 2009, the DoJ launched a Kleptocracy Asset Recovery Initiative aimed at “redoubling [the] commitment” of the agency to recover assets stolen by kleptocrats.⁵⁴ A team of dedicated prosecutors work to prosecute individuals and secure the forfeiture of the proceeds of foreign official corruption that has affected the U.S. financial system and, where appropriate, return those proceeds to benefit the people harmed by these acts of corruption and abuse of office. The agency's commitment to this mission has been manifest in certain recent high-profile

⁵¹ *2019 Year-End Sanctions Update*, GIBSON DUNN (Jan. 23, 2020), <https://www.gibsondunn.com/2019-year-end-sanctions-update/>.

⁵² Eric Lipton, *Tough Sanctions, Then a Mysterious Last-Minute Turnabout*, NEW YORK TIMES (Feb. 21, 2020), <https://www.nytimes.com/2021/02/21/us/politics/dan-gertler-sanctions.html>.

⁵³ [Press Release, Ned Price, State Dept., Revocation of License Granted to Dan Gertler \(March 8, 2021\)](#).

⁵⁴ Attorney General Eric Holder at the Opening Plenary of the VI Ministerial Global Forum on Fighting Corruption and Safeguarding Integrity (Nov. 7, 2009) (“There is no gentle way to say it: When kleptocrats loot their nations' treasuries, steal natural resources, and embezzle development aid, they condemn their nations' children to starvation and disease. In the face of this manifest injustice, asset recovery is a global imperative. In response to this ongoing challenge, I stand before you to announce a redoubled commitment on behalf of the United States Department of Justice to recover such funds”) <https://www.justice.gov/opa/speech/attorney-general-eric-holder-opening-plenary-vi-ministerial-global-forum-fighting>.

enforcement actions against foreign kleptocrats such as the civil forfeiture case against Malaysian financier Low Taek Jho (“Jho Low”) for using funds allegedly misappropriated from 1Malaysia Development Berhad (“1MDB”), Malaysia’s investment development fund.

Also in 2019, the DoJ charged Gulnara Karimova, the daughter of late Uzbekistan President Islam Karimov, of conspiracy to commit money laundering. The charges include allegations that Karimova participated in a bribery and money laundering scheme involving more than \$865 million in bribes from Mobile TeleSystems PJSC (“MTS”), VimpelCom Limited (now VEON), and Telia Company AB (“Telia”) aimed at securing her assistance in entering and maintaining their business operations in Uzbekistan’s telecommunications market.⁵⁵ The Karimova prosecution is not the first case in which U.S. anti-money laundering laws have been used to pursue corrupt officials.⁵⁶

C4I supports these efforts, which are important to prevent the United States from becoming a haven for the proceeds of corruption. But more can be done.

- ▶ C4I believes that the legislative proposals discussed above (the CROOK Act and Foreign Extortion Prevention Act (FEPA)), generally represent a positive development concerning combating global corruption and we support both. In our view, a holistic approach to the problem of foreign bribery is critical. While recognizing that asserting jurisdiction for criminal enforcement purposes over foreign officials is a significant step, in our view it is a necessary one to address a current accountability gap.

⁵⁵ Mobile Telesystems Pjsc and Its Uzbek Subsidiary Enter into Resolutions of \$850 Million with the Department of Justice for Paying Bribes in Uzbekistan (Nov. 7, 2019), <https://www.justice.gov/opa/pr/mobile-telesystems-pjscand-its-uzbek-subsidiary-enter-resolutions-850-million-department>.

⁵⁶ Telia Company AB and Its Uzbek Subsidiary Enter Into a Global Foreign Bribery Resolution of More Than \$965 Million for Corrupt Payments in Uzbekistan (Sept. 21, 2017), <https://www.justice.gov/opa/pr/telia-company-aband-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965>.

- ▶ The U.S. should criminalize the solicitation of bribes from U.S. persons by corrupt foreign officials. C4I also supports the patchwork of other deterrent mechanisms—from barring corrupt officials from entering the United States to naming them publicly—aimed squarely at the demand side of bribery.
- ▶ Fighting global corruption should be a major foreign policy and national security issue and the Biden Administration should strengthen support of programs aimed at promoting the rule of law overseas.
- ▶ The Biden Administration should commit to properly upholding the Global Magnitsky Act.
- ▶ The Administration, including the DoJ, should publicly signal its support for legislative efforts to tackle the demand side of transactional bribery generally.

Beneficial Ownership Disclosure and Addressing Illicit Financial Flows

Early in 2021, the House and Senate passed the Corporate Transparency Act as part of the larger William (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (“NDAA”).⁵⁷ The Corporate Transparency Act is the culmination of a years-long effort to address a major roadblock to effective anti-corruption efforts in the United States: anonymous shell companies. Anonymous companies allow corrupt politicians and organized crime to transfer and hide illicitly acquired funds worldwide, and fuel abuse of power and a culture of impunity. The ability to conceal illicitly obtained gains fuels corruption breeds instability and diverts resources from those they should benefit. A recent news story alleges that shell companies were used to finance the \$1.3 billion private residence in Russia dubbed “Putin’s Palace.”⁵⁸ Opposition leaders combed over 100,000 bank transactions to reveal the use of state-controlled oil and gas companies, as well as shell companies masked as rental property companies to funnel billions of rubles to construct the Palace. A second prominent example is an investigation into Isobel dos Santos, the prominent Angolan billionaire who is

⁵⁷ [National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong. \(2020\).](#)

⁵⁸ Madeline Roache, *The Inside Story of How Navalny Uncovered Putin’s \$1.3 Billion Palace*, TIME (Jan. 29, 2021), <https://time.com/5934092/navalny-putin-palace-investigation/>; PUTIN’S PALACE, <https://palace.navalny.com> (last visited Feb. 22, 2021).

accused of using a network of Western lawyers and dozens of shell companies to channel billions embezzled from state-owned companies offshore.⁵⁹

These news stories demonstrate the troubling use of offshore structures to benefit the wealthy few at the expense of the average citizen. When revenues from state-owned enterprises—such as those from state gas companies which both Putin and dos Santos are accused of using—disappear into offshore structures rather than into public coffers, it depletes funding for public goods. Notably, “disappear” is an apt description of what occurs with shell company funds, as even after the corruption is exposed the vast majority of wealth is never recovered.⁶⁰

The formation of corporations and other legal entities in the United States is governed on a state-by-state basis. Many states collect less information in this process than they do in applying for a driver’s license.⁶¹ The critical area where information collection is lacking is the true, beneficial owners, who exercise significant control or derive a significant benefit from the legal entity. The Corporate Transparency Act closes this hole in our anti-corruption laws by requiring the Treasury Department to collect the names of beneficial owners at the time of entity formation. With the passage of the Corporate Transparency Act, the United States joins other countries in requiring disclosure of beneficial ownership of companies. Such disclosure is critical to preventing the illicit activities that anonymous ownership facilitates—corruption, money laundering, terrorist financing, drug trafficking, sanctions evasion, and others.

Under the Corporate Transparency Act (“CTA”), a year after the bill becomes law, the Financial Crimes Enforcement Network (FinCEN) will be required to set up a registry⁶² to collect the name, address, and birth date of beneficial owners. A beneficial owner is defined in the Act as a person who: exercises substantial control over a corporation or limited liability company; owns 25 percent or more of the equity interests of a corporation or limited liability

⁵⁹ Will Fitzgibbon, *After Luanda Leaks, a billionaire’s empire falls, but her enablers carry on*, INTERNATIONAL CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Dec. 7, 2020), <https://www.icij.org/investigations/luanda-leaks/after-luanda-leaks-a-billionaires-empire-falls-but-her-enablers-carry-on/>.

⁶⁰ STOLEN ASSET RECOVERY INITIATIVE, *STAR*, <https://star.worldbank.org/about-star>.

⁶¹ Jana Kasperkevic, *Forget Panama: it’s easier to hide your money in the US than almost anywhere*, THE GUARDIAN (Apr. 6, 2020), <https://www.theguardian.com/us-news/2016/apr/06/panama-papers-us-tax-havens-delaware>.

⁶² *Corporate Transparency Act*, H.R. 2513 116th Cong. (2020).

company or receives substantial control of the assets of a corporation or limited liability company. Corporations that exist already will have two years to file this information with FinCEN, and there are criminal penalties for providing false information.

Our Recommendations

- ▶ The Biden Administration should ensure that FinCEN effectively implements the beneficial ownership register mandated under the Corporate [Transparency Act](#).
- ▶ The Biden Administration should also ensure that Federal Acquisition Regulation (FAR) and Federal Awardee Performance and Integrity Information System (FAPIIS) are amended to ensure implementation of the requirement under the NDAA that companies receiving federal contracts over \$500,000 publicly disclose their beneficial ownership information.
- ▶ The Corporate Transparency Act specifically requires FinCEN to revise the Customer Due Diligence Rules (issued in 2016) to, “bring the rule into conformance with” the CTA, and “reduce any burdens on financial institutions and legal entity customers that are unnecessary or duplicative.”⁶³ However, FinCEN should ensure that financial institutions retain customer due diligence obligations related to identifying and verifying beneficial ownership information.
- ▶ Another favorite tactic of criminals and kleptocrats is to use real estate to park their illicitly obtained wealth. The real estate sector is well-positioned to detect schemes that use real estate to conceal the true source, ownership, location, or control of funds generated illegally, as well as the companies involved in such transactions. The Treasury Department should expand the Geographic

⁶³ *Id.*

Targeting Order program which requires title insurance companies in certain cities and counties to provide beneficial ownership information to FinCEN for residential transactions over \$300,000 to cover the entire country as well as commercial real estate transactions and make the GTO permanent.⁶⁴

- ▶ FinCEN should close the loopholes currently available to gatekeepers involved in the real estate industry and should require these parties to conduct due diligence into buyers' identities and the sources of their funds.⁶⁵ This includes repealing the temporary exemption granted in 2002 to certain financial institutions including persons involved in real estate settlements and closings from the PATRIOT Act requirement for the implementation of anti-money laundering programs.
- ▶ FinCEN should also examine each of the temporary exemptions, including for “seller[s] of vehicles, including automobiles, airplanes, and boats” and “private bankers,” to determine whether these exemptions are still warranted.
- ▶ A leaked bulletin prepared by the U.S. Federal Bureau of Investigation in May 2020 states that firms in the nearly \$10-trillion private investment funds industry are being used as vehicles for laundering money at scale.⁶⁶ FinCEN should revisit the rule it proposed in 2015, that prescribed minimum standards for anti-money laundering programs for all registered investment advisers and finalize it.⁶⁷

⁶⁴ The current GTO requires title insurance companies to provide the Treasury Department with the beneficial owners of all residential real estate transactions in cash above \$300,000. It currently applies to cities and counties in nine states. *Geographic Targeting Order*, FinCEN, https://www.fincen.gov/sites/default/files/shared/508_Real%20Estate%20GTO%20Order%20FINAL%20GENERIC%2011.4.2020.pdf.

⁶⁵ It would bring the United States in line with the Financial Action Task Force (FATF) Recommendation 22. Recommendation 22 states that designated non-financial businesses and professions such as real estate agents should have the customer due diligence and record-keeping requirements set out in FATF Recommendations 10, 11, 12, 15, and 17. Stephanie Saul, *Treasury Urged to Scrutinize Foreign Real Estate Buyers for Money-Laundering Risk*, NEW YORK TIMES (Mar. 10, 2015), <https://www.nytimes.com/2015/03/11/business/treasury-urged-to-scrutinize-foreign-real-estate-buyers-for-money-laundering-risk.html>.

⁶⁶ Timothy Lloyd, *FBI concerned over laundering risks in private equity, hedge funds -leaked document*, REUTERS (July 14, 2020), <https://www.reuters.com/article/bc-finreg-fbi-laundering-private-equity/fbi-concerned-over-laundering-risks-in-private-equity-hedge-funds-leaked-document-idUSKCN24F1TP>. See also, Neil Weinberg, *Hedge Funds Risk Biden-Era End to Money-Laundering Loophole*, BLOOMBERG (Feb. 5, 2020), <https://www.bloomberg.com/news/articles/2021-02-05/hedge-funds-risk-biden-era-closing-of-money-laundering-loophole>.

⁶⁷ U.S. Dept. of Treasury, *FinCen Proposes AML Regulations for Investment Advisors* (2015), https://www.fincen.gov/sites/default/files/shared/1506-AB10_FinCEN_IA_NPRM.pdf.

- ▶ The Biden Administration should pursue cooperation with other countries in eliminating safe havens for illicit and stolen funds. Despite a growing number of countries introducing beneficial ownership transparency legislation, international efforts are undermined by the slow and patchy implementation of beneficial registers globally. The lack of clear and comprehensive international standards requiring countries to maintain beneficial ownership registers means that corrupt actors may still find jurisdictions in which to remain anonymous.

Extractive Industry Transparency

Revenues from oil, gas, mining, and forestry have the potential to lift millions in the developing world out of poverty. Transparency in reporting by companies as well as governments is necessary to ensure that revenues are used for public benefit and not siphoned off through corruption. To address the company side of this issue, Congress adopted as part of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1504, requiring oil, gas, and mining companies listed on U.S. stock exchanges to publicly disclose the payments made to U.S. and foreign governments in exchange for oil, gas, and minerals extraction.⁶⁸ Other countries followed U.S. leadership on transparency, and today several countries have adopted their own rules that cover the vast majority of oil, gas, and mining companies that compete with American firms.⁶⁹

Shortly thereafter, the United States agreed to join the Extractive Industries Transparency Initiative, a multilateral initiative to bring transparency to revenues received by governments and paid by companies in the extractive industries.⁷⁰ A rule issued by the SEC in late 2016 was overturned by Congress by a resolution under the Congressional Review Act and the Trump administration withdrew the United States from EITI. We and many other organizations have repeatedly urged the SEC to implement Section 1504 and the EITI's requirements

⁶⁸ [The Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. \(2010\).](#)

⁶⁹ John Niepold & Eric Postel, *Commentary: Congress Wants to Make it Easier for Corporations to Hide Corrupt Overseas Deals*, FORTUNE (Mar. 6, 2018), <https://fortune.com/2018/03/06/cardin-lugar-corruption-dodd-frank-sec-transparency/>.

⁷⁰ EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, <https://eiti.org/>.

by adopting a strong extractive industry transparency rule.⁷¹ Instead, the SEC adopted a watered-down final rule in December 2020.⁷² This rule fails to require detailed project by project public disclosure of payments to governments by U.S. publicly-traded oil, gas, and mining companies.

Our Recommendations

- ▶ The Biden Administration should ensure the SEC issues a strong, viable rule properly implementing Section 1504 of the Dodd-Frank legislation, and the United States should rejoin EITI, resuming its leadership role in transparency and the fight against corruption in the extractive industries.

⁷¹ For example, in 2015 we submitted [two letters to the SEC recommending](#) language for the rule implementing Section 1504 of Dodd Frank. In 2016, we submitted comments to the SEC answering specific questions about the drafting of Section 1504 of Dodd Frank and advocated for strong enforcement provisions with as limited exemptions as possible. And again, in 2017 we joined several other organization sending a letter to Congressional leadership urging them to support the Cardin-Lugar Anti-Corruption rule implementing transparency requirements for extractive industries payments. [Letter from Transparency International to Mary White, S.E.C. Chair \(Oct. 2, 2015\)](#); [Letter from Transparency International to Barry Summers, S.E.C. Assoc. Dir. Disclosure Operations \(Dec. 8, 2015\)](#); [Letter to eb-16-2016-letter-to-the-SEC-re-Section-1504.pdf](#); [Letter from Publish What You Pay– United States Coalition Members to Senator Mitch McConnell, Sen. Maj. Leader & Sen. Chuck Schumer, Sen. Min. Leader, et al., \(Jan. 31, 2017\)](#).

⁷² [17 C.F.R. § 240–249\(b\) \(2021\)](#).

Closing

Ending the economic and health crises caused by the COVID pandemic undoubtedly must be the top priority of the Biden Administration. As these crises are addressed, however, the U.S. must also prioritize anti-corruption efforts both domestic and international. Corruption is not merely a victimless crime of the elite, but rather a crime that unchecked permeates all facets of power and leaves those in the lowest income brackets to bear the consequences.

It is no hyperbole that widespread corruption deals in the billions: billions of dollars lost to offshore structures through shell companies and bribery, billions spent in combating perpetrators, and billions of people globally that suffer the consequences when corruption is left unchecked. Additionally, corruption remains one of the greatest impediments to achieving international goals in sustainability and economic development by keeping vital services from societies, driving away foreign investment, and stripping natural resources.⁷³ For example, how many billions might have remained in resource rich countries were it not for the schemes of kleptocrats and their enablers? And how many billions might have been recovered if more stringent enforcement mechanisms were available on an international level?

Beyond trust in government, corruption threatens our national security and economic competition. The world is waking up to the interconnected corruption permeating governments and board rooms around the world. As global protests in the past year alone have shown, there is a high demand for accountability. It is crucial, now more than ever, that the United States engages internationally to fight corruption. Tackling corruption now, when trust in our government is at a low, should not be daunting but rather an opportunity to show our role in foreign policy as a leader in anti-corruption. By committing to strong enforcement efforts, multilateral cooperation, pressure on bad actors, and through supporting legislative efforts that prioritize anti-corruption efforts, the Biden Administration can reassert U.S. international leadership and make strides in combatting corruption around the world. The U.S. has proven its leadership in international anti-corruption efforts in the past and we can be leaders once more.

⁷³ UN Law and Crime Prevention, *The Cost of Corruption: values, economic development under assault, trillions lost, says Guterres*, UNITED NATIONS (Dec. 9, 2018), <https://news.un.org/en/story/2018/12/1027971>.



Acknowledgment

This report was prepared by Coalition for Integrity and edited by Shruti Shah, President, and CEO of the Coalition for Integrity. The research and editorial team included Laurie Sherman, Kelley Flint, Alex Amico, and Taylor Treloar.

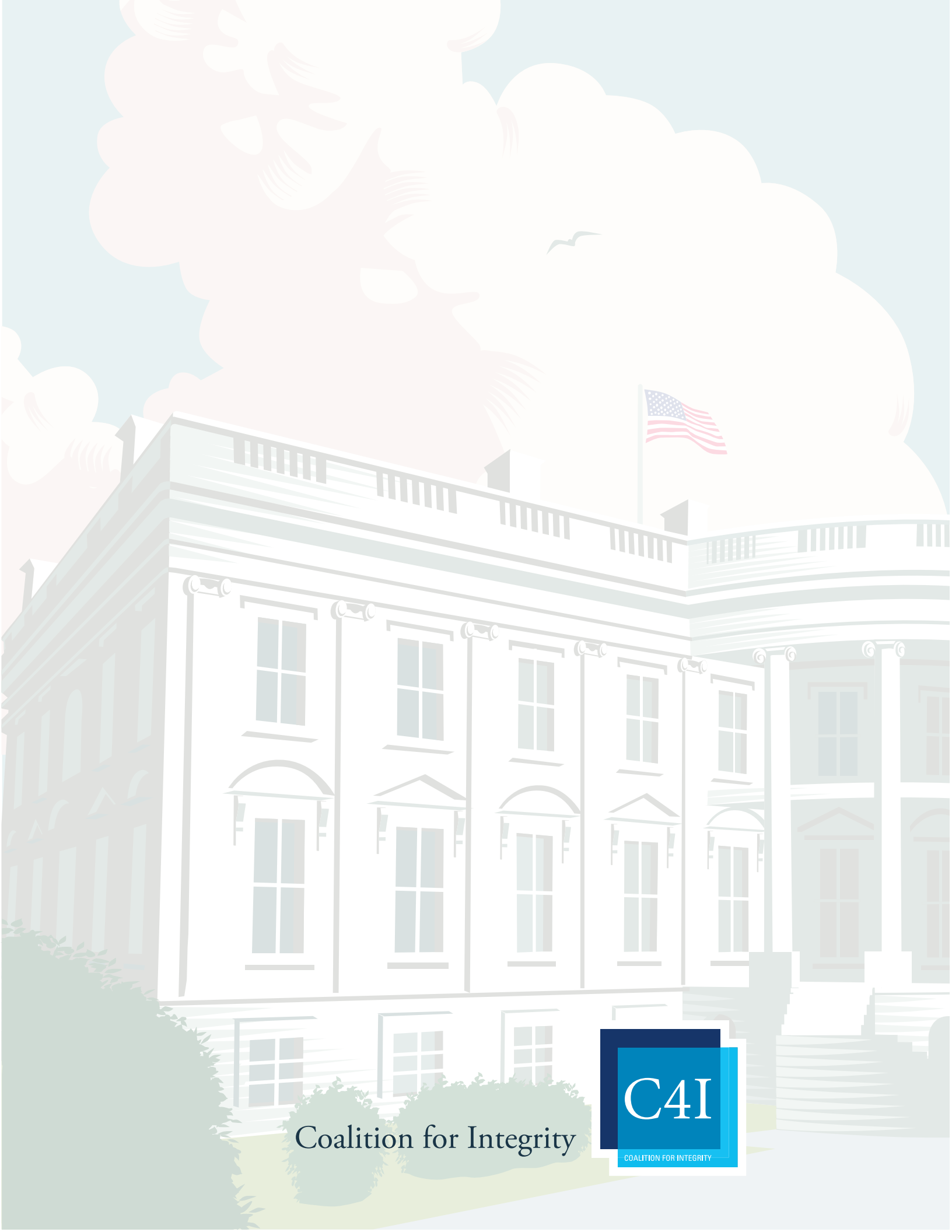
We would also like to recognize and thank the following individuals for their support and insights:

- ▶ Lucinda Low, Partner, Steptoe & Johnson, LLP, Acting Chair, Coalition for Integrity Board of Directors
- ▶ Kevin Davis, Beller Family Professor of Business Law, New York University School of Law, Member, Coalition for Integrity Board of Directors

While Coalition for Integrity benefited greatly from the work and advice provided by the foregoing persons, this report, including its conclusions and recommendations, represents the views of the Coalition for Integrity and does not necessarily reflect the views of those that provided advice, time, and services to the report.

©2021
Coalition for Integrity





Coalition for Integrity

