

New Laws Targeting Assets of Russian Oligarchs: The U.S. Announces Task Force KleptoCapture and the Kleptocracy Asset Recovery Rewards Program

On March 2, 2022, “Attorney General Merrick B. Garland announced the launch of Task Force KleptoCapture, an interagency law enforcement task force dedicated to enforcing the sweeping sanctions, export restrictions, and economic countermeasures that the United States has imposed, along with allies and partners, in response to Russia’s unprovoked military invasion of Ukraine.”¹ The task force’s mission will include:

- Investigating and prosecuting violations of new and future sanctions imposed in response to the Ukraine invasion, as well as sanctions imposed for prior instances of Russian aggression and corruption;
- Combating unlawful efforts to undermine restrictions taken against Russian financial institutions, including the prosecution of those who try to evade know-your-customer and anti-money laundering measures;
- Targeting efforts to use cryptocurrency to evade U.S. sanctions, launder proceeds of foreign corruption, or evade U.S. responses to Russian military aggression; and
- Using civil and criminal asset forfeiture authorities to seize assets belonging to sanctioned individuals or assets identified as the proceeds of unlawful conduct.²

Task Force KleptoCapture will operate out of the Office of the Deputy Attorney General, but will also include agents and analysts from numerous law enforcement agencies.³

On March 16, 2022, the Treasury Department announced the launch of the Kleptocracy Asset Recovery Rewards Program (“KARRA”).⁴ The program, created pursuant to the

¹ U.S. Department of Justice, *Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture* (March 2, 2022), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture>. On March 16, 2022, the Department of Justice and the Treasury Department, with counterparts from Australia, Canada, the European Commission, France, Germany, Italy, Japan, and the United Kingdom also announced the creation of the multinational Russian Elites, Proxies, and Oligarchs (REPO) Task Force, which is designed to facilitate information sharing among law enforcement agencies from member states in order to ensure criminal prosecution, sanctions enforcement and asset forfeiture. U.S. Department of Justice, *U.S. Departments of Justice and Treasury Launch Multilateral Russian Oligarch Task Force* (March 16, 2022), available at <https://www.justice.gov/opa/pr/us-departments-justice-and-treasury-launch-multilateral-russian-oligarch-task-force#:~:text=Treasury%20will%20also%20launch%20the,Government%20of%20the%20Russian%20Federation>.

² *Id.*

³ U.S. Department of Justice, *U.S. Departments of Justice and Treasury Launch Multilateral Russian Oligarch Task Force* (March 16, 2022), available at <https://www.justice.gov/opa/pr/us-departments-justice-and-treasury-launch-multilateral-russian-oligarch-task-force#:~:text=Treasury%20will%20also%20launch%20the,Government%20of%20the%20Russian%20Federation>.

⁴ *Id.*

Kleptocracy Asset Recovery Rewards Act,⁵ authorizes the Secretary of the Treasury, “with the concurrence of the Secretary of State and the Attorney General,” to pay whistleblowers up to \$5 million for information leading to the *restraining, seizure, forfeiture, or repatriation of stolen funds* “linked to foreign government corruption and the proceeds of that corruption” held at a financial institution in the United States (including the US branch of a foreign financial institution) or that come within the possession or control of any U.S. person.⁶ The law defines “foreign government corruption” to mean corruption under the United Nations Convention Against Corruption.⁷ Under KARRA the payments, in the aggregate, must amount to less than the total amount of stolen assets recovered through the program during the fiscal year, and not exceed \$25 million in any calendar year.⁸

These caps on recovery mean that a whistleblower’s reward can be limited to only a small share of the assets recovered. In that way, KARRA differs from other whistleblower programs, like the whistleblower programs offered by the IRS,⁹ the Anti-Money Laundering Act of 2020,¹⁰ the SEC,¹¹ and the CFTC,¹² where rewards are calculated as a proportional share of the recovered assets. Where large sums are recovered, those programs often offer higher rewards to whistleblowers than would KARRA. For example, the SEC has recently announced rewards of approximately \$14 million and \$13 million to individuals, and \$40 million to two whistleblowers, with one individual receiving approximately \$32 million.¹³ Similarly, on October 21, 2021, the

⁵ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Subtitle A, 134 Stat. 3388, 4834.

⁶ *Id.* at § 9703, 4834–36.

⁷ United Nations Convention Against Corruption, 2004, available at https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁸ *Id.* at § 9703(d), 4835. There was a \$450,000 initial funding for the 2021 fiscal year. *Id.*

⁹ the IRS whistleblower program permits the whistleblower to receive “at least 15 percent but not more than 30 percent of the proceeds collected.” 26 U.S.C. § 7623(b)(2)(a).

¹⁰ The Anti-Money Laundering Act of 2020 has no minimum award but Whistleblowers who report violations of the Anti-Money Laundering Act can receive rewards that are as much as 30% of the monetary enforcement sanctions collected in a case, depending on the significance of information and the degree of assistance that the whistleblower and their attorney provided in the investigation and enforcement action. 31 U.S.C. § 5323(b).

¹¹ The SEC is required to issue a whistleblower reward that ranges from 10% to 30% of the amount collected as a result of the whistleblower’s information and assistance. 15 U.S.C. § 78u–6(b).

¹² CFTC whistleblower awards range from 10 percent to 30 percent of the monetary sanctions collected by a CFTC action or a related action, if more than \$1 million is collected as a result of the whistleblower’s information. 7 U.S.C. § 26(b).

¹³ S.E.C., *SEC Awards Approximately \$14 Million to Whistleblower* (March 11, 2022), <https://www.sec.gov/news/press-release/2022-40#:~:text=Whistleblower%20awards%20can%20range%20from,could%20reveal%20a%20whistleblower's%20identity>; S.E.C., *SEC Awards Over \$13 Million To Whistleblower* (Jan. 6, 2022), <https://www.sec.gov/news/press-release/2022-2>; SEC, *SEC Awards \$40 Million to Two Whistleblowers* (Oct. 15, 2021), <https://www.sec.gov/news/press-release/2021-211>.

CFTC announced a reward of approximately \$200 million to an individual whistleblower under its program.¹⁴

Moreover, unlike other programs,¹⁵ under KARRA, rewards may be reduced or refused where “the Secretary has a reasonable basis to believe” that the whistleblower “planned, initiated, directly participated in, or facilitated” the illegal conduct.¹⁶ However, just as in other programs,¹⁷ KARRA makes whistleblowers completely ineligible for rewards if they are convicted of criminal conduct arising from their planning, initiating, directly participating in, or facilitating the illegal conduct.¹⁸

Finally, KARRA provides only generalized protections for whistleblowers authorizing the Secretary of the Treasury to “take such measures in connection with the payment of the reward as the Secretary considers necessary to effect . . . protection” of the whistleblower and his or her family. Other programs offer specific, particularized protections to whistleblowers.¹⁹

In sum, KARRA presents a new tool for the recovery of stolen assets and an opportunity for putative whistleblowers who should be aware of KARRA’s parameters and those of other programs under existing law.

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¹⁴ CFTC, *CFTC Awards Nearly \$200 Million to a Whistleblower* (Oct. 21, 2021), <https://www.cftc.gov/PressRoom/PressReleases/8453-21>.

¹⁵ *But see* 26 U.S.C. § 7623(b)(3).

¹⁶ § 9703(f)(2), 134 Stat. 3388, 4836.

¹⁷ *See* 26 U.S.C. § 7623(b)(3); 134 Stat.3388, 4599 (“to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section”); 15 U.S.C. § 78u–6(c)(2) (same); 7 U.S.C. § 26(c)(2) (same).

¹⁸ *Id.*

¹⁹ 26 U.S.C. § 7623(d); 134 Stat.3388, 4600–01; 15 U.S.C. § 78u–6(h); 7 U.S.C. § 26(c)(2)(h)(2).

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