

Walking the Talk:

2021 Blueprints for a Human Rights-Centered
U.S. Foreign Policy



Chapter 9: Curbing Corruption at Home and Abroad



Acknowledgments

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Human Rights First challenges the United States of America to live up to its ideals. We believe American leadership is essential in the struggle for human dignity and the rule of law, and so we focus our advocacy on the U.S. government and other key actors able to leverage U.S. influence. When the U.S. government falters in its commitment to promote and protect human rights, we step in to demand reform, accountability, and justice.

When confronting American domestic, foreign, and national security policies that undermine respect for universal rights, the staff of Human Rights First focus not on making a point, but on making a difference. For over 40 years we've built bipartisan coalitions and partnered with frontline activists, lawyers, military leaders, and technologists to tackle issues that demand American leadership.

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Curbing Corruption at Home and Abroad

Introduction

Corruption presents an existential threat to democratic governance, economic development, and the promotion and protection of human rights. Systems of grand corruption, when left uncontested, transform national resources and government institutions into tools of self-enrichment for the politically connected and economic elite.¹ In nearly every instance, these systems result in both direct and indirect violations of human rights, which frequently disproportionately impact the most vulnerable and traditionally marginalized groups of society, such as the poor, racial and ethnic minorities, women, and members of the LGBTQI+ community.² In recent decades, corruption has also been transformed into a geopolitical weapon that is being deployed by illiberal and kleptocratic regimes to expand their influence and undermine the world's democracies.³

As the U.N. Human Rights Council has recognized, “[i]t is difficult to find a human right that could not be violated by corruption.”⁴ When corruption manifests itself in the form of outright theft, such as the illicit diversion of resources intended to support various public services, the internationally recognized rights to healthcare, education, and life can be irreparably harmed.⁵ Corruption in the form of bribes, whether paid by a facilitator of corruption or a victim of a corrupt demand, can result in a violation of nearly every recognized human right, including the right to freedom from discrimination, the right to a fair trial, the right to property, and the right to participate in self-governance.⁶ Additionally, no matter the form it takes, corruption indirectly weakens democratic institutions and the rule of law.

Corruption likewise kneecaps the global economy. The Organization for Economic Cooperation and Development (OECD) has found that corruption increases transaction costs and decreases economic efficiency.⁷ According to the World Economic Forum, the annual cost of corruption globally is at least \$2.6 trillion, or five percent of the global domestic product.⁸ The World Bank estimates that each year, individuals and businesses pay \$1 trillion in bribes.⁹

[D]espite anti-money laundering (AML) regulations aimed at combating illicit finance, the U.S. economy remains a haven for ill-gotten gains.

With both the world's largest economy and the world's most frequently traded currency, the United States is an indispensable player in the global fight against corruption.¹⁰ At times, the United States has played a leading role in advancing international anti-

corruption efforts through the development and modeling of new accountability tools.¹¹ For example, in 1977, the U.S. government enacted the Foreign Corrupt Practices Act (FCPA) (15 U.S.C. §§ 78dd-1, et seq), becoming the first country to criminally prohibit its citizens and companies from bribing foreign officials

1 Transparency International defines grand corruption as “the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society.” Transparency International, *What is Grand Corruption and How Can We Stop It?* (Sep. 21, 2016) available at <https://www.transparency.org/en/news/what-is-grand-corruption-and-how-can-we-stop-it#>; Sarah Saadoun, *America once led anti-corruption fight. Now self-dealing Trump is kleptocrats' role model*, USA Today (Oct. 31, 2019) available at <https://www.usatoday.com/story/opinion/2019/10/31/trump-boosts-kleptocrats-america-gives-up-corruption-fight-column/2476348001/>.

2 World Bank, *Brief: Combating Corruption* (last updated Oct. 4, 2018) available at <https://www.worldbank.org/en/topic/governance/brief/anti-corruption>.

3 Ben Judah, Belinda Li, Hudson Institute, *Money Laundering for 21st Century Authoritarianism*, p. 9 (Dec. 2017) available at <https://www.hudson.org/research/14020-money-laundering-for-21st-century-authoritarianism>; see also Josh Rudolph, Thomas Morley, The Alliance for Securing Democracy, *The German Marshall Fund of the United States, Covert Foreign Money: Financial loopholes exploited by authoritarians to fund political interference in democracies* (Aug. 2020) available at <https://securingdemocracy.gmfus.org/wp-content/uploads/2020/08/ASD-Covert-Foreign-Money.pdf>.

4 U.N. Human Rights Council, *Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights*, para. 17, A/HRC/28/73 (Jan. 5, 2015) available at <https://www.refworld.org/docid/550fef884.html>.

5 *Id.*

6 *Id.*; see also, U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute, *Corruption and Human Rights*, available at <https://www.u4.no/topics/human-rights/basics>.

7 Organization for Economic Co-operation and Development (OECD), CleanGovBiz, *Boosting Integrity, Fighting Corruption*, p. 2 (2012) available at <https://www.oecd.org/competition/50350066.pdf>.

8 Meetings Coverage, Security Council, *Global Cost of Corruption at Least 5 Per Cent of World Gross Domestic Product, Secretary-General Tells Security Council, Citing World Economic Forum Data*, U.N. Meetings Coverage SC/13493 (Sep. 10, 2018) available at <https://www.un.org/press/en/2018/sc13493.doc.htm>.

9 *Id.*

10 Jennifer L. Cook, *Six Most Popular Currencies for Trading*, Investopedia (last updated Mar. 10, 2020) available at <https://www.investopedia.com/articles/forex/11/popular-currencies-and-why-theyre-traded.asp>.

11 Saadoun, *supra* note 1.



abroad.¹² The success of the FCPA prompted the governments of other major economies, such as the United Kingdom, Canada, Brazil, and France, to adopt comparable measures.¹³ Similarly, Congress' passage of the Global Magnitsky Human Rights Accountability Act of 2016 ([Pub. L. 114-328, Subtitle F](#)), a statute that gives the executive branch the ability to freeze the U.S.-based assets of non-U.S. persons who have engaged in corruption, has prompted the adoption or consideration of similar laws in Canada, the United Kingdom, and the European Union.¹⁴

Recently, however, the United States has failed to adequately prioritize anti-corruption efforts. Overseas, under-prioritization of anti-corruption programs has allowed foreign corruption to frustrate American foreign policy priorities. From Afghanistan to Iraq to Yemen, endemic corruption has undermined American strategic goals and resulted in a waste of U.S. taxpayer money.¹⁵ At home, loopholes in America's domestic anti-corruption framework have allowed domestic markets to become the epicenter of global illicit finance.¹⁶ Simply put, despite anti-money laundering (AML) regulations aimed at combating illicit finance, the U.S. economy remains a haven for ill-gotten gains.¹⁷

According to the U.S. Treasury Department, approximately \$300 billion is laundered through the United States each year.¹⁸ American companies, according to the World Bank, are used for money laundering in grand corruption cases at a higher rate than companies from any other country in the world.¹⁹

¹² U.S. Department of Justice, *Foreign Corrupt Practices Act: An Overview* (last updated Feb. 3, 2017) available at <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>.

¹³ Saadoun, *supra* note 1.

¹⁴ Ewelina U. Ochab, *The Magnitsky Law is Taking Over the European Union*, *Forbes* (Dec. 10, 2018) available at <https://www.forbes.com/sites/ewelinaochab/2018/12/10/the-magnitsky-law-is-taking-over-the-european-union/>.

¹⁵ Colby Goodman, Christina Arabia, Security Assistance Monitor, Center for International Policy, *Corruption in the Defense Sector: Identifying Key Risks to U.S. Counterterrorism Aid*, p. 2 (Sep. 2018) available at https://securityassistance.org/sites/default/files/SAM%20Corruption%20Report%20Final_1.pdf.

¹⁶ Ben Judah, Nate Sibley, *The West is Open for Dirty Business*, *Foreign Policy* (Oct. 5, 2019) available at <https://foreignpolicy.com/2019/10/05/eu-us-fight-corruption-kleptocracy/>.

¹⁷ *Id.*

¹⁸ U.S. Department of the Treasury, *National Money Laundering Risk Assessment*, p. 2 (2018) available at https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf.

¹⁹ Emile van der Does de Willebois, Emily M. Halter, Robert A. Harrison, Ji Won Park, J.C. Sherman, Stolen Asset Recovery Initiative, World Bank, *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About it* (2011) available at <https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf>.

The United States' status as a destination for the proceeds of global corruption is, in no small part, the product of the country's limited approach to AML regulations and the ease with which corrupt actors can establish anonymous shell corporations in the United States.²⁰ While American banks are subject to strict compliance and enforcement rules, hedge funds, private equity firms, venture capital firms, and the real estate industry are not. Unlike most other major economies, the United States does not require disclosure of a corporation's true owners (beneficiaries), even to appropriate authorities, at the time of incorporation.²¹ The absence of mandatory beneficial ownership reporting allows kleptocrats and other criminals to conceal ill-gotten gains via anonymous shell companies to avoid scrutiny from federal law enforcement.²²

Taken together, America's outdated AML regulations and easily exploitable anonymous incorporation laws continue to make the U.S. economy an attractive destination for corrupt actors. These individuals use their

access to U.S. markets to enrich themselves and perpetuate the systems of corruption in which they operate. Recognizing the role that the U.S. economy plays in enabling these systems of international corruption, it is vital that the United States reestablish itself as a leader in the fight against financial corruption at home and abroad.

Over the past two years, there has been growing bipartisan support in Congress for legislation that would end anonymous shell companies in the U.S. by requiring American companies to report

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their beneficial owners to the Treasury Department. Responding to a broad coalition of advocates in the business, human rights, national security, and anti-corruption communities, the House passed a beneficial ownership disclosure bill—the Corporate Transparency Act of 2019 ([H.R. 2513](#))—in October 2019.²³ In June 2020, after months of bipartisan negotiations, the Senate Banking Committee unveiled the Senate's own stand-alone beneficial ownership bill—the [Anti-Money Laundering \(AML\) Act](#)—and pushed for the bill's inclusion in the Senate's version of the must-pass FY2021 National Defense Authorization Act (NDAA).²⁴ Although the AML Act was not ultimately incorporated into the Senate's NDAA, the critical beneficial ownership requirements of H.R. 2513 were included in the House's version.²⁵ As of this blueprint's publication, it remains to be seen whether the House's beneficial ownership reforms survive the NDAA conference process. If the House amendments are included in the final bill, the NDAA's enactment into law would mark arguably the most significant anti-corruption development in the United States in decades.

While such legislative reforms are undoubtedly needed, the executive branch has ample authority to unilaterally strengthen the U.S. AML framework. Relying on this authority, the next administration should prioritize the promulgation of new regulations that eliminate loopholes in the outdated AML regime and significantly curtail the ability of foreign nationals to buy real estate in the U.S. using anonymous shell companies. Additionally, the next administration should move quickly to realign U.S. State Department resources to better ensure that anti-corruption efforts are a foreign policy priority. The three recommendations below address how an incoming administration could achieve these goals absent Congressional action.

20 Judah, Sibley, *supra* note 16; Joshua Kirschenbaum, David Murray, *An Effective American Regime to Counter Illicit Finance*, The Alliance for Securing Democracy, The German Marshall Fund of the United States (Dec. 18, 2018) available at <http://www.gmfus.org/publications/effective-american-regime-counter-illicit-finance>.

21 Josh Kirschenbaum, *Closing Today's Illicit Finance Loopholes*, American Interest (Aug. 8, 2019) available at <https://www.the-american-interest.com/2019/08/08/closing-todays-illicit-finance-loopholes/>.

22 FACT Coalition, Letter to the Honorable Nancy Pelosi and the Honorable Kevin McCarthy regarding the Corporate Transparency Act / COUNTER Act (Jul. 20, 2020) available at <https://thefactcoalition.org/wp-content/uploads/2020/07/FACT-Letter-Maloney-Amdt-1-NDAA-20200720-FINAL.pdf>.

23 Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. (2019) available at <https://www.congress.gov/bill/116th-congress/house-bill/2513>.

24 Rudolph, Morley, *supra* note 3, at p. 29.

25 Amy Mackinnon, *The U.S. is a Haven for Money Laundering. That Might be About to Change.*, Foreign Policy (Jul. 31, 2020) available at <https://foreignpolicy.com/2020/07/31/us-money-laundering-shell-company-new-law/>.

Recommendations

✓ Close regulatory loopholes in the U.S. anti-money laundering framework by expanding beneficial ownership reporting requirements

To prevent corrupt foreign nationals from laundering their ill-gotten gains in the United States, the next administration should use pre-existing statutory authorities to close loopholes in the current AML framework and expand the applicability of beneficial ownership reporting requirements.

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that “financial institutions” keep records and file reports that “have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.”²⁶

The Treasury Department’s Financial Crimes Enforcement Network (FinCEN) establishes the various reporting and record-keeping requirements that comprise the current AML framework and, within certain parameters, identifies the economic actors to which they apply. Under current regulations, econom-

ic actors that are defined by FinCEN as “financial institutions” are required to know the identity of their individual customers and, in the event that their customer is a corporation, the identity of the corporation’s beneficial owners.²⁷ This “beneficial ownership” information is then made available to U.S. law enforcement and plays a critical role in anti-money laundering investigations.

Currently, the statutory definition of “financial institution” is limited to only 24 types of businesses and institutions.²⁸ The definition does not include a variety of high-risk sectors for money laundering. For example, accountants, lawyers, real estate brokers, hedge funds, private equity funds,²⁹ and fine art dealers are not defined as “financial institutions” under the statute.³⁰ The statute does, however, grant the Secretary of the Treasury the authority to extend the regulatory definition to “any other business . . . whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.”³¹ Relying on the authority granted to the Treasury Department in the BSA, the next administration should direct FinCEN to promulgate regulations that define these economic actors as “financial institutions.” Specifically, the next administration should:

- **Expand the definition of “financial institutions,” using the notice and comment rule-making process, to include all SEC-registered investment advisers, including investment advisers at hedge funds, private equity funds, and other private funds.** The rule would amend the BSA’s definition of “financial institution” to include: “[a]ny person who is registered or required to register with the SEC under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(a)).”³²

26 31 U.S.C. § 5311, available at <https://www.govinfo.gov/content/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIV-chap53-subchapII-sec5311.pdf>.

27 31 C.F.R. § 1010.230, available at <https://www.govinfo.gov/content/pkg/FR-2016-05-11/pdf/2016-10567.pdf#page=1>.

28 31 U.S.C. § 5312(a)(2) available at <https://www.govinfo.gov/content/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIV-chap53-subchapII-sec5312.pdf>.

29 In July 2020, the FBI issued a bulletin in which it identified private equity funds as a favored tool for money launderers. Timothy Lloyd, *FBI Concerned over laundering risks in private equity, hedge funds—leaked document*, Reuters (Jul. 14, 2020) available at <https://www.reuters.com/article/bc-finreg-fbi-laundering-private-equity/fbi-concerned-over-laundering-risks-in-private-equity-hedge-funds-leaked-document-idUSKCN24F1TP>.

30 Judah, Sibley, *supra* note 16.

31 31 U.S.C. § 5312(a)(2)(Z) available at <https://www.govinfo.gov/content/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIV-chap53-subchapII-sec5312.pdf>.

32 Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, 80 Fed. Reg. 52,680 (proposed Sep. 1, 2015) available at <https://www.federalregister.gov/documents/2015/09/01/2015-21318/anti-money-laundering-program-and-suspicious-activity-report-filing-require->

- **Promulgate a rule that would extend the definition of “financial institutions” to include art dealers and antiquity dealers,** which, market research demonstrates, are especially susceptible to money laundering.³³
- **Promulgate a rule that would require securities broker-dealers to conduct due diligence on their customers, as well as on their customers’ customers.** Under current regulations, if a foreign brokerage executes a trade with a U.S. investment bank through an intermediary, the U.S. investment bank is only required to conduct due diligence on the intermediary, and has no obligation to vet the actual beneficiary of the trade.³⁴
- ✓ **Expand the applicability of “Geographic Targeting Orders” to prevent foreign individuals from laundering their illicit finances through the U.S. real estate market**



A second front in the domestic battle against illicit finance is the U.S. real estate market. Since 2002, residential real estate transactions in the United States have been largely exempt from U.S. anti-money-laundering regulations.³⁵ Under the current AML framework, “persons involved in real estate closings and settlements” are not required to comply with the BSA’s beneficial ownership and suspicious activity reporting requirements.³⁶ This so-called “real estate loophole” allows foreign individuals to launder their illicit finances in the U.S. by anonymously purchasing U.S. real estate using unattributable shell companies.³⁷ According to the *Financial Times*, prior to 2016, \$32 billion in anonymous foreign money flowed into the U.S. real estate market in the form of all-cash transactions each year.³⁸

Since 2016, FinCEN has used a specific regulatory tool, known as a Geographic Targeting Order (“GTO”), to partially close this “real estate loophole.” GTOs are time-limited orders issued by FinCEN that impose recordkeeping and reporting requirements on specific economic actors or actions in certain geographic areas.³⁹ Businesses or persons engaged in an activity covered by a GTO are required to collect beneficial ownership information from customers participating in the covered transaction. If the customer is conducting the transaction on behalf of another person, or if the customer itself is a corporate entity, the GTO requires that the identity of the intended beneficiary of the

[ments-for-registered.](#)

33 See Financial Action Task Force, *Financing of the Terrorist Organisation Islamic State and Iraq of the Levant (ISIL)*, p. 37 (Feb. 2015) available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Financing-of-the-terrorist-organisation-ISIL.pdf>. According to the Basel Art Trade Guidelines, the art market’s vulnerability is a result of “the volume of illegal or legally questionable transactions, which is noticeably higher in this sector than in other globally active markets.” See Basel Institute on Governance, *Basel Art Trade Guidelines*, p. 7 (2018) available at <https://www.baselgovernance.org/publications/working-paper-12-basel-art-trade-guidelines-intermediary-report-self-regulation>. A July 2020 Congressional report traced \$18 million in fine art purchases from U.S. dealers back to shell companies linked to sanctioned Russian kleptocrats Arkady and Boris Rotenberg. See Natasha Bertrand, *Congressional probe: Russian oligarchs using art to evade sanctions*, Politico (Jul. 29, 2020) available at <https://www.politico.com/news/2020/07/29/probe-russian-oligarchs-evade-art-sanctions-386154>.

34 Joshua Kirschenbaum, David Murray, The Alliance for Securing Democracy, The German Marshall Fund of the United States, *An Effective American Regime to Counter Illicit Finance*, p. 4 (Dec. 18, 2018) available at <http://www.gmfus.org/publications/effective-american-regime-counter-illicit-finance>.

35 The 2001 USA PATRIOT Act amended the BSA to require “persons involved in real estate closings and settlements” to comply with AML regulations. FinCEN, however, issued a temporary exemption for the real estate industry in 2002. Since 2002, FinCEN has extended AML requirements to residential real estate transactions that involve financing; however, non-financed transactions remain exempt from the BSA’s reporting requirements. See U.S. Government Accountability Office, *GAO-20-546, Anti-Money Laundering: FinCEN Should Enhance Procedures for Implementing and Evaluating Geographic Targeting Orders*, p. 7-8 (Jul. 2020) available at <https://www.gao.gov/assets/710/708115.pdf>.

36 31 C.F.R. § 103.175, available at <https://www.sec.gov/about/offices/ocie/aml2007/31cfr103.175.pdf>.

37 Casey Michel, *Obama-era program to fight kleptocrats’ favorite tool is working better than anyone guessed*, ThinkProgress (Jun. 19, 2018) available at <https://thinkprogress.org/us-efforts-to-crack-down-on-shell-company-purchases-might-be-working-92e25df29511/>.

38 Tom Burgis, *US prime property is magnet for illicit wealth, warns Treasury*, Financial Times (Feb. 23, 2017) available at <https://www.ft.com/content/3b1b583e-f9ea-11e6-bd4e-68d53499ed71>.

39 See 31 U.S.C. § 5326(a) available at <https://www.govinfo.gov/content/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIV-chap53-subchapII-sec5326.pdf>; see also 31 C.F.R. § 1010.370, available at <https://www.govinfo.gov/content/pkg/CFR-2011-title31-vol3/pdf/CFR-2011-title31-vol3-sec1010-370.pdf>.

transaction be disclosed.⁴⁰ Per the BSA, a GTO can only be valid for 180 days.⁴¹ However, the director of FinCEN has the authority to renew a particular GTO's 180-day window indefinitely.⁴²

Through the reissuance and expansion of a single GTO over the past four years, FinCEN has required title insurance companies in certain geographic areas to report beneficial ownership information for luxury residential real estate purchases that are made in cash by a corporate entity.⁴³ Under this GTO, title insurance companies in the covered areas are required to report the names of all natural persons who, directly or indirectly, own 25 percent or more of the corporation purchasing the property.⁴⁴ If the purchasing corporation is owned by another corporation, the GTO requires the disclosure of the beneficial ownership information of all of the corporations involved.⁴⁵ This "real estate GTO" effectively prevents shell companies from being used to anonymously purchase luxury residential real estate in certain counties in the United States.

FinCEN's first real estate GTO, issued in January 2016, applied only to covered transactions in New York City and Miami.⁴⁶ Despite its limited reach, the order had a significant impact on the luxury real estate market in both metropolitan areas. According to a report published by the Federal Reserve Bank of New

In order to better prevent foreign individuals from laundering the proceeds of their corruption in U.S. markets, the next administration should expand FinCEN's real estate GTO and take regulatory action to make the order's requirements permanent.

York, in the first two years of the GTO's existence, all-cash real estate purchases by anonymous shell companies in covered counties fell by 70 percent, amounting to roughly \$45 billion.⁴⁷ As a result of this success, in 2018, FinCEN expanded the order's reach to cover 12 metropolitan areas: Boston, Chicago, Dallas-Fort

Worth, Honolulu, Las Vegas, Los Angeles, Miami, New York City, San Antonio, San Diego, San Francisco, and Seattle.⁴⁸ Since 2018, the scope of the GTO has remained static. The most recent GTO, issued on May 8, 2020, covers only residential real estate transactions in the same 17 counties and five boroughs identified in the 2018 order.⁴⁹

Kleptocrats have taken full advantage of the real estate GTO's geographic limitations. In August 2020, the Department of Justice brought a civil forfeiture action against well-known Ukrainian kleptocrat Ihor Kolomoisky, alleging, in part, that Kolomoisky and his business partner used stolen funds to purchase commercial real estate throughout the United States.⁵⁰ According to federal prosecutors, Kolomoisky used offshore shell companies to launder hundreds of millions of dollars through residential and commercial real estate in Cleveland, Ohio, a city not covered by the current GTO.⁵¹ The U.S. Attorney's Office in Cleveland has

40 See, e.g., U.S. Department of the Treasury, Financial Crimes Enforcement Network, *Geographic Targeting Order* (Oct. 20, 2015) available at https://www.fincen.gov/sites/default/files/shared/Renewal_Miami_TBML_GTO_Order.pdf.

41 31 U.S.C. § 5326(d) available at <https://www.govinfo.gov/content/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleV-chap53-subchapII-sec5326.pdf>.

42 American Land Title Association, *Real Estate Geographic Targeting Orders Fact Sheet*, p. 2 (2016) available at <https://www.alta.org/media/pdf/fincen/160812-real-estate-geographic-targeting-orders-faq.PDF>.

43 *Id.*

44 *Id.* at p. 1.

45 *Id.* at p. 3.

46 U.S. Department of the Treasury, Financial Crimes Enforcement Network, *Press Release: FinCEN Targets Shell Companies Purchasing Luxury Properties in Seven Major Metropolitan Areas* (Aug. 22, 2017) available at <https://www.fincen.gov/news/news-releases/fincen-targets-shell-companies-purchasing-luxury-properties-seven-major>.

47 Sean Hundtofte, Rantala Ville, *Anonymous Capital Flows and U.S. Housing Markets*, University of Miami Business School Research Paper No. 18-3 (May 28, 2018) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3186634.

48 U.S. Department of the Treasury, Financial Crimes Enforcement Network, *FinCEN Reissues Real Estate Geographic Targeting Orders and Expands Coverage to 12 Metropolitan Areas* (Nov. 15, 2018) available at <https://www.fincen.gov/news/news-releases/fincen-reissues-real-estate-geographic-targeting-orders-and-expands-coverage-12>.

49 GAO-20-546, *supra* note 35; see U.S. Department of the Treasury, Financial Crimes Enforcement Network, *FinCEN Reissues Real Estate Geographic Targeting Orders for 12 Metropolitan Areas* (May 8, 2020) available at <https://www.fincen.gov/news/news-releases/fincen-reissues-real-estate-geographic-targeting-orders-12-metropolitan-areas-1>.

50 Matt Zapotosky, Rosalind Helderman, *Ukrainian who made appearance in Trump impeachment saga accused by U.S. of stealing, laundering billions*, Washington Post (Aug. 2, 2020) available at https://www.washingtonpost.com/national-security/justice-department-accuses-ukrainian-oligarch-of-stealing-billions-from-bank-he-once-owned-and-laundering-it-in-the-us/2020/08/06/b88924b8-d7f4-11ea-aff6-220dd3a14741_story.html.

51 *Id.*

reportedly opened a criminal investigation into Kolomoisky for money laundering.⁵²

In order to better prevent foreign individuals from laundering the proceeds of their corruption in U.S. markets, the next administration should expand FinCEN's real estate GTO and take regulatory action to make the order's requirements permanent. Nothing in the relevant statute prevents FinCEN's GTOs from applying to both commercial and residential real estate transactions, and there is no limitation on the geographic scope of the order. Furthermore, as illicit finance experts Joshua Kirschenbaum and David Murray have outlined, the reporting requirements of the real estate GTO can be made permanent through the promulgation of a new regulation that defines title insurance as a "covered product" under the BSA.⁵³ To take full advantage of these authorities contained in the BSA, and to improve the U.S. AML regime, the next administration should adopt the following recommendations:

- **At the next renewal of the real estate GTO, extend the order to cover both residential and commercial real estate transactions.** Acting through FinCEN, the next administration should immediately issue an amended GTO that extends the order's beneficial ownership reporting requirement to cover both residential and commercial real estate transactions.
- **In the amended GTO, extend the order to cover all major-to medium-sized metropolitan regions in the country,** including, but not limited to, the following cities and surrounding counties of: Washington, DC; Philadelphia, PA; Phoenix, AZ; Houston, TX; Austin, TX; San Jose, CA; Jacksonville, FL; Columbus, OH; Cleveland, OH; Charlotte, NC; and Indianapolis, IN.
- **Through the notice and comment rule-making process, define "title insurance" as a "covered product" under the BSA, and require beneficial ownership reporting.** Currently, only insurance policies that have a transferable cash value are defined as "covered products" under the BSA and are subject to AML requirements.⁵⁴ To permanently require that title insurers provide beneficial ownership information to federal authorities, the next administration should expand the regulatory definition of "covered product" to include "title insurance" and obligate insurance companies to report the identity of the beneficial owners of corporate entities that purchase such insurance.⁵⁵



52 Michael Sallah, Tanya Kozyrevyva, Christopher Miller, *This Billionaire Oligarch is Being Investigated By A US Federal Grand Jury for Alleged Money Laundering*, BuzzFeed (May 19, 2020) available at <https://www.buzzfeednews.com/article/mikesallah/ukraine-billionaire-oligarch-money-laundering-investigation>.

53 Kirschenbaum, Murray, *supra* note 34, at n. 30.

54 *Id.*

55 *Id.*

Energy Resources (ENR)—in coordination with the Department’s six regional bureaus.⁵⁹ Despite a growing recognition of corruption’s strategic impact, however, at present, the department lacks a senior coordinator focused on harmonizing efforts to address corruption, as well as senior leads within regional bureaus explicitly tasked with the same mission in their areas of responsibility.

To address this shortfall, the next administration should direct the Secretary of State to establish a new senior anti-corruption coordinator position within each of the six regional bureaus that fall under of the office of the Under Secretary of State for Political Affairs. Each senior anti-corruption coordinator should work with the various missions within their area of responsibility, as well as relevant functional bureaus and interagency partners, to establish and implement country-specific anti-corruption plans.

This proposal builds on a successful pilot program initiated by the Bureau of Europe and Eurasian Affairs (EUR) in 2014, which temporarily established a senior anti-corruption coordinator position.⁶⁰ During his time in the position, the senior officer tasked with this mission worked with EUR’s posts to create anti-corruption action plans tailored to the specific political realities and corruption challenges faced by each post.⁶¹ The existence of the position allowed EUR to elevate the importance of anti-corruption efforts internally, improving the department’s anti-corruption work in the region.

By establishing similar positions throughout all six regional bureaus, the incoming administration will improve the efficacy of the State Department’s current anti-corruption work, while signaling to the international community that anti-corruption efforts are a U.S. foreign policy priority.

59 These include the bureaus responsible for African Affairs (AF); European and Eurasian Affairs (EUR); East Asian and Pacific Affairs (EAP); Near Eastern Affairs (NEA); South and Central Asian Affairs (SCA); and Western Hemisphere Affairs (WHA).

60 George Kent, *Countering Corruption Regionally: The “EUR” Initiative*, *Foreign Service Journal* (Jun. 2016) available at <https://www.afsa.org/countering-corruption-regionally-eur-initiative>.

61 *Id.*

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