

The corporate role in countering public corruption

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Government investigators are increasing their focus on US domestic corruption. Organizations can join the fight and reduce exposure by strengthening their corruption compliance programs.

Highlights

- ▶ Executives with experience in public corruption enforcement joined EY Forensic & Integrity Services leaders for a May 11 webcast to discuss the harm caused by US domestic corruption.
- ▶ Panelists discussed recent regulatory trends, business activity that presents corruption risks, red flags to look for, how to manage an investigative response and compliance program priorities.
- ▶ In today's regulatory and business environment, organizations need to be equipped to proactively identify corruption risks and prevent corruption.

Corruption is a threat to government and degrades the business environment, unfairly impacting businesses that act with integrity. The White House recently called corruption a societal cancer and “a disease that eats at public trust.” President Biden called it a threat to democracy itself and has committed resources to fight US domestic corruption and ensure accountability.¹

Historically, US domestic corruption cases have focused on politicians and public officials. However, regulators have recently shifted their attention to corporations that are engaged in corrupt practices to influence public officials – in other words, cutting off the supply side of corruption.

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There are always going to be public officials to bribe, but if you leave the facilitators of corruption (i.e., corporations or individuals engaged in corruptly doing business with local, state or federal government) out on the streets, you're not actually changing the culture or the playing field. They'll bribe the next official that shows up. This shift to focus on the supply side sends a message.

Jeff Sallet, Partner, EY Forensic & Integrity Services, Ernst & Young LLP, and former Associate Deputy Director of the FBI, who spent much of his career investigating public corruption, white collar crime, organized crime and money laundering

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Understand your touch points with government. Test and evaluate your controls on a regular basis. Don't assume corruption risks in the US are low.

Miles Ripley, EY Americas Investigations & Compliance Leader,
Forensic & Integrity Services



¹Source: “Fact Sheet: U.S. Strategy on Countering Public Corruption,” The White House, December 6, 2021.

Given the heightened exposure to corporate criminal liability, business executives and compliance professionals must reassess their level of risk and examine the effectiveness of training, financial controls and compliance programs. Organizations need to be equipped to detect, deter and prevent wrongdoing by paying attention to the warning signs and asking the right questions to manage the risks.

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Efforts to close gaps in their compliance program may help an organization avoid prosecution or a harsh penalty. We'd rather you ramp up compliance to prevent problems in the first place. Quite frankly, it's the right thing to do, and ultimately our goal is to stop criminal conduct.

Corey Amundson, Chief of the Justice Department's Public Integrity Section

Disrupting the supply of corruption

Corporations that interact with government, such as contractors; participants in government-funded programs (Infrastructure Investment and Jobs Act as well as other COVID-19-related funding); and those that want to influence laws, win bids or obtain permits, may offer cash, gifts, contributions, employment or any other compensation in exchange for decisions in their favor. When determining how to design and implement a domestic corruption compliance program, it is imperative to determine when and where your business interacts with government in connection with your business activities.

US corporations operating globally that have implemented programs and training focused on international business need to ensure they are cognizant of the risks in their US domestic operations and develop compliance programs accordingly.

Corporations must pay particular attention to political and charitable contributions, political lobbying, consulting agreements, and employment offers and vendors' contracts awarded to parties connected to public officials.

Simply having a policy and procedure in place to "check the box" will no longer be sufficient. The Department of Justice will consider whether the corporation's compliance program is well designed, supported by management and implemented effectively.

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The compliance program should be thought about at the beginning of an investigation, throughout the investigation and at the end of the investigation.

Christine Wong, Global Co-Chair of Morrison & Foerster's Litigation Department and a former assistant US attorney

Summary

Public corruption is a national threat priority for the US government.² Prosecutors are no longer just focused on the public officials accepting bribes but also pursuing the corporations involved. To protect themselves, organizations must recognize the regulatory environment has changed and focus on developing and implementing effective risk assessments and compliance programs.



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²Source: "Fact Sheet: U.S. Strategy on Countering Public Corruption," The White House, December 6, 2021.