

THE DEPUTY SECRETARY OF STATE

WASHINGTON

June 1, 1976

MEMORANDUM FOR: Mr. L. William Seidman

From: Charles W. Robinson

Subject: Recommendation to the President
Regarding Questionable Corporate
Payments Abroad

We have reviewed the issues raised by the draft memorandum to the President on "Questionable Corporate Payments Abroad" and believe that, on balance, an initiative by the Administration calling for new disclosure legislation on corrupt practices should not be made at this time. While there may be strong arguments for such an initiative in political terms, in our judgment the substantive case is weak. The vigorous action already taken by U.S. agencies and congressional committees has had the effect of forcing substantial disclosure and of modifying corporate behavior. In addition, the disclosure provisions of the Security Assistance Act will, when that Act becomes law, require comprehensive disclosure of all payments made in connection with sales of defense items under the FMS program or under export license. These actions, together with our international initiatives, appear adequate to influence U.S. companies and to meet the expectations of the international community.

Not only is further disclosure legislation to curtail illicit payments by U.S. firms abroad unnecessary, it has the potential of causing serious damage to U.S. foreign relations. All U.S. regulation of payments by U.S. firms abroad inevitably involves U.S. authorities in the examination of the conduct of foreign officials in their own countries. As recent evidence has demonstrated, disclosures in the United States of alleged corruption abroad can threaten leaders and institutions in friendly foreign countries. Enactment of general disclosure legislation would tend to expand and to institutionalize this process. When deterrence fails and disclosure results, U.S. interests abroad can be seriously damaged.

We recognize the pressures that exist for further Presidential action to meet the expectations associated with the establishment of a task force and to blunt the criticisms of Congressional leaders such as Senators Church and Proxmire. However, in view of the likelihood that Congress will not complete action on legislation along the lines of the Church or Proxmire proposals this year, and the possibility that an Administration initiative might give impetus to such legislation, we recommend against proposing legislation at this time.

In the event the President should be disposed to propose further legislation at this time, we would favor legislation that would be aimed at simplifying the reporting requirements* imposed on U.S. business by the Government. U.S. firms doing business abroad could be required to report to a single, designated agency of the Executive Branch (possibly a commission operating within the Commerce Department) all payments made to foreign officials, directly or indirectly, in connection with business dealings with foreign governments. The designated agency would have authority to establish the form, timing and parameters of such reports by regulation. The reports would be made available to other interested agencies of the United States Government, including the IRS and SEC, and would also be made available, upon request, to committees of Congress which need the information for legislative purposes as well as to foreign governments under the procedures developed in the Lockheed case. The reporting firms would be invited to identify any information they believe to be proprietary data under Title 18 U.S.C. 1905 and that designation would be passed along to the agencies and the Congress which would make their own independent judgment as to the application of the statute. Under this approach, public disclosure would only be made in those cases where agency or congressional processes required it.

This procedure parallels that established by the new Security Assistance Act for both FMS and licensed commercial sales of defense articles and services. To avoid duplicating reports, the new legislation should supersede those provisions of the Security Assistance Act that are encompassed by it. We would not propose to repeal any existing authority of the IRS or SEC but would wish to leave open the possibility that those agencies might be satisfied with the reports furnished through the new procedure.

* This objective is, of course, consistent with the President's program to simplify government regulation of business.