

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY
UNITED STATES OF AMERICA
ARTICLE 7, PARAGRAPH 4 UNCAC
CONFLICT OF INTEREST**

UNITED STATES (NINTH MEETING)

States parties and signatories may wish to cite and summarize the measures that ensure full compliance with these provisions of the Convention, and in particular, to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Information sought may include:

- Description of specific conflicts of interest standard(s), indicating if these standards:
 - Are publicized widely;
 - Regulate the outside activities of public officials;
 - Prohibit the holding by public officials of certain types of assets or positions in legal entities that are incompatible with their primary functions, such as an individual sitting on the board of a company;
 - Limit the official actions a public official may take because of a conflict of interest;
 - Apply criminal, administrative, or other sanctions where public officials do not comply with applicable conflicts of interest regulations;
 - Description of training or advisory services to public officials regarding relevant conflicts of interest regulations;
 - Description of public access to information on government processes in which there is a higher risk of conflict of interest between the interests and activities of a public official and the particular type of government process;
 - Description of the specific duties and responsibilities of the specialized staff or bodies given responsibility to strengthen transparency and prevent conflicts of interest in government;
 - Description of the institutional structure and procedures to oversee the compliance with conflict of interest legislation and apply respective sanctions;
 - Description of the measures aimed at preventing conflicts of interest concerning former public officials in private entities, such as:
 - Restrictions, for a reasonable period of time, on the professional activities of former public officials;
 - Restrictions, for a reasonable period of time, on the employment of former public officials by the private sector after resignation or retirement.

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 systems to manage conflicts of interest and to declare assets. This response is specific to the Executive Branch of the federal system established under Article III of the U.S. Constitution, but does not include systems established under any other branch of government. The legislative and judicial branches of the federal government have separate ethics programs that address similar ethics and financial disclosure issues for public officials in those branches. In particular, high-level officials in all three branches, including the President, Vice President, Members of Congress, and Judges, are required to file public financial disclosure reports under the Ethics in Government Act.

Conflicts of Interest:

All employees of the executive branch are subject to various conflict of interest rules.¹ These include statutory criminal and civil conflict of interest prohibitions as well as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), which include the Fourteen Principles of Ethical Conduct. All full-time, non-career political appointees in the executive branch are also subject to the Ethics Pledge, which includes additional recusal obligations, post-employment restrictions, and a ban on accepting gifts from lobbyists or lobbying organizations.² Senior politically appointed officials are also subject to civil outside activity and employment restrictions.³ All statutory conflict of interest laws are published in the United States Code and the Standards of Conduct are published in the Code of Federal Regulations. The texts of these laws and regulations are also available through the website of the U.S. Office of Government Ethics (OGE).⁴ OGE also publishes a *Compilation of Federal Ethics Laws* that includes various ethics and good governance related statutes, including the conflict of interest statutes.⁵ OGE's website also provides plain-text explanations of the conflict of interest statutes and the Standards of Conduct by topic⁶ and interpretive legal advisories issued from 1979 through the present.⁷

The U.S. Congress has criminalized various conflict of interest prohibitions through statute. For example, criminal statutes prohibit bribery⁸ and the acceptance and payment of salary or salary supplementation for official duties.⁹ Employees are also prohibited from taking an official action in which they have a direct or imputed financial interest.¹⁰ Further, employees are prohibited from engaging in unofficial representations of outside parties in matters against

¹ These include the criminal conflict of interest statutes (18 U.S.C. § 201, et seq.), Executive Order 12674 on Principles of Ethical Conduct as amended by Executive Order 12731, the uniform Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. Part 2635, and the Ethics Pledge as set forth in Executive Order 13770.

² Executive Order 13770.

³ 5 U.S.C. app §§ 501-505 and implemented, in part, in 5 C.F.R. § 2636.

⁴ <https://www.oge.gov/web/oge.nsf>

⁵ <https://www.oge.gov/Web/oge.nsf/Resources/Compilation+of+Federal+Ethics+Laws>. Many of the laws contained in this compilation are not implemented by OGE.

⁶ <https://www.oge.gov/web/oge.nsf/Topics>

⁷ <https://www.oge.gov/web/oge.nsf/Legal%20Advisories>

⁸ 18 U.S.C. § 201.

⁹ 18 U.S.C. § 209.

¹⁰ 18 U.S.C. § 208.

the United States, whether for compensation or not.¹¹ In addition, all government employees are subject to post-employment prohibitions, with additional prohibitions applying to senior- and very senior-level officials.¹²

Further, each employee must comply with the Standards of Conduct. The Standards of Conduct prohibit employees from soliciting or accepting gifts from prohibited sources or gifts given because of their official position.¹³ A prohibited source includes anyone seeking business with or official action by an employee's agency and anyone substantially affected by the performance of the employee's duties. There are limited exceptions to this prohibition. The Standards of Conduct also require that employees act impartially,¹⁴ and implement the criminal prohibition on employees participating in an official government capacity in a matter where the employee, spouse, minor child, or other specified persons has a financial interest.¹⁵ Employees are prohibited from participating in matters that have a direct effect on the financial interests of prospective employers and may not misuse their official position for private gain. Employees are also not permitted to participate in a government capacity in certain matters involving members of their household and others with whom they have a "covered relationship," such as any former employer from the past year, if it is determined that a reasonable person would question their impartiality.¹⁶ Employees may not misuse their government position for personal gain¹⁷ and may not use or allow the use of nonpublic Government information to further their own private interests or the private interests of others,¹⁸ and are not exempt from insider trading laws.¹⁹

The Standards of Conduct also place limitations on employees' outside employment and outside activities likely to raise a potential conflict of interest, or the appearance thereof.²⁰ For example, employees may not engage in outside activities that conflict with their official duties,²¹ may not receive compensation for teaching, speaking, or writing related to their official duties,²² and must satisfy their just financial obligations.²³ Employees also face limitations on fundraising in a personal capacity.²⁴ Many federal agencies also have a system in place requiring employees to obtain approval before engaging in outside activities and some have limitations on certain types of outside activities. Senior government employees holding certain non-career positions, to include Presidential appointees, are also subject to more stringent restrictions on their outside activities and limitations on earned income.²⁵ Senior officials are subject to limitations on the amount of outside earned income they can receive while in office, and Presidential appointees are fully banned from receiving any outside income.

¹¹ See 18 U.S.C. §§ 203, 205.

¹² 18 U.S.C. § 207.

¹³ 5 C.F.R. § 2635.201, et seq.

¹⁴ 5 C.F.R. § 2635.101(b)(8); 5 C.F.R. § 2635.502.

¹⁵ 5 C.F.R. § 2635.402.

¹⁶ 5 C.F.R. § 2635.502.

¹⁷ 5 C.F.R. § 2635.703.

¹⁸ 5 C.F.R. § 2635.702.

¹⁹ Stop Trading on Congressional Knowledge (STOCK) Act of 2012, Pub. L. 112-105.

²⁰ 5 C.F.R. § 2635.801, et seq.

²¹ 5 C.F.R. § 2635.802.

²² 5 C.F.R. § 2635.807.

²³ 5 C.F.R. § 2635.809.

²⁴ 5 C.F.R. § 2635.808.

²⁵ 5 U.S.C. app § 501, et seq.

Pursuant to Executive Order, political appointees are subject to additional limitations.²⁶ For example, all political appointees are prohibited from receiving gifts from registered lobbyists and registered lobbying organizations, except when one of a very limited number of exemptions applies. In addition, political appointees are barred from participating in a government capacity in certain particular matters in which their former employer or former clients are a party or represent a party for two years from the date of their appointment.

Training:

Even prior to coming on board, prospective employees must be alerted to the fact that they will be subject to the Standards of Conduct and the criminal conflict of interest laws, as well as their agencies' commitment to government ethics. As part of executive branch-wide requirements, all agencies must issue notices to prospective employees in written offers of employment regarding the agencies' commitment to ethics and the applicable ethics requirements.²⁷ In addition, any employee entering into supervisory positions must also be made aware of their heightened responsibilities for advancing government ethics and modeling ethical behavior.²⁸

The ethics notices to prospective employees and new supervisors are complemented by initial ethics training requirements. Within three months from the time any employee begins work for a federal agency, the agency must provide the employee with initial ethics training.²⁹ 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.³⁰ In 2016, over 350,000 executive branch employees received initial ethics training.

Senior agency officials who are serving in presidentially appointed, Senate-confirmed (PAS) positions also receive substantial counselling with regard to 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.

These agency leaders must also receive an ethics briefing within 15 days appointment.³¹ 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. This ethics briefing is in addition to, and does not supplant, the initial ethics training required for all employees.

Executive branch employees are required to complete additional training requirements, determined by the type of position held, on an annual basis. This includes interactive ethics

²⁶ Executive Order 13770, § 1.

²⁷ 5 C.F.R. § 2638.303.

²⁸ 5 C.F.R. § 2638.103; § 2638.306.

²⁹ 5 C.F.R. § 2638.304.

³⁰ 5 C.F.R. § 2638.304.

³¹ 5 C.F.R. § 2638.305. Extensions may be granted for up to 30 days after the date of appointment or longer in extraordinary circumstances. *Id.*

training presentations on topics that the Designated Agency Ethics Official (DAEO) deems appropriate but must touch on financial conflicts of interest, impartiality, misuse of position, and gifts. In 2016, over 460,000 executive branch employees received required annual ethics training. Moreover, agencies are authorized to provide for additional ethics education requirements, as they see fit and in accordance with their agency-specific risk-assessment.³² In 2016, 79% of agencies reported providing ethics training to persons who were not required to receive training by regulation, and 66% of agencies reported providing additional, specialized training.

In addition to formal ethics training, each agency must maintain a program for providing advice and counseling to prospective, current, and former employees regarding the government ethics laws and regulations and their application to specific activities. Employees are encouraged to seek advice from agency ethics officials, and in some instances are required to receive prior authorization from an agency designee prior to engaging in certain activities.

Post-Employment Restrictions:

Employees who are leaving federal agencies are subject to limitations on actions they can take both before and after they leave government. While employees are generally free to seek post-government employment, they are required to recuse from any matters that might affect the financial interests of a prospective employer with whom they are seeking, negotiating, or have an arrangement for future government employment. In addition, high-level officials must file a notification statement of negotiation and recusal within three days of beginning to negotiate for future employment. In 2016, over 3,500 such statements were filed.

Executive branch officials are also subject to limitations on undertaking certain activities after they leave government. These post-employment restrictions generally do not prohibit an employee from taking a position with any given private sector employer, but rather, limit the types of actions an employee can take after leaving government.

All executive branch employees are covered by a lifetime ban on “switching sides” and representing an outside party back to the government on any particular matter involving specific parties (such as an investigation, lawsuit, contract, grant, or application) he or she worked on while in the government. Supervisors are restricted for two years after leaving the government from communicating with the government on behalf of another entity on a particular matter involving specific parties that was pending under his or her official responsibility within a year before termination of employment. Senior employees are prohibited for one year after leaving any senior position from representing any person back to any government agency where they worked in the past year on any and all matters, regardless of whether they worked on the matter before, it was pending before the government agency when they were in the government, or it is a new issue. Very senior employees are prohibited for two years after leaving a very senior position from representing any person back to any government agency where they were a very senior employee on any and all matters, regardless of whether they worked on the matter before, it was pending before the government agency when they were in the government, or it is a new issue. They are also

³² 5 C.F.R. § 2638.309.

barred from contacting other high-level officials at other agencies, such as Cabinet Secretaries and agency heads.

Political appointees are further prohibited from engaging in certain post-employment activities. Former political appointees may not engage in lobbying activities with respect to their former agency for five years after terminating employment as an appointee. Former political appointees are also prohibited from engaging in lobbying activities with a covered executive branch official or other senior political appointee for the remainder of the Administration. In addition, former political appointees are prohibited from engaging in any activity on behalf of any foreign government or foreign political party which would require the appointee to register as a “foreign agent” under U.S. law.³³

Oversight:

The U.S. Office of Government Ethics (OGE) provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest.³⁴ OGE oversees the executive branch ethics program and works with a community of ethics practitioners from more than 130 agencies to implement the program. OGE provides expert guidance to stakeholders, holds the executive branch accountable for the ethics program through monitoring compliance, and provides assistance to the President and the Senate in the Presidential appointment process. OGE engages the public in overseeing government activities by informing the public about the ethics program and by making ethics information publicly available. OGE also monitors congressional activity for ethics-related legislation that affects the executive branch ethics program and shares its expertise with Congress.

Because of the breadth of the executive branch, the executive branch ethics program is a shared responsibility. As the supervising ethics office, OGE sets policy for the entire executive branch ethics program. The head of each agency is statutorily responsible for leading the program in his or her agency. This includes creating an ethical culture by demonstrating a personal commitment to ethics and providing the necessary resources to implement a strong and effective agency ethics program. The agency head is also responsible for selecting a Designated Agency Ethics Official (DAEO), the employee with primary responsibility for directing the daily activities of an agency's ethics program and coordinating with OGE. Often, additional professional ethics staff is necessary to effectively carry out important ethics program responsibilities. As of 2016, there were approximately 6,800 officials assisting the ethics programs of over 130 agencies. Each agency's employees, supervisors, human resources officials, and Inspectors General also play a significant role in maintaining the integrity of government programs and operations.

³³ Executive Order 13770, § 1.

³⁴ The U.S. Office of Government Ethics was established by the Ethics in Government Act of 1978. 5 U.S.C. app. § 401.



The focus of the executive branch ethics program is principally on preventing violations from occurring in the first instance. Potential violations of legal authorities established under this framework, including government ethics authorities, are primarily investigated by the thousands of Inspectors General staff members across the executive branch. In addition, the Department of Justice has enforcement authority that includes both civil and criminal penalties.



Enforcement:

When executive branch agency ethics officials find evidence that an employee may have violated a criminal statute or Standards of Conduct regulation, they are to refer the evidence to the appropriate authority for action. Ethics counselors who become aware of a potential violation will normally send that information to their agency’s independent Inspector General to investigate. Where there is a possible violation of a criminal statute, the Inspector General

or similar investigative unit will refer the matter to the Department of Justice. The Department of Justice may decide to pursue the violation with criminal charges or pursue civil penalties, depending on the offense.

Enforcement mechanisms differ depending on whether the action is regulation or statutory in nature. An employee who violates the Standards of Conduct has engaged in a regulatory violation, which can be the basis of corrective action or discipline, up to and including removal. Agencies reported around 1,400 disciplinary actions taken in whole or in part as a result of violations of the Standards of Conduct in 2016. Violations of the bribery and conflict of interest statutes can lead to criminal prosecution and/or civil enforcement. For violations of the bribery laws, employees may be subject to a criminal fine, incarceration of up to 15 years, and/or disqualified from holding any office of honor, trust, or profit.³⁵ Violations of the conflict of interest laws can result in imprisonment of up to a year (or up to five years if done willfully), criminal fines, civil penalties, or injunctive action.³⁶ In addition, the U.S. may void and rescind any government transaction (such as a contract, or grant) on the basis of a final conviction for any conflict of interest or bribery offense.³⁷ The U.S. may also bring suit against any person who enters into a conspiracy to violate the criminal conflict of interest or bribery laws³⁸ or who aids and abets an employee in the violation of such laws.³⁹

Please outline the actions required to ensure or improve implementation of the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties and signatories may face include:

- Challenges in developing the proper legislative or regulatory framework for managing or preventing conflicts of interest;
- Challenges in administering conflict of interest systems;
- Challenges in relation to specific recruitment, selection or training requirements for categories of positions considered especially vulnerable to corruption, including possible early identification of potential conflicts of interest;
- Challenges in providing ethical guidance or advice to public officials; and
- Challenges in communication, and in particular in raising awareness and disseminating information about new standards of conflict of interest or in developing training manuals, courses, curricula or other related material, including online initiatives, used in training programs for public officials.

The United States does not have any challenges to report at this time.

Do you consider any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

³⁵ 18 U.S.C. § 201.

³⁶ 18 U.S.C. § 216.

³⁷ 18 U.S.C. § 218.

³⁸ 18 U.S.C. § 371.

³⁹ 18 U.S.C. § 2.

- **Legislative assistance:** Please describe the type of assistance
- **Institution-building:** Please describe the type of assistance
- **Policymaking:** Please describe the type of assistance
- **Capacity-building:** Please describe the type of assistance
- **Research/data-gathering and analysis:** Please describe the type of assistance
- **Facilitation of international cooperation with other countries:** Please describe the type of assistance
- **Others:** Please specify

The United States does not require technical assistance with regard to implementation of this provision.

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY UNITED STATES OF AMERICA**

ARTICLE 7, PARAGRAPH 4 UNCAC

CONFLICT OF INTEREST

UNITED STATES (THIRD MEETING)

1. Has your country adopted and implemented articles 7 – 9 of the UN Convention against Corruption?

Yes

2. Please cite, summarize and, if possible, provide copies of the applicable policy(ies) or measure(s):

In particular, the Secretariat would be grateful for information regarding policies or measures that:

- *identify and address potential conflicts between the professional duties and personal interests of civil servants or elected public officials.*
- *require asset declarations from civil servants or those elected to public office (States parties are encouraged to provide examples of asset declaration forms where used).*

The program designed to prevent, detect, and if necessary, address conflicts of interest on the part of individual public officials generally has four parts: enforceable written standards; personal financial disclosures; training, education and counseling; and enforcement. Of course, this program complements enforceable, transparent, public administration systems particularly in the areas of procurement, internal financial controls, budget, and human resources.

Enforceable, written standards. At the federal level, the United States relies upon a series of criminal conflict of interest statutes, civil ethics statutes and administrative standards or codes of conduct to establish for public officials (and often for those in the private sector in their dealings with public officials) written, enforceable standards with regard to conflicts of interest.

In general, there are criminal statutes in chapter 11 of title 18 of the U.S. Code that specifically describe situations where an official may not engage in a particular conduct because it creates a conflict with his or her official duties or loyalty to the Government. The most generally applicable restrictions are found in sections 201-209 (http://www.oge.gov/About/International-Activities/Docs/statutes_ogecom/). These

sections of title 18 of the U.S. Code are in the process of being translated into all six UN languages. By August 2012 they will be available at <http://www.oge.gov/About/International-Activities/Translated-Documents/>. None of the generally applicable criminal statutes prohibit the holding of a particular financial asset or a position outside the Government, but some do prohibit the receipt of compensation or anything of value for certain activities (from anyone other than the Government). The civil statutes (5 U.S.C. app. section 501 et. seq., available at <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-app-ethicsing-titleV.htm>) do, however, prohibit the most senior political officials, all elected officials and all federal judges from engaging in certain types of activities or holding certain positions in their private capacities and from receiving more than a specified amount of outside earned income, regardless of the activity performed for the income. These restrictions are similar in nature to the incompatibilities regimes found in other countries.

In the executive branch, the administrative Standards of Conduct (5 C.F.R. Part 2635, available at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=eaab3e76921028ab2de631c3f4b0f8a0&rgn=div5&view=text&node=5:3.0.10.10.9&idno=5>) complement these restrictions with general branch-wide restrictions as well as by allowing agencies (with approval from the U.S. Office of Government Ethics) to restrict further the outside activities and financial interests of their employees, when those restrictions are appropriately related to the functions of the agencies. The Standards of Conduct are in the process of being translated into all six UN languages. By August 2012 they will be available at <http://www.oge.gov/About/International-Activities/Translated-Documents/>. Agency supplemental regulations are found at 5 C.F.R. Parts 3101-8701. In addition, on January 21, 2009, President Obama signed an Executive Order, "Ethics Commitments by Executive Branch Personnel," that requires certain political appointees to sign an Ethics Pledge (available at <http://www.oge.gov/OGE-Advisories/Legal-Advisories/DO-09-003a--Attachment-to-DO-09-003,-Ethics-Pledge/>).

Each house of the legislative branch also has conduct standards. The Senate Code of Official Conduct is a part of the Standing Rules of the Senate. The Senate publishes a Senate Ethics Manual containing these provisions as well as guidance on their interpretation (see <http://ethics.senate.gov/public/index.cfm/ethicsrules>).

The United States House of Representatives (House) adopts a code of conduct as a part of its rules at the beginning of each Congress. The House also publishes a House Ethics Manual containing these provisions as well as guidance on their interpretation (available at <http://ethics.house.gov/>). In 1958, the House and the United States Senate (Senate) passed a concurrent resolution containing a Code of Ethics for Government Service. The House continues to expect its Members and employees to adhere to this Code.

In the judicial branch there are two primary codes of conduct: the Code of Conduct for United States Judges and the Code of Conduct for Judicial Employees (available at <http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct.aspx>).

In addition to written, enforceable standards there are three other aspects of a conflict of interest prevention program. They are public and confidential financial disclosure; education, training and counseling; and enforcement as a deterrent.