

## **USA Response: Information on enhancing the effectiveness of anti-corruption bodies in fighting corruption**

The United States is pleased to provide the following response to the request for information provided by Secretariat contained in CU 2020/59(A)/DTA/CEB/ISS:

### **Major U.S. Corruption Prevention Bodies**

Several offices and agencies have responsibility across the federal government for various aspects of the prevention of corruption. Within the Executive Branch of the federal government, responsibility for the day-to-day implementation of ethics programs falls to the individual departments and agencies, which receive support and guidance from the U.S. Office of Government Ethics (OGE). The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is an independent entity established within the executive branch to address integrity, economy and effectiveness issues that transcend individual Government agencies and aid in the establishment of a professional, well-trained and highly skilled workforce in the Offices of Inspectors General. CIGIE members make a concerted effort to collaborate on common issues affecting a few agencies. For

The U.S. Office of Special Counsel (OSC) was created on January 1, 1979, by the Civil Service Reform Act of 1978 (CSRA). OSC initially operated as an investigative and prosecutorial arm of the Merit Systems Protection Board until it became an independent executive agency pursuant to the Whistleblower Protection Act of 1989. Subsequent legislation has strengthened OSC's ability to protect federal employees from certain personnel actions and safeguard the merit system. OSC protects the merit system and federal employees in the following ways:

- (a) OSC receives and investigates complaints of prohibited personnel practices, which include whistleblower retaliation, retaliation for other defined protected activity, hiring and merit promotion-related offenses, and other violations of law, rule, or regulation concerning merit system principles;
- (b) OSC serves as a channel for federal employees to make disclosures of government wrongdoing, which OSC may forward to the agency involved for an investigation, report, and proposed corrective actions if warranted;
- (c) OSC receives and investigates complaints regarding the possible violations of the Hatch Act, which prohibits certain political activity by federal employees as well as certain state and local employees, and OSC also provides advisory opinions regarding what may be permitted and prohibited under the Hatch Act;
- (d) OSC receives and reviews complaints of violations of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), and may seek corrective action for service members whose rights have been violated by their federal agency employer.

The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress. Often called the “congressional watchdog,” GAO investigates how the federal government spends taxpayer dollars. The head of GAO, the Comptroller General of the United States, is appointed to a 15-year term by the President from a slate of candidates Congress proposes. GAO’s mission is to support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. GAO provides Congress with timely information that is objective, fact-based, nonpartisan, non-ideological, fair and balanced.

GAO’s work is done at the request of congressional committees or subcommittees or is mandated by public laws or committee reports. GAO also undertakes research under the authority of the Comptroller General. They support congressional oversight by:

- Auditing agency operations to determine whether federal funds are being spent efficiently and effectively;
- Investigating allegations of illegal and improper activities;
- Reporting on how well government programs and policies are meeting their objectives;
- Performing policy analyses and outlining options for congressional consideration; and
- Issuing legal decisions and opinions, such as bid protest rulings and reports on agency rules.

GAO advises Congress and the heads of executive agencies about ways to make government more efficient, effective, ethical, equitable, and responsive.

### **Assessing Effectiveness of Prevention Efforts**

Given the decentralized anticorruption system in the United States, no single agency is responsible for evaluating the effectiveness of anticorruption bodies or practices. The following example is provided to demonstrate one of many practices used to achieve this objective.

As the supervising ethics office for the executive-branch of the United States, the U.S. Office of Government Ethics (OGE) has developed a single, comprehensive, and clear set of standards of conduct for all executive branch employees; operates an advisory program service to provide guidance on the application and meaning of the ethics laws and regulations; and maintains an effective system for public and confidential financial disclosure. Because the executive branch ethics program is decentralized, each of the over 130 executive branch agencies is responsible for conducting a program to prevent conflicts of interest and to ensure compliance with the financial disclosure process. OGE’s Compliance Division is responsible for monitoring and reviewing agency ethics programs to ensure compliance with applicable ethics requirements established by statutes, rules, regulations, and Executive Orders. To do so, the Compliance Division, through the Program Review Branch, conducts periodic ethics program reviews (“program reviews”) of agencies’ ethics programs. The purpose of a program review is to identify and report on the strengths and weaknesses of an agency’s ethics program by evaluating

(1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program. These reviews are a vital means by which OGE can assess the ability of an ethics program to engender faith and confidence in the work of an agency.

Pursuant to the Ethics in Government Act, OGE's Compliance Division conducts three types of ethics program reviews through the Program Review Branch: plenary reviews, inspections, and follow-up reviews.

A plenary review examines, in-depth, all elements of an agency's ethics program and results in a written report providing a narrative description of the ethics program, including how it is administered, what model practices are in place, and what deficiencies, if any, were found during the review. Reports also include recommendations directing the agency to correct any deficiencies that were not corrected prior to the conclusion of the review.

Inspections are a streamlined version of the plenary review and focus primarily on results. An inspection report indicates in a summary format whether an ethics program has substantially complied with certain core requirements. Inspection reports also provide brief narrative statements to justify findings of deficiencies, explain any apparent discrepancies and highlight model practices, as appropriate. Additionally, an inspection report, like a plenary review report, may include recommendations directing an agency to correct deficiencies. The results of an inspection may lead the Program Review Branch to conduct a more comprehensive plenary review of an agency's ethics program. This would occur if the findings of an inspection indicated the ethics program had deficiencies that could be more adequately addressed through a plenary review.

Follow-up reviews are conducted when a plenary review or inspection results in a recommendation. The follow-up report primarily focuses on determining if the agency took action to respond to the recommendation and whether that action was sufficient to resolve the underlying deficiency. However, if new deficiencies are identified during a follow-up review, additional recommendations will be issued and additional follow-up reviews will be conducted, as necessary.

These program reviews are supplemented by an Annual Agency Ethics Program Questionnaire. This Questionnaire is administered by OGE each year and is completed by the ethics program at each of the 130 plus executive branch agencies. The Questionnaire seeks extensive information about agency ethics programs, including core elements of the ethics program that assist in the identification and resolution of potential conflicts of interest. Following completion of the Questionnaire by each agency, OGE publishes on its website both the individual agency responses and a summary report that provides insight into the resources and common practices used to implement the executive branch ethics program as well as the aggregate numbers and compliance rates for each of the main program areas designed to prevent, detect, and resolve conflicts of interest.

Ethics program reviews are designed to ensure consistent and sustainable ethics program compliance with established executive branch ethics laws, regulations and policies and to

provide recommendations for meaningful program improvement. Both plenary and inspection reviews provide for the comprehensive evaluation of an agency's ethics program against objective statutory and regulatory criteria. The major topics that are covered in a program review include:

- processes for public and confidential financial disclosure program administration;
- processes for notifying prospective employees that they are covered by the ethics laws and regulations;
- processes for notifying new supervisors of their heightened ethical obligations;
- processes initial and annual ethics training requirements; and
- reviewing samples of ethics advice and counseling for consistency with applicable laws and regulations.

OGE occasionally also conducts special reviews, which are more narrowly focused on specific issues and are often aimed at assessing agency practices in a single area. In the past, OGE has conducted special reviews on such topics as post-Presidential election readiness, use of waivers and authorizations, successful financial disclosure programs, and ethical implications of emergency response. Special reports are made publicly available on OGE's website at: <https://www.oge.gov/Web/OGE.nsf/Special+Reports>. To learn more about ethics program reviews see Ethics Program Reviews.

OGE's Compliance Division, through the Program Review Branch, conducts most of the periodic ethics program reviews of the more 130 executive branch agencies using the inspection report. The inspection report indicates in a summary format whether an ethics program has substantially complied with certain core requirements, including those related to financial disclosures.

### **Ensuring the Independence of U.S. Corruption Prevention Bodies**

Since 1989, the U.S. Office of Government Ethics (OGE) has existed as a separate Executive branch agency. Prior to 1989, OGE was part of the Office of Personnel Management. OGE's Director is appointed for a five-year term, which lasts one year longer than the four-year Presidential term. Moreover, OGE's Director is the only non-career position at the agency; all other employees are career officials with civil service protections.

OGE's staff of approximately 70 full-time officials includes experts in financial disclosure, ethics program management, and ethics law and policy. OGE is committed to ensuring its staff have the training needed to carry out their functions. To do so, OGE ensures that it is meeting its employees' professional development needs by providing significant education and training opportunities and support through the dedication of time and resources. For example, all OGE employees participate in the OGE Employee Development Plan (EDP) program. The EDP identifies individual employee learning objectives that must be tied directly to OGE's strategic plan and to the organizational goals of the employee's work unit. The EDP identifies specific formal training, mentoring, self-study, and/or on-the-job training activities that the employee will

complete in the covered period. Significantly, the EDP also identifies objective measures for assessing the employee's acquisition of the targeted knowledge or skills. Often, this measurement will involve the employee's completion of a work product or delivery of a presentation related to the training that is evaluated by the employee's supervisor to determine whether the training was effective. To ensure accountability in this continuous learning process, the completion of the EDP is part of each employee's performance standards. This mixture of support and accountability has helped OGE to foster a performance culture through continuous learning. In fiscal year 2017, 100 percent of employees successfully completed their EDP. In addition, new OGE officials are required to attend an ongoing internal education program to ensure their understanding of the ethics laws.

The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is comprised of all Federal Inspectors General (IGs) whose offices are established under section 2 or section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) (IG Act) (<https://www.ignet.gov/pande/leg/igactasof1010.pdf>). These IGs are appointed by the President after Senate confirmation or are appointed by agency heads (designated Federal entities). In addition to these Inspectors General, the Council consists of the Deputy Director for Management of the Office of Management and Budget, who is the Executive Chair of the Council; the Inspectors General of the Intelligence Community and the Central Intelligence Agency; the Controller of the Office of Federal Financial Management, a senior level official of the Federal Bureau of Investigation designated by the Director of the Federal Bureau of Investigation; Director of the Office of Government Ethics; Special Counsel of the Office of Special Counsel; the Deputy Director of the Office of Personnel Management; and the Inspectors General of the Library of Congress, Capitol Police, Government Printing Office, Government Accountability Office, and the Architect of the Capitol.

The IG Act statutorily established the Offices of Inspector General (OIG) as independent and objective units within each agency whose duty it is to combat waste, fraud, and abuse in the programs and operations of that agency. The purpose of an IG is to conduct audits and investigations; provide leadership and coordination to promote economy, efficiency, and effectiveness and prevent fraud in an agency's programs and operations; and keep the head of the agency and the Congress informed as to deficiencies in such programs and operations.

It is important to note that there are two distinct types of IGs under the IG Act: those in "establishment" agencies (establishment IGs) and those in "designated Federal entities" (DFE) (DFE IGs). For both types of IGs, the IG Act specifically provides for the organizational independence of the OIG. This important organizational independence helps to limit the potential for conflicts of interest that exist when an audit or investigative function is placed under the authority of the official whose particular programs are being scrutinized. This insulates IGs against reprisal and promotes independent and objective reporting.

Establishment IGs [IG Act, § 3(a)]: The Act specifies that each IG "shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment." Except under narrow circumstances,

even the head of the establishment may not prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

DFE IGs [IG Act, § 8G(d)]: Similarly, each DFE IG “shall report to and be under the general supervision of the head of the [DFE], but shall not report to, or be subject to supervision by, any other officer or employee of such [DFE].” Again, except in narrow circumstances, even the head of the DFE may not prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

The CIGIE is a coordinating body for issues that transcend those individual Government agencies, and serves to increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the Offices of IGs (OIGs).

In December 2016, the President signed into law the Inspector General Empowerment Act of 2016 (IGEA), a landmark piece of legislation welcomed by IGs and all advocates of Government accountability and efficiency. Among its provisions, the IGEA confirms that Federal IGs are entitled to full and prompt access to agency records, thereby eliminating any doubt about whether agencies are legally authorized to disclose potentially sensitive information to IGs. In so doing, the IGEA ensures that IGs have the ability to conduct audits, reviews, and investigations in an independent and efficient manner. This provision was necessary because of refusals by a few agencies to provide their IGs with independent access to certain information that was available to the agency and relevant to ongoing oversight work by the agency IG. Further, it was necessary because of a Department of Justice Office of Legal Counsel (OLC) opinion in July 2015 asserting that the Inspector General Act did not entitle IGs to all records available to an agency. As result of the IGEA, this OLC opinion is no longer applicable. Other important provisions allow IGs to match data across agencies to help uncover wasteful spending and enhance the public’s access to information about misconduct among senior Government employees.

In the 2017, the Office of Special Counsel (OSC) had the scope of its authority to investigate retaliation against whistleblowers expanded through the passage of the OSC Reauthorization Act of 2017. Specifically, this bill authorizes the OSC: (1) to have timely access to material that relates to an investigation involving whistle-blower disclosures and prohibited personnel practices, (2) to request from any agency information or assistance necessary for it to carry out its duties, and (3) to require an agency to provide it with any record or other information that relates to an investigation, review, or inquiry. The Act clarifies OSC’s access to agency documents, including attorney-client communications (in this case, specifically communications between agency officials and agency attorneys). Now, agencies may not withhold information or records from OSC’s requests on the basis of any common law privileges, and the Act empowers OSC to report to congressional committees any case of contumacy or failure by an agency to produce information or records requested by OSC under its statutory authority.