

## Cabinet News and Views

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### In Depth: President Biden Proposes New Administrative Forfeiture Process and Other Legislative Changes to Address Ukraine Crisis



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Alongside the slew of new sanctions imposed in response to Russia's invasion of Ukraine, the Biden administration also has been laying the groundwork to maximize the impact of those sanctions. Just days after Russian military action began, President Biden announced in his March 1 [State of the Union Address](#) an initiative to increase pressure on Russia's political leadership by "go[ing] after the crimes" of its enablers – the so-called "oligarchs" who have amassed control over much of the country's wealth. The following day, the DOJ [announced](#) formation of a multi-agency "KleptoCapture" task force dedicated to enforcing sanctions against Russia, including by using tools to "freeze and seize" the criminal proceeds of Russian oligarchs. Soon thereafter, on March 16, the United States, the United Kingdom and numerous other partners [formed](#) the aptly named Russian Elites, Proxies, and Oligarchs ("REPO") task force, which, according to Secretary of the Treasury Janet L. Yellen, is "galvanizing coordinated efforts to freeze and seize assets" of Russian leaders and their enablers.

In his April 28 emergency [request](#) to Congress for assistance to Ukraine, President Biden moved beyond these organizational initiatives by submitting proposals to strengthen the legal tools available to punish Russia – and, at the same time, generate funds to aid Ukraine. If enacted, these proposals would enable the U.S. government not merely to block sanctioned property (essentially "freezing" it in place) but to seek its forfeiture – that is, transferring ownership of it and then using those funds "to remediate harms of Russian aggression towards Ukraine."

Among the most significant of the Biden administration's legislative proposals is the establishment of a process, to be defined in a new Chapter 59 of Title 50 of the United States Code, to seize and forfeit property that is blocked under Russia-related sanctions. The new forfeiture authority "would be expressly retroactive" – thus reaching previously blocked property – and would apply to all blocked

property that is (i) subject to U.S. jurisdiction, and (ii) derived from or used in specified unlawful or “wrongful” conduct. The scope of relevant conduct that would subject property to forfeiture remains unclear, but it is to include, among other things, a new criminal offense for “possession of proceeds from corrupt dealings with the Russian government.”

Importantly, the proposed seizure and forfeiture authorities would establish an entirely new administrative forfeiture process, distinct from existing criminal and civil forfeiture authorities. According to a White House [press release](#), the process is to be “streamlined,” suggesting an emphasis on speed. The legislative amendments would authorize the Secretary of the Treasury or a designee, in consultation with the Attorney General and other relevant departments and agencies, to first identify blocked property subject to seizure and/or forfeiture based on the factors described above. Such property would then be subject to seizure by the Attorney General.

Next, the Secretary of the Treasury would be authorized to make an initial determination, again in consultation with the Attorney General, that the property is subject to forfeiture using a preponderance of the evidence standard. This determination would be based on a record “demonstrating that the property in question 1) is owned by a covered person; and 2) has facilitated unlawful or wrongful conduct, is the proceeds of such conduct, or is otherwise traceable to such conduct.” Treasury would take steps to give notice of this determination to “any identified party that appears to have a protected legal interest in the property,” who would have 60 days to request reconsideration of the determination.

If a request for reconsideration is unsuccessful, the forfeiture decision would become final unless judicial review is sought within 10 days. Jurisdiction would lie solely in the U.S. District Court for the District of Columbia, and “discovery would be available only upon a showing of good cause and that the discovery would be in the interest of justice at the discretion of the court.” Any appeal would be on an “expedited” basis, and, if the government prevailed, the Secretary of the Treasury would act promptly to order forfeiture. Liquidation of the property in question would then follow, and the Secretary of State would be authorized to direct any resulting net proceeds “for remediation of harms in Ukraine.”

Other aspects of the legislative proposal sent to Congress would create new criminal offenses and amend existing laws, aiding efforts to prosecute those in possession of ill-gotten wealth:

- First, as already noted, President Biden’s proposal would create a new criminal offense, to be codified at 18 U.S.C. 228, prohibiting the knowing or intentional possession of “proceeds directly obtained from corrupt dealings with the Russian government.”
- Second, criminal violations of the Export Control Reform Act and the International Emergency Economic Powers Act (the authorizing legislation for many sanctions programs, including those directed against Russia) would be added to the definition of “racketeering activity” in the Racketeer Influenced and Corrupt Organizations (“RICO”) Act. This would allow charges of export control and sanctions evasion to be brought alongside charges of fraud, money laundering, and other predicate acts in a manner not always

possible under current law.

- Lastly, the President's proposal would establish a 10-year statute of limitations for money laundering offenses involving any "specified unlawful activity" that is a violation of foreign law, thereby affording the DOJ additional time to work with international partners to build complex cases and "identify assets for seizure and forfeitures."

Taken together, President Biden's legislative proposals - if enacted - would significantly expand the scope of authorities to seize and seek forfeiture of certain blocked property, while also directing the proceeds of such forfeitures to aid Ukraine and supporting the prosecution of sanctions evasion and other criminal activity. The legislative proposals also signal that the administration is preparing for a potentially high volume of administrative, civil, and criminal action against Russian elites who violate the U.S. law, and those who enable them. Regardless of the course of the conflict in Ukraine, the legal fallout is sure to extend for years to come.

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