

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

ARTICLE 9, PARAGRAPH 2 UNCAC

MANAGEMENT OF PUBLIC FINANCES

UNITED STATES OF AMERICA (THIRTEENTH MEETING)

*1. In relation to integrity in public procurement and management of public finances
(article 9)*

The United States has also used ICT to increase transparency and public oversight on spending related to the COVID-19 pandemic recovery. On the website pandemicoversight.gov the public can find information on where and how pandemic program funding money was spent. The “Track the Money” feature displays federal funding provided through the CARES Act; the PPP and Health Care Enhancement Act; the Families First Coronavirus Response Act and the Coronavirus Preparedness and Response Supplemental Appropriation Act. Users can also use the website to review contract spending for pandemic relief broken down by state and find information on fraud cases involving pandemic recovery spending.

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

ARTICLE 9, PARAGRAPHS 2 AND 3 UNCAC

MANAGEMENT OF PUBLIC FINANCES

UNITED STATES (SIXTH MEETING)

In relation to measures to promote transparency and accountability in the management of public finances, States parties and signatories may wish to cite and describe measures that:

- *Provide for transparent and public procedures for adopting of the national budget, that specify the type of information required as part of the submission to the legislature, with opportunity for public input and debate;*

On behalf of the President, the Office of Management and Budget develops an annual budget for the executive branch based upon input from each department and agency. OMB provides standardized guidance for the preparation, submission and execution of the budget in the form of Circular A-11. For more information, please see: https://www.whitehouse.gov/omb/circulars_all_current_year_all_toc/.

Once the Budget has been developed, it is transmitted by the President to the Congress and becomes a public document. (The current budget consists of 150 pages, 2.3MB of information.) Following the Budget's transmittal, the Congress begins the process of determining what activities of the federal government they will appropriate funds to and how much. Congressional appropriations committees draft appropriations bills that reflect these decisions. An appropriation, once enacted, provides departments and agencies with the legal authority to spend the amount appropriated for the purposes for which it is appropriated. This legislative appropriations process gives the public an opportunity for input into the amount the government spends and for what through public hearings, committee meetings, and public debate.

- *Ensure that reporting on revenue and expenditure is public, timely and regular, and that there are consequences for the responsible agency and officials for failure to report at all or in a timely fashion;*
- *Ensure that effective system of accounting and auditing is put in place and that there is effective oversight over the budgetary revenue and expenditure with regular training and accreditation requirements for government accountants and auditors;*
- *Ensure that effective and efficient system of risk management and internal control is put in place, with clear allocation and description of the roles and responsibilities and description of how the offices responsible for risk management and internal control maintain, organize and store records;*
- *Provide for corrective action in case of failure to comply with the legal requirements, with description of the procedure for oversight and implementation.*

With regard to internal controls, the Office of Management and Budget (OMB), through Circular A-123, (available at https://www.whitehouse.gov/omb/circulars_a123_rev/), defines Federal management's responsibility for internal control in Federal agencies, and is the implementation circular for the Federal Managers Financial Integrity Act (FMFIA) of 1982. This Circular provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on internal control. A-123 requires agencies and Federal managers to take systematic and proactive measures to:

- develop and implement appropriate, cost-effective internal control for results-oriented management;
- assess the adequacy of internal control in federal programs and operations;
- separately assess and document internal control over financial reporting;
- identify needed improvements;
- take corresponding corrective action; and
- report annually on internal control through management assurance statements.

FMFIA also requires that federal agency executives periodically review and annually report on agencies' internal control systems. The FMFIA requires the Comptroller General of the U.S. Government Accountability Office (GAO) (the U.S. equivalent of a supreme audit institution) to prescribe internal control standards. Since 1983, GAO has issued its Standards for Internal Control in the Federal Government and its subsequent revisions, most recently September 2014, effective in fiscal year 2016: <http://www.gao.gov/assets/670/665712.pdf>.

With regard to accounting and auditing, OMB Circular A-136 (available at https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a136/a136_revised_2014.pdf) establishes a central point of reference for all Federal financial reporting guidance for Executive Branch departments, agencies, and entities required to submit annual audited financial statements. It provides agencies instructions on the form and content of agencies audited financial statements, which show how the agencies executed their funds. In addition, it provides guidance on the Government-Wide Financial Report, which presents a view of the Federal Government's finances and discusses important financial issues and significant conditions that may affect future operations.

Section 270 of OMB Circular A-11, noted above, provides guidance for performance and strategic reviews as part of the federal budget process. Section 270 encourages agencies to consider the concept of enterprise risk management (ERM) which is a strategic business discipline that addresses a full spectrum of an organization's risk. ERM encompasses all areas of organizational exposures to risk, and seeks to prioritize and manage risk exposure as an interrelated risk portfolio rather than as individual silos. The circular describes the components of effective risk management, including the option of establishing a chief risk officer, or designee that is responsible for managing an agency's risk portfolio. The guidance describes key roles for an effective risk manager or CRO in a federal agency.

With regard to corrective action, the Anti-Deficiency Act consists of provisions of law that were passed by Congress to prevent departments and agencies from spending or obligating funds that have not been appropriated. The Act prohibits agencies from entering into contracts that exceed the enacted appropriations for that year, or purchasing services and merchandise before appropriations are enacted. The Act:

- Prohibits agency heads from spending funds above the amount authorized by congress and OMB, including the authorization of expenditure or future obligation or contract, except in extraordinary emergency or unusual circumstances.
- Prohibits the government from accepting voluntary services exceeding that authorized by law except for exigent circumstances.
- Establishes penalties for ADA violations, including fines of \$5,000, imprisonment of up to 2 years, or both, for willful and knowingly over-obligating any amount.
- Requires that agency heads report in writing, any ADA violation to the President of the United States, by way of OMB director, The Speaker of the House of Representatives, the President of the Senate, and the Comptroller General. Signed ADA letters and fund control reviews must be posted on agency's websites.

In addition, there are disciplinary sanctions for violating the provisions of the standards of conduct for misuse of government resources and there are also criminal statutes that can be applicable to the intentional misuse of public funds and resources.

In relation to civil and administrative measures to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue to prevent the falsification of such documents, States parties and signatories may wish to cite and describe measures that:

- *Put in place a mechanism for recording, storing and preserving the integrity of accounting books, records, financial statements and other related documents, including national archiving or other recordkeeping institution; and sanctioning for falsification;*
- *Define a general schedule of records retention and disposition, including controls or security standards;*
- *Establish policies and procedures regarding the storage and preservation of electronic records, including security measures;*

Requirements for recording, storing and preserving government contract files are found in Subpart 4.8 of the FAR (available at https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%204_8.html). In general, this subpart sets forth what a contract file is, which records should be in the contract file, the standards for closing a contract file and the storage, handling and disposal of contract files.

The National Archives and Records Administration (NARA) is the independent Federal agency that oversees the management of all Federal records, including accounting books, records, financial statements and other related documents. The National Archives and Records Administration Act of 1984 amended the records management statutes to divide records management oversight responsibilities between the National Archives and Records Administration (NARA) and the General Services Administration (GSA). Under the Act, NARA is responsible for adequacy of documentation and records disposition (44 U.S.C. 2904(a)), and GSA is responsible for economy and efficiency in records management (44 U.S.C. 2904(b)).

Federal agency records management programs must comply with regulations promulgated by both NARA (36 C.F.R. Part 1220, available at <http://www.ecfr.gov/cgi-bin/textidx?SID=a03a3ca5427d2265a8ad85fcc33354ca&node=pt36.3.1220&rgn=div5>) and GSA's

Federal Management Regulations Parts 102-193 (available online at <http://www.gsa.gov/portal/ext/public/site/FMR/file/FMRTOC102-193.html/category/21863/#wp436256>). NARA maintains a General Records Schedule (GRS) for certain broad categories of records. The GRS contain provisions on Financial Management and Reporting Records. GRS 1.1 contains the records schedule for Financial Management and Reporting Records (<http://www.archives.gov/records-mgmt/grs.html>). For records not covered by the GRS, agencies are required by law to develop records (44 U.S.C. 3303).

Agencies submit the schedules for NARA approval on a specific form which contains descriptions of record series or systems and disposition instructions for each. These instructions specify when the series is to be cut off, when eligible records are to be moved to off-site storage, when eligible temporary records must be destroyed or deleted, and when permanent records are to be transferred to the National Archives. Schedules may not be implemented until NARA has approved them. Some schedules, especially those containing records relating to financial management, claims, and other related matters, must also be approved by the General Accounting Office (GAO) (44 U.S.C. 3309) before NARA will approve them. Once approved by NARA, retention periods in the schedules are mandatory and authorize the systematic removal of unneeded records from Federal offices.

In terms of accountability, Federal law places requirements on all federal agencies and on all federal employees with regard to managing federal records. Every Federal agency is legally required to manage its records. Records are the evidence of the agency's actions. Therefore, they must be managed properly for the agency to function effectively and to comply with Federal laws and regulations.

Agency heads have specific legal requirements for records management which include:

- Making and preserving records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities ([44 U.S.C. 3101](#)).
- Establishing and maintaining an active, continuing program for the economical and efficient management of the records of the agency ([44 U.S.C. 3102](#)).
- Establishing safeguards against the removal or loss of records and making requirements and penalties known to agency officials and employees ([44 U.S.C. 3105](#)).
- Notifying the Archivist of any actual, impending, or threatened unlawful destruction of records and assisting in their recovery ([44 U.S.C. 3106](#)).

Federal employees are responsible for making and keeping records of their work. Federal employees have three basic obligations regarding Federal records:

1. Create records needed to do the business of their agency, record decisions and actions taken, and document activities for which they are responsible
2. Take care of records so that information can be found when needed. This means setting up good directories and files, and filing materials (in whatever format) regularly and carefully in a manner that allows them to be safely stored and efficiently retrieved when necessary
3. Carry out the disposition of records under their control in accordance with agency records schedules and Federal regulations.

Finally, in addition to administrative program requirements and sanctions, as well as the discipline that can be imposed for a violation of the standards of conduct, there is a criminal statute, 18 U.S.C. 2071, that applies to the intentional concealment, removal or mutilation of records.