THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY 
UNITED STATES OF AMERICA 
ARTICLE 7 UNCAC 
PUBLIC SECTOR 

UNITED STATES OF AMERICA (EIGHTH MEETING)

The U.S. Constitution created a federal system of government in which power is shared between the federal government and the state governments. Due to this system, both the federal government and each of the state governments have their own court system and certain law enforcement responsibilities. This response is specific to the federal court system established under Article III of the U.S. Constitution, the federal judiciary and federal law enforcement agencies, and does not include courts established under any other federal jurisdiction, such as military courts.

Recruitment, Hiring, Retention:

Law enforcement responsibilities in the United States are divided between the federal government and state, county, and municipal governments. At the federal level, law enforcement responsibilities primarily fall under the executive branch. Federal law enforcement personnel are therefore subject to applicable merit hiring standards as other executive branch employees. The U.S. Office of Personnel Management (OPM) is the central human resources management agency for the executive branch. OPM develops civil service regulations consistent with the laws passed by Congress and is responsible for ensuring compliance with those laws and regulations. It delegates to the other executive branch agencies, including those with law enforcement responsibilities, the authority to operate various human resources functions, including the authority to competitively examine and hire employees.

In general, there are two basic categories of career public officials in the federal executive branch, both of which are hired under merit system principles: 1) competitive service employees, who are hired through a competitive examination process and must meet government-wide suitability and qualification standards; and 2) excepted service employees, who may be hired non-competitively but must still be found fit and qualified for their positions, either under government-wide standards or agency-specific standards. Each agency is responsible for developing selective factors, if appropriate. Personal favoritism, nepotism, and political influence are not permitted in the selection
process. Any occurrence of non-merit favoritism is viewed as a “prohibited personnel practice.” The head of each agency is responsible for the prevention of prohibited personnel practices.

The U.S. Department of Justice is exclusively responsible for federal criminal prosecutions and primarily responsible for civil prosecutions. The Department of Justice employs career prosecutors whose tenures, except in special circumstances, are not for fixed terms. Career prosecutors are generally “excepted service appointments.” The official appointments are made by the Attorney General after a competitive selection process conducted by others in the Department. The hiring of career federal prosecutors is overseen by the Office of Attorney Recruitment and Management (OARM) in strict compliance with applicable federal hiring regulations. OARM reviews the suitability of every prosecutor offered a position at the Department based on a candidate’s completed security forms, fingerprint and financial background checks, as well as a full field FBI background investigation and tax and attorney bar check.

Promotions and mobility are typically within the purview of the career and appointed supervisors within each agency. In the Department of Justice, because offices, including Offices of the U.S. Attorney, vary in size from dozens of prosecutors to hundreds of prosecutors, promotions within the offices are decided by the office’s management team, depending on the structure of the office. As in the rest of the career service of the executive branch, decisions on performance reviews, promotions, reassignments, bonuses, discipline and other administrative actions are initially made by supervisors, following standard personnel procedures. Promotion to a small number of career supervisory positions within the Senior Executive Service is more formal, and must involve advertisement, a qualification process and interviews. Positions appointed by the President and confirmed by the Senate, which includes U.S. Attorneys, U.S. Marshals, and the heads of all executive agencies including those with law enforcement components, are not eligible for promotion.

Training:

Even prior to coming on board, prospective employees must be alerted to the importance of the Department of Justice’s ethics program. As part of executive-branch wide requirements, agencies must issue notices to prospective employees in written offers of employment regarding the agencies’ ethics programs and applicable ethics requirements.¹ Senior officials within the Department of Justice who are serving in presidentially appointed, Senate-confirmed (PAS) positions also receive substantial counselling with regard to

¹ 5 C.F.R. § 2638.303.
the application of the federal conflict of interest laws prior to appointment and in conjunction with their preparation and submission of their first public financial disclosure report for purposes of their nomination and appointment.

In addition, agencies, including the Department of Justice, must issue notices regarding applicable ethics requirements to employees who are newly hired or promoted to supervisory positions. The notices emphasize that, in their new roles as supervisors, these employees will have heightened personal responsibility for advancing government ethics. This notice must be issued within one year of appointment, which corresponds to the time period established in the regulations of the Office of Personnel Management for supervisory training.

The ethics notices to prospective employees and new supervisors are complemented by ethics training requirements. Within 3 months from the time an employee begins work for a federal agency, including those with law enforcement responsibilities, the agency must provide the employee with initial ethics training. The initial ethics training must focus on ethics laws and regulations that the Designated Agency Ethics Official (DAEO) deems appropriate for the audience and must address concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts. Agencies must also provide the employee a summary of the Standards of Ethical Conduct for Executive Branch Employees, relevant agency supplemental standards; and instructions for how to contact the DAEO.

In addition, agency leaders must receive an ethics briefing around the time of appointment. This requirement applies to most civilians serving in presidentially appointed, Senate-confirmed positions, and supplements other applicable requirements. For the Department of Justice, this includes the Attorney General, U.S. Attorneys, and U.S. Marshals. During this individualized briefing, the agency ethics official discusses the appointee’s basic recusal obligation, the mechanisms for recusal, the commitments made in the appointee’s ethics agreement, and the potential for conflicts of interest arising from any financial interests acquired after the nominee financial disclosure report was filed.

Executive branch employees, including Department of Justice attorneys, are required to complete certain training requirements, determined by the type of

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2 5 C.F.R. § 2638.306.
3 5 C.F.R. § 2638.103.
4 5 C.F.R. § 412.202(b).
5 5 C.F.R. § 2638.304.
6 5 C.F.R. § 2638.305.
position held, on an annual basis. This includes ethics training on financial conflicts of interest, impartiality, misuse of position, and gifts. Prosecutors can seek advice from a variety of sources, including an Ethics Advisor or the Departmental Ethics Office.

The Federal Bureau of Investigation (FBI) is one of the primary national security agencies at the federal level, with both law enforcement and intelligence gathering responsibilities. At the FBI, ethics function resides organizationally within the Office of Integrity and Compliance (OIC). The OIC administers the day-to-day operation of all aspects of the FBI Ethics and Integrity Program. This includes overseeing and administering the Ethics and Integrity Training Program to ensure compliance with all executive branch-wide regulations (as noted in the preceding paragraphs) and FBI policies. For new FBI Special Agents, ethics is woven into the curriculum of the FBI’s New Agents’ Training which is conducted at the FBI Academy. A course on ethical leadership is provided during regularly scheduled classes throughout the duration of the program.

Candidature

There are no federal law enforcement positions that are filled through elections.
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PUBLIC SECTOR

UNITED STATES (THIRD MEETING)

U.S. Office of Personnel Management Website

o RELEVANT ARTICLE SECTIONS
  □ Article 7, Paras 1. and 1. (a) - recruitment, hiring, retention, promotion and retirement based on principles of efficiency, transparency and objective criteria

o ABOUT
  □ The U.S. Office of Personnel Management (OPM) is the central human resources agency for the Federal Government. Its mission is to “Recruit, Retain and Honor a World-Class Workforce to Serve the American People.” To carry out this mission, OPM provides human resource advice and leadership to Federal agencies, supports agencies with human resource policies, holds agencies accountable for their human resource practices, and upholds the merit system principles. Additionally, OPM delivers human resource products and services to agencies on a reimbursable basis, including personnel background investigations, leadership development and training, staffing and recruiting assistance, supporting organizational assessments, and training and management assistance. OPM also delivers services directly to Federal employees, those seeking Federal employment, and Federal retirees and their beneficiaries.

o AWARENESS RAISING
  □ The OPM website (www.opm.gov) provides a trove of information and resources to stakeholders, including:
  • job seekers (http://www.opm.gov/job_seekers/)
  • federal employees (http://www.opm.gov/federal/)
  • retirees and families (http://www.opm.gov/retirees/)
  • HR practitioners and agencies (http://www.opm.gov/hr_practitioners/)

USAJOBS

o RELEVANT ARTICLE SECTIONS
Article 7, Paras 1. and 1. (a) - recruitment, hiring based on principles of efficiency, transparency and objective criteria

ABOUT

USAJOBS (www.usajobs.gov) is the Federal Government’s central web-based employment portal that provides on-line worldwide job vacancy information, employment information, fact sheets, job applications, and integration with other Federal hiring systems. Most federal agencies are required by law and regulation to post job openings on USAJOBS and this public notice helps ensure open competition by informing job seekers when, where, and how to apply for these jobs.

AWARENESS RAISING

USAJOBS is updated daily and averages 12,000 listings at any given time covering worldwide job opportunities, handles more than 3 million applicant search requests daily, and processes millions of job applications each year. USAJOBS offers the applicants one central secure place to save their application documents like resumes and college transcripts, then leverage these saved documents towards multiple job applications across the Federal government. USAJOBS is built upon best practices using an open framework and ensures access for applicants with differing physical and technological capabilities. Additionally, the system sends applicants daily email alerts based on their personal saved search criteria keeping them up to date regarding new postings. USAJOBS is convenient, user friendly, and with the exception of scheduled maintenance, is available 24 hours a day, 7 days a week.

USAJOBSRecruit (www.usajobsrecruit.gov) is a companion website for Federal employees with recruiting responsibilities. It is designed to create a Federal recruitment community for sharing best-in-class recruiting practices, ideas, insights, lessons learned, and for creating recruiting solutions. USAJOBSRecruit provides tools (e.g., School Sorter, templates, checklists), job aids, learning modules, information on effective recruiting strategies, and webinars. Other special features include recruiting blogs and interactive forums with featured recruiting experts to further foster collaboration and communication among Federal employees with recruiting responsibilities.

Background Investigations

RELEVANT ARTICLE SECTIONS

- Article 7, Para 1. (a) - recruitment, hiring based on principles of efficiency, transparency and objective criteria
- Article 7, Para 1. (b) – selection and training of individuals for public positions considered especially vulnerable to corruption
The U.S. Government conducts background investigations to determine if applicants or employees meet the suitability or fitness requirements for employment, or are eligible for access to Federal facilities, automated systems, or classified information. The scope of a background investigation varies depending on the duties and access requirements for the position. Executive Order 10577 directs the U.S. Office of Personnel Management (OPM) to examine “suitability” for competitive Federal employment. Determinations of "suitability" are based on a person's character or conduct that may have an impact on the integrity or efficiency of the service. By Executive Order 13488, individuals in positions of public trust are reinvestigated periodically in order to ensure that they remain suitable for continued employment.

AWARENESS RAISING

On its website (http://www.opm.gov/investigate/investigations/index.aspx) the U.S. Office of Personnel Management (OPM) describes the purpose of background investigations, the authority through which OPM conducts investigations, the role each agency has in determining the level of the background check, and information on how an individual may request a copy of his/her background report.

Hiring Reform

RELEVANT ARTICLE SECTIONS

Article 7, Para 1. (a) - recruitment, hiring based on principles of efficiency, transparency and objective criteria

ABOUT

President Obama’s Memorandum of May 11, 2010, Improving the Federal Recruitment and Hiring Process, outlined the Administration’s comprehensive initiative to address major, long-standing impediments to recruit and hire the best and the brightest into the Federal civilian workforce. The U.S. Office of Personnel Management (OPM) is spearheading the Government-wide initiative to reform recruiting, hiring and retention policies and procedures. The reform effort will encompass multiple years and will require sweeping changes to streamline and improve the hiring process. OPM leads the effort to ensure Federal agencies acquire, assess, and retain employees with the specific competencies necessary to achieve agencies’ goals and missions.

AWARENESS RAISING

The OPM Hiring Reform website is a resource to human resources professionals and hiring managers implementing hiring reform. The site offers "bite-sized" training modules on the key areas related to hiring reform. The site can be found at www.opm.gov/hiringreform/. Webcasts on hiring reform can be found at http://www.opm.gov/HiringReform/MediaCenter/index.aspx.
Merit System Principles

RELEVANT ARTICLE SECTIONS

- Article 7, Paras 1. and 1. (a) – systems for recruitment, hiring, retention, promotion and retirement based on principles of efficiency, transparency, and objective criteria such as merit, equity and aptitude

ABOUT

- The Merit System Principles (http://www.mspb.gov/meritsystemsprinciples.htm) are nine basic standards governing the management of the executive branch workforce. The Merit Systems Protection Board (www.mspb.gov) is an independent, quasi-judicial agency in the executive branch that serves as the guardian of Federal merit systems. The Board's mission is to protect Federal merit systems and the rights of individuals within those systems. MSPB carries out its statutory responsibilities and authorities primarily by adjudicating individual employee appeals and by conducting merit systems studies. In addition, MSPB reviews the significant actions of the Office of Personnel Management (the agency responsible for recruiting, hiring, and setting benefits policies for Federal civilian employees) to assess the degree to which those actions may affect merit.

AWARENESS-RAISING

- MSPB raises awareness through a wealth of information on its website including:
  - Database of MSPB decisions (http://www.mspb.gov/decisions/decisions.htm)
  - Studies on specific issues such as prohibited personnel practices (http://www.mspb.gov/studies/index.htm).
  - Newsletters (http://www.mspb.gov/studies/newsletters.htm)
  - Video interviews (http://www.mspb.gov/video.htm)
  - Radio interviews (http://www.mspb.gov/radio.htm)
  - Training videos (http://www.mspb.gov/training.htm)
  - Smartphone apps (http://www.mspb.gov/mobile.htm) that provide users with on-the-go access to the latest MSPB decisions, weekly case reports, studies, Issues of Merit newsletters, and press releases. The apps also allow users to search decisions, review the merit system principles, “like” or “favorite” documents for reference, share documents using social media like Twitter and Facebook, and follow MSPB’s Twitter feed (@USMSPB).
Ethics Training & Counseling

- RELEVANT ARTICLE SECTIONS
  - Article 7, Para 1. (b) – training individuals for public positions vulnerable to corruption
  - Article 7, Para 1. (d) – education programs that enable non-elected public officials to meet the requirements for the correct, honorable and proper performance of public functions and specialized training to enhance awareness of the risk of corruption
  - Article 7, Para 4 – systems that promote transparency and prevent conflicts of interest

- ABOUT
  - Each executive branch agency must have an ethics training program for all of its employees that promotes the understanding and application of ethics laws and rules and that informs employees of the availability of personal, on-demand ethics advice. Once an employee begins work for an agency, the agency must provide every employee an initial ethics orientation consisting of verbal training or at least one hour of official duty time to review the Standards of Ethical Conduct for Employees of the Executive Branch and any agency-specific supplemental standards (or summaries of each). In addition, employees who are in sensitive positions requiring that they file financial disclosures (whether public or confidential) are required to receive annual ethics training that must cover the Standards of Ethical Conduct for Employees of the Executive Branch, any agency supplemental standards, and the Federal conflict of interest statutes. The annual training must also include the contact information for agency ethics officials available to advise on ethics issues.

- AWARENESS RAISING
  - As a good practice, several executive branch agencies require that all employees receive annual ethics training, regardless of whether they file financial disclosures.
  - Many agencies tailor the annual ethics training for at-risk employees such as procurement officials or for supervisory employees who are in positions to spot and address problems.
  - To encourage employees to seek ethics advice, agencies often hang posters in the workplace that provide the agency ethics official contact information.
  - Agencies create a variety of ethics training and counseling resources for their employees. For example, the U.S. Department of Agriculture (USDA) has online “self-help” guides that allow users to answer a series of yes/no questions to receive a tailored explanation of what ethics rules may apply under specific circumstances (http://usda-
ethics.net/selfhelp/index.htm). For other examples of USDA ethics training and counseling visit http://usda-ethics.net/.


The U.S. Office of Government Ethics offers several resources such as pamphlets, videos, crossword puzzles, and posters to raise awareness about ethics rules. Federal employees can use this information to supplement annual ethics training or to educate themselves on novel issues. This material is meant to complement the advice and counsel that agency ethics officials provide (http://www.oge.gov/Education/Education-Resources-for-Federal-Employees/Education-Resources-for-Federal-Employees/).

**Ethics in the Acquisition Workforce**

**RELEVANT ARTICLE SECTIONS**

- Article 7, Para 1. (b) – training individuals for public positions vulnerable to corruption
- Article 7, Para 1. (d) – education programs that enable non-elected public officials to meet the requirements for the correct, honorable and proper performance of public functions and specialized training to enhance awareness of the risk of corruption
- Article 7, Para 4 – systems that promote transparency and prevent conflicts of interest

**ABOUT**

Federal employees involved in the procurement and acquisition process play an important role in preserving the integrity of Government contracting and assuring fair treatment of bidders, offerors, and contractors. Like all executive branch employees, the acquisition workforce is subject to the criminal conflict of interest statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. Further, acquisition officials are subject to additional prohibitions as defined in the Procurement Integrity Act.

Government acquisition professionals also have specific responsibilities to identify and prevent conflicts of interest on the part of businesses and employees contracted by the Government: Contracting Officers are required to identify potential *organizational* conflicts of interest, i.e., when a contractor has an interest that may bias its judgment or the advice it provides the Government, and must ensure that contractors have procedures in place to screen certain employees for potential *personal* conflicts of interest. Contracting Officers must also be aware of regulations that require certain contractors to maintain business ethics compliance programs.
The Office of Federal Procurement Policy has developed common certification programs that generally reflect a government-wide standard for education, training, and experience leading to the fulfillment of core competencies in a variety of acquisition-related disciplines (http://www.whitehouse.gov/sites/default/files/omb/assets/procurement/fac_contracting_program.pdf and http://www.whitehouse.gov/sites/default/files/omb/procurement/revisions-to-the-federal-acquisition-certification-for-contracting-officers-representatives.pdf).

Both the Federal Acquisition Institute and the Defense Acquisition University have learning resources to assist Government agencies in ensuring the acquisition workforce is adequately trained on responsibilities and fundamental contract rules and regulations (www.dau.mil and www.fai.gov).

Typically, procurement officials are required by their agency to file confidential financial disclosures to ensure that contracting decisions are made free from bias (see below under “Financial Disclosure” for more information). These individuals are required to receive annual ethics training (see above under “Ethics Training & Counseling” for more information on annual ethics training requirements).

Through official memoranda, the Office of Federal Procurement Policy emphasizes the importance of compliance with laws, regulations, and standards that prescribe ethical conduct in acquisitions.