

ASSISTANT ATTORNEY GENERAL  
LEGISLATIVE AFFAIRS**Department of Justice**  
**Washington, D.C. 20530**

APR 20 1977

Honorable Harley O. Staggers  
Chairman, Interstate and Foreign  
Commerce Committee  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

As previously indicated to the Senate Banking Committee, the Administration firmly supports legislation which would proscribe the bribery of foreign public officials by American businesses and their representatives. Accordingly, we are in complete accord with the aims and objectives of H.R. 3815 which would directly criminalize such illicit practices. Secretary Blumenthal will be testifying before the Committee on H.R. 3815 and will fully elaborate the Administration's position with respect to the issue of foreign payments. The purpose of this letter is to directly address our specific concerns regarding the enforcement provisions of H.R. 3815 and to point out certain apparent weaknesses of the Bill.

As the Department that will be ultimately responsible for criminally prosecuting any violations of H.R. 3815, we are acutely sensitive to the need for the Bill to provide an effective mechanism for detecting and investigating suspected violations of its provisions. Our experience in combatting domestic political corruption, coupled with our own recent efforts to develop prosecutions involving the bribery of foreign officials amply demonstrates the difficulties of gathering sufficient credible and admissible evidence to support prosecution. By its very nature the bribery of public officials is covert and generally involves consensual parties who go to great lengths to conceal the transaction. When the official involved is a representative of a foreign government and most of the critical acts take place outside of the country, the problems of detection, investigation and prosecution are necessarily compounded.



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Considering the anticipated enforcement problems associated with any statute which would proscribe bribery of foreign officials, we believe it imperative that we be in a position to rapidly mobilize maximum available investigative resources to pursue possible violations. As currently worded, H.R. 3815 would hamper this effort by sharply dividing investigative responsibility between the Securities and Exchange Commission and the Federal Bureau of Investigation. Rather than create such an anomaly, the Administration proposes instead to retain present Securities and Exchange Commission jurisdiction over illicit foreign payments by issuers subject to their registration requirements while simultaneously assigning criminal investigative jurisdiction to the Federal Bureau of Investigation for such cases regardless of the identity of the briber. This is in accord with current practices involving alleged domestic corruption by issuers and their representatives and experience has shown that it in no way restricts the Securities and Exchange Commission from continuing its own civil investigative efforts designed to protect the investing public.

The Department fully recognizes the expertise developed by the Securities and Exchange Commission over the past several years in the area of illicit foreign payments and believes they must play a vital role in any future attempt to deter and eradicate once and for all bribery of foreign officials by American issuers. Through their voluntary disclosure program they have performed a vital public service in exposing the pervasive and apparently long-standing practice of some businesses to engage in such illicit practices. Their proposed Rules governing corporate record keeping, if promulgated, should further thwart attempts by issuers to conceal such payments and will presumably result in many fertile investigative leads. In order to be in a position to develop credible evidence in admissible form, this expertise, in our view, should be combined with that of the Federal Bureau of Investigation in investigating corruption and in gathering evidence abroad. By affording jurisdiction over such offenses to the Federal Bureau of

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Investigation, we would be able to utilize the expertise of both agencies to ensure vigorous and prompt criminal prosecutions of violations of the proposed statute.

Several additional features of H.R. 3815, in our view, pose potential enforcement problems. First, as currently worded the statute would require that the mails or instrumentality of interstate commerce be directly used to offer ... or make the prohibited payment. We believe this to be unduly restrictive and suggest instead that the provision be modified so as to provide that the mails or interstate facility need only be used in furtherance of the illicit payment, offer, etc.

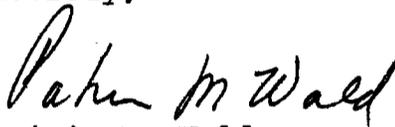
Secondly, we believe "acquiesce" by employees or officials is too vague a concept upon which to predicate criminal liability. If by the term you wish to reach those who assist those engaging in the illicit practice, then we suggest that the term is not needed in light of the provisions of Sections 2, 3 and 4 of Title 18.

Lastly, we wish to comment briefly on the provision of H.R. 3815 which would enable the Department to seek in appropriate cases injunctive relief. While we welcome this authority, we anticipate that in the future relatively few cases will involve continuing criminal activities which would initially lend themselves to such action. While it is conceivable that instances will arise where bribe payments will be made over a period of time possibly linked to the volume of sales, thereby suggesting immediate injunctive action, we expect future cases to primarily involve single bribe instances which will not effectively lend themselves to this preliminary form of judicial action.

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I would be more than happy for Department representatives to meet with members of your staff and discuss more fully the points raised in this letter.

Sincerely,

A handwritten signature in cursive script that reads "Patricia M. Wald". The signature is written in dark ink and is positioned above the typed name.

Patricia M. Wald  
Assistant Attorney General  
Office of Legislative Affairs