



# Department of Justice

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ANTI-CORRUPTION LEGISLATIVE PROPOSALS

114<sup>TH</sup> CONGRESS

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**PROPOSALS REGARDING THE ILLEGAL PROCEEDS OF  
TRANSNATIONAL CORRUPTION**

**Amendment Language**

**Title I: Expand foreign money laundering predicates to include any violation of foreign law that would be a money laundering predicate if committed in the United States.**

Section 1956(c)(7) of title 18, United States Code (Laundering of monetary instruments), is amended to read as follows:

“(7) The term “specified unlawful activity” means—

- (A) any act or activity constituting an offense in violation of the laws of the United States punishable by imprisonment for a term exceeding one year; or
- (B) any act or activity in violation of foreign law that would constitute an offense covered under subparagraph (A) if the act or activity had occurred within the jurisdiction of the United States; or
- (C) any act or activity listed in section 1961(1)(A) of this title.
- (D) This subsection does not include—
  - (i) an act which is indictable under section 1962 of this title;
  - (ii) an act which is indictable under title 26, United States Code, or which is indictable under section 371 of title 18, United States Code, as a conspiracy to commit an offense under title 26, United States Code, or as a conspiracy to defraud the Internal Revenue Service; or
  - (iii) an act which is indictable under subchapter II of chapter 53 of title 31.”

## **Title II: Allow administrative subpoenas for money laundering investigations.**

### ADMINISTRATIVE SUBPOENAS FOR MONEY LAUNDERING—

1. Section 3486 of title 18, United States Code (Administrative subpoenas), is amended by:
  - a. striking the comma at the end of subsection (a)(1)(A)(iii), inserting a semi-colon and word “or” after “the Treasury”, and inserting the following new subsection (iv) after subsection (iii):

“(iv) an offense under section 1956, 1957, or 1960 of this title, or section 5313, 5316, 5324, 5331 or 5332 of title 31, or an offense against a foreign nation constituting specified unlawful activity under section 1956, or a criminal or civil forfeiture based upon an offense enumerated in this subsection or for which enforcement could be brought under section 2467 of title 28, the Attorney General; the Secretary of Homeland Security; or the Secretary of the Treasury,”; and
  - b. striking the word “or” before subsection (a)(6)(B)(iv), inserting a semicolon and the word “or” after the word “witnesses”, deleting the period, and inserting the following new subsection (B)(v), as follows:

“(v) dissipation, destruction, removal, transfer, damage, encumbrance, or other unavailability of property that may become subject to forfeiture or an enforcement action under 2467 of title 28, United States Code.”
2. Section 604(a)(1) of the Fair Credit Reporting Act (15 U.S.C. § 1681b(a)(1)) is amended by inserting the words “, or a subpoena issued pursuant to section 5318 of title 31 or section 3486 of title 18” before the period at the end.
3. Section 1510(b) of title 18, United States Code (Obstruction of criminal investigations), is amended by:
  - a. in paragraph (b)(3)(B), deleting the words “or a Department of Justice subpoena (issued under section 3486 of title 18)” and by inserting the words “, a subpoena issued under section 3486 of title 18, or an order

or subpoena issued pursuant to section 3512 of title 18, section 5318 of title 31, or section 1782 of title 28, ” after the words “grand jury subpoena”; and

b. in paragraph (b)(3)(B)(i) inserting the words “, 1960, or an offense against a foreign nation constituting specified unlawful activity under section 1956, or a foreign offense for which enforcement of a foreign forfeiture judgment could be brought under section 2467 of title 28” after the number “1957”.

4. Section 3420 of title 12, United States Code (Grand jury information; notification of certain persons prohibited), is amended in subsection (b)(1)(A) by deleting “or 1957” and inserting “, 1957, or 1960” and by deleting “and 5324” and inserting “, 5322, 5324, 5331, and 5332”.

**Title III: Enhance law enforcement’s authority to access foreign bank or business records by serving branches located in the United States regardless of bank secrecy or data privacy laws in those jurisdictions.**

Section 5318(k)(3) of title 31, United States Code, is amended to read as follows:

**“(3) Foreign bank records.—**

**(A) Subpoena of records.—**

**(i) In general.—** Notwithstanding subsection (b) of this section, the Secretary of the Treasury or the Attorney General may issue a subpoena to any foreign bank that maintains a correspondent account in the United States and request any records relating to such account or any related account at the foreign bank, including records maintained outside of the United States, that are the subject of any investigation of a criminal violation of United States law or a civil forfeiture action. The subpoenaed foreign bank shall produce all requested records and authenticate the same with testimony or in the manner set forth in Rule 902(12) of the Federal Rules of Evidence or section 3505 of title 18, United States Code.

**(ii) Issuance and service of subpoena.**—A subpoena referred to in clause (i) shall designate both a return date and the judicial district in which the related investigation is proceeding. The subpoena may be served in person or by mail or fax on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international legal or law enforcement assistance.

**(iii) Relief from subpoena.**—At any time before the return date of the subpoena, the foreign bank may petition the United States district court for the district in which the related investigation is proceeding, as designated in the subpoena, for an order modifying or setting aside the subpoena or a prohibition of disclosure set forth under subparagraph (C).

**(B) Acceptance of service.**—

**(i) Maintaining records in the United States.**—Any covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of such foreign bank and the name and address of a person who resides in the United States and is authorized to accept service of legal process for records covered by this subsection.

**(ii) Law enforcement request.**—Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

**(C) Non-disclosure of subpoena.**—No officer, director, partner, employee, or shareholder of, or agent or attorney for, the subpoenaed foreign bank shall, directly or indirectly, notify any account holder and, beneficial owner involved or any person named in the subpoena issued

under subparagraph (A) and served on such an institution about the existence or contents of such subpoena. Upon application by the Attorney General for a violation of this subsection, the subpoenaed foreign bank is liable to the United States government for a civil penalty of twice the amount of the suspected criminal proceeds sent through the correspondent account of the foreign bank in the related investigation, or, if no such proceeds can be identified, \$250,000.

**(D) Enforcement.**—In the case of refusal to obey a subpoena issued to any foreign bank, the Attorney General may invoke the aid of any court of the United States within the federal judicial district in which the investigation or related proceeding occurs to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed foreign bank to appear before the Secretary or the Attorney General to produce certified records, in accordance with Rule 902(12) of the Federal Rules of Evidence and section 3505 of title 18, United States Code, or to provide testimony concerning the production of such records. Any failure to obey the order of the court may be punished by the court as contempt. All process in any such case may be served on the foreign bank in the same manner as set forth in paragraph (A)(ii) of this subsection.

**(E) Termination of correspondent relationship.**—

**(i) Termination upon receipt of notice.**—A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed—

**(I)** to comply with a subpoena issued under subparagraph (A); or

**(II)** to prevail in proceedings before a United States district court contesting such subpoena under subparagraph (A)(iii) or, if taken, upon an appeal in the Court of Appeals.

**(ii) Limitation on liability.**—A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship or complying with a non-disclosure order in accordance with this subsection.

**(iii) Failure to terminate relationship.**—Failure to terminate a correspondent relationship in accordance with this subsection shall render the covered financial institution liable for a civil penalty of up to \$10,000 per day until the correspondent relationship is so terminated.

**(F) Enforcement of civil penalties.**—Upon application of the United States, any funds held in the subpoenaed foreign bank’s correspondent accounts maintained in the United States with a covered financial institution (as defined in section 5318(j)(1) of title 31) may be seized by the United States to satisfy any civil penalties

**(i)** under subparagraph (C); or

**(ii)** imposed by the court for contempt under subparagraph (D).”

**Title IV: Create a mechanism to use and protect classified information in civil asset recovery cases.**

Title 18, United States Code, is amended to add a new section 988 as follows:

**“§ 988. Classified information in forfeiture proceedings brought by the United States**

**(a)** The provisions of section 2339B(f) of title 18, United States Code, regarding classified information shall be applicable in any civil or criminal forfeiture proceeding brought by the United States under Federal law.

**(b)** As used in this section, the term “classified information” has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App. III).”



**Title V: Make the time period in which the United States can restrain property based on a request from a foreign country, currently 30 days, parallel to the domestic restraint period, which is 90 days; and extend the procedures to authenticate foreign records of regularly conducted activity in criminal cases to civil asset recovery cases.**

CIVIL ASSET RECOVERY BASED UPON FOREIGN OFFENSES –

1. Section 981(b)(4) of title 18, United States Code, is amended by:
  - a. in subsection (A), striking “30” and inserting “90”; and
  - b. in subsection (B), inserting after the words “under this subsection” the words “or to receive an order, affidavit, or evidence in support of an application to preserve property pursuant to section 2467 of title 28, United States Code.”

ADMISSIBILITY OF FOREIGN RECORDS IN CIVIL ASSET RECOVERY PROCEEDINGS—

Section 3505(a)(1) of title 18, United States Code, is amended by, after the words “criminal proceeding,” inserting the words “, civil forfeiture action, or enforcement action brought under section 2467 of title 28, United States Code,”.

## **Section-by-Section Analysis**

**Title I.** Title I would extend foreign money laundering predicates to include any violation of foreign law that would be a money laundering predicate if committed in the United States. This proposal would amend 18 U.S.C. § 1956(c)(7) to include all domestic felony offenses, with certain exemptions, as predicates for money laundering. In addition, the amendment will allow prosecutors to directly pursue kleptocracy cases and prosecute for money laundering the use of proceeds from the full range of foreign corruption activities.

Currently, U.S. prosecutors can charge money laundering cases and file asset recovery actions for specific acts of foreign corruption and these actions can capture, without specifically charging violations of foreign law relating to conduct occurring in another country, most of the foreign corruption predicate acts. The proposed amendment will allow prosecutors to directly pursue kleptocracy cases and prosecute for money laundering the use of proceeds from the full range of foreign corruption activities criminalized pursuant to the 2003 U.N. Convention Against Corruption. Adopting this amendment will complement the ability of U.S. prosecutors to charge money launderers and recover kleptocracy proceeds while also enhancing the stature of the United States in promoting an anti-corruption and anti-organized crime agenda worldwide.

**Title II.** Title II would allow for the issuance of administrative subpoenas for money laundering investigations. The proposed amendment will enhance the ability of investigators to obtain records in money laundering investigations. In criminal money laundering investigations, such records are often obtained through the issuance of grand jury subpoenas, but law enforcement occasionally needs the speed and flexibility to subpoena administratively.

**Title III.** Title III would enhance law enforcement's authority to access foreign bank of business records by serving branches located in the United States regardless of bank secrecy or data privacy laws in those jurisdictions. Kleptocrats use the global financial system to launder corruption proceeds. These illicit funds are predominantly processed by large, global financial institutions which have U.S. correspondent accounts. Given the worldwide presence of those financial institutions, records that are relevant to a U.S. investigation may exist overseas. Current law permits U.S. law enforcement, with approval from the Department of Justice, to attempt to obtain bank records located abroad by serving subpoenas on branches of the bank located in the United States, even where production of the records would violate the foreign country's bank secrecy or data protection laws. However, obtaining such records as legally admissible evidence can still result in protracted negotiation and litigation. This can ultimately result in law enforcement not being able to obtain those records. This proposed amendment will enhance the ability of U.S. investigators to obtain overseas records as a form of legally admissible evidence.

**Title IV.** Title IV would create a mechanism to use and protect classified information in civil asset recovery cases. Because kleptocracy investigations typically involve high-

ranking foreign government officials, kleptocracy cases may increasingly involve classified information. In criminal cases, the Classified Information Procedures Act (CIPA) provides a framework for the government to prevent the unnecessary disclosure of classified information by, among other things, having a court review classified documents *in camera* to make an independent determination about whether the information should be disclosed to the defense. CIPA does not alter the government's discovery obligations and is intended to appropriately balance the rights of the defendant with the government's secrecy interests. Currently, if litigation over classified information arises in a civil kleptocracy case, there are no CIPA-type procedures in place. This amendment would provide CIPA-type procedures if litigation over classified information arises in certain civil forfeiture cases.

**Title V.** Title V would make the time period in which the United States can restrain property based on a request from a foreign country, currently 30 days, parallel to the domestic restraint period which is 90 days. Because stolen assets are typically secreted away in various countries, multilateral cooperation in kleptocracy cases is essential for sharing evidence and determining which authorities are best positioned to seize particular assets. There are several impediments, however, to effective parallel work.

First, there is a discrepancy between the time limits imposed in domestic and foreign asset recovery cases. In a case initiated by U.S. authorities, the government has 90 days from the time of seizure to initiate a forfeiture proceeding—but the government has only 30 days from seizure based on a request from a foreign government. At the expiration of the 30-day period, the U.S. must either file its own action or receive and seek U.S. court enforcement of a foreign restraint or forfeiture order. In complex asset recovery cases involving multiple foreign jurisdictions, 30 days is insufficient time for a thorough exchange of information, translation of documents, additional investigation by U.S. and foreign authorities, and ultimately a determination of where to bring the case.

Second, in these cases U.S. prosecutors may seek to use foreign business records. In a criminal case, foreign business records are admissible if there is a certificate attesting that the document meets the business records test. This certificate may eliminate the unnecessary time and expense required to fly in a foreign witness to testify about how a foreign record was created. This is not the case in civil asset recovery cases.

## **PROPOSALS REGARDING SUBSTANTIVE CORRUPTION OFFENSES**

### **Amendment Language**

**Title VI: Amend 18 U.S.C. Section 666 (theft or bribery concerning programs receiving federal funds) to resolve a circuit split on the issue of whether after-the-fact gratuities are covered.**

Section 666(d) of title 18, United States Code, is amended by inserting the following provision after paragraph (5):

“(6) the terms “intending to be... rewarded” and “intent to influence or reward” include things of value that are solicited, demanded, accepted, agreed to be accepted, given, offered, or agreed to be given either before or after the agent takes some action or refrains from taking some action in connection with the business, transaction, or series of transactions of an organization, government, or agency.”

**Title VII: Amend 18 U.S.C. Section 666 (theft or bribery concerning programs receiving federal funds) to correct a drafting error regarding bona fide salary, and to lower the dollar threshold from \$5,000 to \$1,000.**

1. Section 666(c) of title 18, United States Code (Theft or bribery concerning programs receiving Federal funds), is amended by:

- a. deleting the words “This section does not apply to”; and
- b. inserting the following words “The term ‘anything of value’ that is corruptly solicited, demanded, accepted or agreed to be accepted in subsection (a)(1)(B) and corruptly given, offered, or agreed to be given in subsection (a)(2) shall not include” before the words “bona fide salary”.

2. Section 666(a)(1)(B) of title 18, United States Code, is amended by replacing the amount “\$5,000” with the amount “\$1,000”.

## **Section-by-Section Analysis**

**Title VI.** Title VI would amend 18 U.S.C. Section 666, which criminalizes fraud and bribery in connection with Federal programs, to resolve a circuit split and insure that the statutory language prohibiting corrupt “rewards” is given full effect. The proposal would expressly criminalize the corrupt offer or acceptance of payments to “reward” official action as well as those intended to “influence” official action, and resolve a conflict among Federal circuit courts on the issue of whether after-the-fact gratuities are covered by Section 666. The amendment would also be consistent with the interpretations of six of eight Circuit Courts of Appeals which have addressed this issue, finding that the plain language of the statute criminalizes the corrupt offer or acceptance of rewards. This amendment would clarify the original intent and give full effect to the language Congress originally enacted.

**Title VII.** Title VII would amend 18 U.S.C. Section 666 to correct a drafting error regarding bona fide salary, and to lower the dollar threshold from \$5,000 to \$1,000. Section 666 of title 18 (Theft or bribery concerning programs receiving Federal funds) should be amended to clarify that subsection (c)—which excludes bona fide salary paid in the usual course of business—applies only to the statute’s prohibition on giving or receiving “anything of value” as a bribe. The current text of section 666(c) indicates that the exemption applies to the entirety of the statute, which includes its prohibition on federal program fraud and its \$5,000 and \$10,000 jurisdictional requirements. However, the legislative history makes clear that this was not Congress’s intent, which was simply to ensure that by paying a legitimate salary or bonus to a government employee or organization, an employer would not be guilty of bribery.

In applying section 666(c) to fraud and the jurisdictional requirements rather than solely to the thing of value given as a bribe, some courts have concluded that the exemption immunizes the conduct of defendants who received otherwise legitimate payments in the usual course of business—even though they obtained the related contracts or employment at the outset through bribery or fraud. The record shows that Congress did not intend these results. Congress imported the language in section 666(c) from its amendment of the bank bribery statute, Bank Bribery Amendments Act of 1985, amending 18 U.S.C. § 215. *See* H.R. Rep. No. 99-335 (1986), *reprinted in* 1986 U.S.C.C.A.N. 1782. The purpose of that amendment was to ensure that routine payments made to bank employees and officials by the banks or credit unions themselves would not constitute bank bribery.

In addition, significant abuses of the public trust can take place in circumstances in which the dollar amount involved is relatively low, but the threat to the integrity of a government function is relatively high. For example, in *United States v. Mills* the conduct involved bribes of \$3,500 to state government employees in exchange for state government jobs. 140 F.3d 630, 631 (6th Cir. 1998). Amending section 666(a)(1)(B) by lowering the dollar threshold from \$5,000 to \$1,000 would assist the Department of Justice in our efforts to combat all substantial breaches of public trust.