

U.S. Government Addresses Responsible Business Conduct

April 10, 2024

On March 25, 2024, the Biden-Harris Administration released its updated [National Action Plan on Responsible Business Conduct](#) (the “NAP”). The result of years of interagency effort and engagement with a wide range of stakeholders, the NAP outlines priority areas for action by the U.S. government (the “USG”) and includes specific commitments from at least 14 agencies and groups within government.

The USG released its [first NAP](#) in 2016 in the waning days of the Obama Administration. Since then, global interest in responsible business conduct has increased significantly. Governments around the world are increasingly imposing mandatory reporting standards related to environmental and social impacts, consumers are demanding more information and favoring companies that can show real commitment to sustainability, and crises around the world have increased scrutiny and exposed weaknesses of global supply chains.

Against this backdrop, the 2024 NAP enshrines an *expectation* of human rights due diligence (“HRDD”), details increased use of various penalties to promote responsible business conduct and outlines specific commitments by Executive Branch agencies and groups across a range of priorities. The NAP also seeks to ensure businesses have the [resources](#) they need to comply with U.S. and other responsible business requirements.

HRDD Expectation

Notably, and in contrast to EU due diligence regulations and directives like the [Corporate Sustainability Due Diligence Directive](#) (the “CSDDD”) and the [Corporate Sustainability Reporting Directive](#) (the “CSRD”), the NAP does not establish or even lay the groundwork for mandatory HRDD. According to the 2024 NAP, the USG “expects businesses to conduct HRDD throughout their value chains” and integrate findings into decision-making and existing risk-management systems. According to the NAP, HRDD should align with international standards and should include: (1) metrics to assess and address risks; (2) ongoing assessment, monitoring and evaluation; (3) consistent stakeholder engagement and public communication; and (4) grievance mechanism(s).

Moving beyond the general expectation enshrined in the NAP, the International Development Finance Corporation will clarify its clients' responsibilities in assessing supply chains with high risks of child and forced labor, significant health and safety issues or significant conversion of critical forest areas or critical natural habitat. These changes will be subject to public comment.

Penalties to Promote Responsible Business Conduct

Per the NAP, entities across the USG will increase penalties on companies deemed to be acting irresponsibly, including economic sanctions, visa restrictions and export control measures. Customs and Border Patrol ("CBP"), part of the U.S. Department of Homeland Security, also committed to drafting guidance on when agencies across the government should consider suspending or debarring contractors who repeatedly violate forced labor prohibitions, or who are the targets of [Withhold Release Orders](#) ("WROs")—a tool CBP uses to hold goods suspected to be created wholly or in part by forced labor.

The NAP also provides for the creation of a Forced Labor Investigations Unit intended to increase the number of WROs and findings and to initiate and conduct criminal investigations into allegations of forced labor. These actions will likely lead to more enforcement efforts related to the presence of forced labor in a company's supply chain.

Strengthening Access to Remedy: Grievance Mechanisms and Worker Voice

The NAP also centralized access to remedy. The USG committed to strengthening dispute mechanisms to ensure parties who suffer adverse human rights consequences can access remedy safely and without reprisal.

One focus of these efforts is the National Contact Point (the "NCP") under the OECD Guidelines. As discussed in our Debevoise in Depth "[OECD Guidelines on Responsible Business Conduct: 2023 Revisions and the 'Specific Instance Grievance Mechanism'](#)," the NCP provides an alternative dispute resolution mechanism in which parties may bring complaints against companies for violating the OECD Guidelines. The NAP proposes four more significant changes to the NCP process, several of which will be subject to a public notice and comment process.

- The USG will develop one of the first NCP policies in the world on reprisals aiming to protect whistleblowers, victims and others who report on violations of the guidelines.

- The State Department will lead the creation of a new Responsible Business Conduct Advisory Body of experts who can strengthen and guide the NCP.
- The NAP proposes changing the NCP rules of procedure to encourage routine follow-up on cases even after their conclusion. This will empower the NCP to engage companies on an ongoing basis even after the mediation process is complete.
- The State Department has proposed significant changes to the NCP's confidentiality policy. [Current practices](#) prohibit disclosure until a Final Statement is issued, which is often redacted. Proposed changes, on the other hand, involve making public the existence and status of pending cases on the NCP's website with party names—if both parties agree—prior to the initial assessment and issuing Initial Assessments as public documents. Proponents of the change hope transparency will encourage those with additional information to come forward and will encourage companies to participate in the grievance mechanism under increased public scrutiny.

Beyond the NCP process, the NAP includes commitments from various agencies to strengthen access to remedy and worker voice, including the following:

- The State Department will evaluate and assess how to strengthen public reporting mechanisms for business conduct that violates human and labor rights.
- The NAP creates a Hotlines Working Group, chaired by the Department of Health and Human Services and including the Department of Homeland Security and the Department of Justice, which will (1) review existing reporting mechanisms and (2) identify ways to improve methods for workers and civil society to inform the USG of potential human trafficking violations in federal contracts.
- The Department of Labor's Bureau of International Labor Affairs will undertake a major [pilot project](#) in the Indonesian palm oil sector to create and refine a model for worker-driven social compliance systems to promote fundamental labor rights and the elimination of forced labor.
- The Department of the Treasury will advocate for an effective remedy system at multilateral banks. The approach will aim to minimize the occurrence of environmental and social harm in International Finance Corporation and Multilateral Investment Guarantee Agency projects by improving safeguards and to support remedial action to address harm as needed.
- The Export-Import Bank of the United States will solicit public input on how to strengthen the effectiveness of project-based grievance mechanisms and will work

with global counterparts on ways to strengthen best practices around access to remedy.

Priority Areas

The NAP outlined further commitments in areas including procurement, key minerals, technology, workers' rights, climate change and anti-corruption.

- **Procurement.** The Department of Defense will consider requiring membership in the International Code of Conduct Association for private security contractors; the Department of Labor will make the information it already produces, including the annual List of Goods Produced by Child Labor or Forced Labor, available to procurement officers making award decisions; and the State Department will pilot a human trafficking risk-mapping process in the procurement processes for its Bureau of Overseas Building Operations and will develop a toolbox of best practices for risk-based due diligence based on OECD standards.
- **Key Minerals.** The U.S. Agency for International Development will promote the [Public-Private Alliance for Responsible Minerals Trade](#), with a focus on aligning industry operations with the OECD Guidelines, identifying key barriers to impactful due diligence and testing and analyzing solutions to these challenges, and the Department of Labor will pilot new traceability strategies to facilitate companies' legal purchasing of artisanal and small-scale mined cobalt in accordance with internationally recognized standards from mining cooperatives in the Democratic Republic of the Congo and other countries.
- **Technology.** NAP commitments focused on strengthening content authentication standards, driving towards a global norm on responsible deployment of AI and ensuring human rights considerations are embedded in the design, development, deployment, use and procurement of digital technologies. The State Department will engage with the [Freedom Online Coalition](#) to develop technology sector-specific HRDD guidance, will work with the private sector to identify solutions to technology-facilitated gender-based violence and will engage with Internet Service Providers on best practices for mitigating risks of internet shutdowns.
- **Workers' Rights.** The Office of the U.S. Trade Representative (the "USTR") will establish a Forced Labor Trade Strategy to identify priorities and establish an action plan to utilize existing and new trade tools to address forced labor, the Department of Homeland Security will convene biannual stakeholder engagements on the implementation of the [Uyghur Forced Labor Prevention Act](#), and the National

Oceanic and Atmospheric Administration will continue to promote the adoption of international labor standards for crew and observers in the international fisheries management bodies.

- **Environment, Climate and Just Transitions.** The State Department will award grants for work related to just transitions, focusing on the nexus of climate and labor rights, and will work to increase civil participation in the environmental submissions mechanism established by various Free Trade Agreements, and USTR will use trade-policy tools to advance environmental sustainability.
- **Anti-corruption.** The Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") initiated [rulemaking](#) on February 7, 2024 to increase the transparency of the U.S. real estate sector and address the systemic money laundering vulnerabilities, and Treasury will continue (1) to implement FinCEN's rule on beneficial ownership information reporting provisions and (2) to assess gaps in the application of Anti-Money Laundering/Countering the Financing of Terrorism obligations to financial intermediaries, gatekeepers and other professional sectors not covered by the provisions; the State Department will support the implementation of a new Infrastructure Anti-Corruption Toolbox to prevent and detect corruption in infrastructure.

Conclusion

Implementation of the NAP is now underway, as agencies take steps to fulfill their commitments enshrined in the NAP. The private sector has meaningful opportunities to engage with the USG to shape how these commitments translate into action, especially by providing comment for any forthcoming rulemaking and by engaging with industry groups to advocate for business needs. As drafted, the NAP can have significant consequences for companies in the United States and across the world as they are expected to know more about their supply chains and do more to ensure their conduct is responsible.

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Please do not hesitate to contact us with any questions.



Natalie L. Reid
Partner, New York
+1 212 909 6154
nlreid@debevoise.com



Samantha J. Rowe
Partner, London
+44 20 7786 3033
sjrowe@debevoise.com



Ulysses Smith
ESG Senior Advisor, New York
+1 212 909 6038
usmith@debevoise.com



Isabelle Glimcher
Associate, New York
+1 212 909 654
iwglimcher@debevoise.com



Gabriel A. Kohan
Associate, Washington, D.C.
+1 202 383 8036
gakohan@debevoise.com

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