Country Review Report of United States of America

Review by the Kingdom of the Netherlands and Bangladesh of the implementation by the United States of America of articles 5-14 and 51-59 of the United Nations Convention against Corruption for the review cycle 2016-2021

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the United States of the Convention is based on the completed response to the comprehensive self-assessment checklist received from the United States, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from the Netherlands and Bangladesh and the United States, by means of telephone conferences, e-mail exchanges and any further means of direct dialogue in accordance with the terms of reference and involving Marianne Toussaint and Kellen McClure (the United States), Alain Hoekstra, Jeroen Hennekam and Evert van der Steeg (the Kingdom of the Netherlands), Mohammad Shahidul Haque, Kazi Arifuzzaman, Mohammad Abdul Halim, Kamal Hossein, Golam Shahriar Chowdhury, and Dipankar Biswas (Bangladesh). The representatives of the secretariat were Stefanie Holling and Meder Begaliev.
6. A country visit, agreed to by the United States, was conducted from 16 to 18 July 2019 in Washington, D.C.

III. Executive summary

1. *Introduction: overview of the legal and institutional framework of the United States of America at the federal level in the context of implementation of the United Nations Convention against Corruption*

The United States of America ratified the United Nations Convention against Corruption on 30 October 2006 and the Convention entered into force for the United States on 29 November 2006.

The United States is a federal republic and its legal system is based on the common law tradition of England. Under article VI of the United States Constitution, ratified treaties in force, along with federal law, are considered the "supreme Law of the Land".

The implementation by the United States of chapters III and IV of the Convention was reviewed in the first year of the first cycle, and the executive summary of that review was published on 23 March 2012 (CAC/COSP/IRG/I/1/1/Add.6). In addition, the United States anti-corruption framework has been reviewed in multiple rounds of evaluations as part of the Council of Europe Group of States against Corruption (GRECO) and the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption of the Organization of American States. Similarly, the anti-money-laundering and counter-terrorist financing framework of the United States has been assessed by the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG).

The legislative framework for preventing corruption and recovering assets includes, notably, the Ethics in Government Act, the Civil Service Reform Act, the Inspectors General Act, the Freedom of Information Act, the Federal Acquisitions Regulations, criminal laws against money-laundering and related criminal and civil forfeiture laws, the Foreign Corrupt Practices Act, titles 18 and 31 of the United States Code (USC) and the Bank Secrecy Act (as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act).

The key institutions involved in corruption prevention and asset recovery include the Department of Justice, the Office of Government Ethics (OGE), the Council of the Inspectors General on Integrity and Efficiency (CIGIE), the Offices of Inspectors General (OIGs), the Office of Special Counsel (OSC), the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Securities and Exchange Commission (SEC), the Department of the Treasury and that Department's Financial Crimes Enforcement Network (FinCEN).

The present review focuses on measures taken by the United States at the federal level only.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

The United States has a comprehensive set of laws, policies and regulations for preventing and combating corruption. Those instruments establish ethics frameworks for preventing conflicts of interest in the public and private sectors, promoting transparency in government operations and protecting the integrity of public procurements and public finances.

The Ethics in Government Act and other relevant rules and policies set out a comprehensive, decentralized ethics programme for the prevention of financial conflicts of interest in the public sector consisting of enforceable standards of ethical conduct, financial disclosure programmes, training and education and restrictions on gifts, lobbying and other outside activities for public officials who are entering service, holding office or separating from service.

OGE provides overall oversight and leadership of the ethics programme in the executive branch while the heads of agencies and entities lead the implementation of the programme in their respective agency or entity. Ethics committees in each chamber of Congress set ethical rules and standards for Members and staff of Congress.

OGE develops rules and regulations on conflicts of interest and ethics and provides technical assistance in relation to proposed legislation. OGE informs the public and other key stakeholders about its work and the ethics programme through its website and social media tools.

OGE provides expert advice and training to more than 5,000 ethics officials in over 130 executive branch agencies through, inter alia, ethics training, advice and counselling for executive branch

employees. OGE evaluates agencies' performance in implementing the ethics programme through the OGE annual questionnaire and programme reviews.

Additionally, OIGs in key agencies, as well as the Government Accountability Office (GAO), conduct audits, evaluations and investigations to prevent and combat waste, fraud and abuse, including corruption. GAO is a member of the International Organization of Supreme Audit Institutions (INTOSAI) and its Governing Board.

CIGIE is an independent entity established within the executive branch to address integrity, economy and effectiveness issues that transcend individual government agencies and to aid in the establishment of a professional, well-trained and highly skilled workforce in OIGs. The above-mentioned prevention bodies are established by statutes and have sufficient budgetary and human resources. However, the Director of OGE serves "at the pleasure of the President" and may be removed from office at any time. Similarly, Inspectors General serve at the pleasure of the President or, where applicable, the head of a designated federal entity. Of the two types of Inspectors General, "establishment Inspector Generals" are appointed by the President subject to Senate confirmation and may be removed or transferred by the President subject to prior written communication to Congress of the reasons for any such removal or transfer. GAO is an independent agency under the United States Congress and is headed by the Comptroller General of the United States, who is subject to removal only for cause. Inspectors General in designated federal entities are appointed by the agency head and may be removed or transferred by the agency head subject to prior written communication to Congress; however, for designated federal entities with a board or commission, the removal or transfer of an Inspector General from a designated federal entity requires the written agreement of two-thirds of the board or commission members.

The United States participates in several international instruments and initiatives related to corruption, such as the Inter-American Convention Against Corruption, the Organisation for Economic Co-operation and Development Anti-Bribery Convention, GRECO, FATF and several of the FATF-style regional bodies, the Open Government Partnership and the anti-corruption working groups of the Group of 20 and the Asia-Pacific Economic Cooperation. The United States also assists other States and civil society in developing and implementing specific corruption prevention measures through the Bureau of International Narcotics and Law Enforcement Affairs of the Department of State and the Governance and Rule of Law Division of the United States Agency for International Development.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The recruitment, retention, promotion and retirement of federal civil servants, including Senior Executive Service members, are governed by title 5 of USC, relevant presidential executive orders and other laws and regulations. OPM was created by the Civil Service Reform Act to lead as the primary independent human resources and personnel policy management agency for the federal Government. OPM is responsible for issuing most of the title 5 implementing regulations governing the civil service, including the Hatch Act, and oversees a merit-based hiring process. OPM provides, inter alia, guidance and services to agencies (vetting, personnel background investigations, leadership development and training, etc.) and directly to civil servants.

Federal government vacancies are posted on a central online portal (www.usajobs.gov). Recruitment to civil service is competitive and merit-based, and all applicants or employees are investigated for their suitability for federal employment on the basis of their character or conduct that may have an impact on the integrity or efficiency of the service (Executive Order 10577). Pursuant to Executive Order 13488, individuals in positions of public trust are reinvestigated periodically (e.g. positions with responsibilities involving access to or operation or control of financial records, with a significant risk for causing damage or realizing personal gain (5 Code of Federal Regulations (CFR) § 731.106 (b)). Appeals against employment decisions may be lodged with the Merit Systems Protection Board (MSPB).

There is currently no requirement for civil servants to periodically rotate to different positions, but civil servants may be assigned different responsibilities to prevent conflicts of interest. Pursuant

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to 18 USC § 208, executive branch employees are prohibited from participating in certain Government matters affecting their own financial interests or the interests of certain persons with whom they have ties outside the Government.

Pursuant to 5 C.F.R §§ 2638.301 and 2638.304, each executive branch agency must carry out a government ethics education programme and each new employee must complete an initial ethics training course.

Article II, section 1, clause 5, and article I, section 2, clauses 2 and 3, of the Constitution outline criteria concerning candidature for and election as President, Representative in the House of Representatives, and Senator in the Senate, respectively. The Federal Election Campaign Act, administered and enforced by the Federal Election Commission, governs public and private financing of candidates, political parties and others in federal elections by, inter alia, setting limits and prohibitions on contributions and their sources and specifying reporting requirements. Detailed campaign finance data are published on the Commission's Disclosure Portal.

The key ethics rules and laws consist of criminal conflict of interest statutes, civil statutes, and administrative regulations known as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct). Members, officers and employees of Congress are bound by the Code of Official Conduct and the Code of Ethics for Government Service.

Generally, public officials are prohibited from participating personally and substantially in any matter where their financial interests or those of their family members or of other specified persons may directly and predictably be affected (18 USC § 208 (a).

The financial disclosure programme established by the Ethics in Government Act is designed to identify and prevent conflicts of interest. Disclosures may be public (for elected, presidentially appointed Senate-confirmed (PAS) and other senior officials) or confidential (for individuals in risk-sensitive positions as determined pursuant to 5 CFR § 2634.904(a)(1)). Financial interests that must be disclosed include a wide range of interests such as outside positions, assets, income, transactions and liabilities of public officials and their spouses and children. However, if they own a trade or business, loans given to such trade or business are not required to be reported if the public official and the official's spouse and children are not personally liable for such loans.

If a potential conflict of interest is identified, 5 CFR § 2640 outlines possible remedies, including divestiture of assets, resignation from outside positions, recusal, waiver and blind trusts. Certificates of divestiture and blind trusts must be approved by OGE. Nominees to PAS positions set forth in ethics agreements the steps they will take to alleviate actual or apparent conflicts of interest. Likewise, Members of Congress and candidates, officers and certain employees of Congress must file financial disclosure and periodic transaction reports (5 USC § 101 et seq.), which are published online (sect. 8, Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act)). Failure to file or the filing of a false financial disclosure report is subject to sanctions.

Violations of the Standards of Conduct may be investigated by OIGs and may lead to corrective or disciplinary action. During investigations, OIGs may seek technical support from OGE, including its expertise on ethics laws. Violations of the bribery and conflict of interest statutes are referred to the Department of Justice and may lead to criminal prosecution and/or civil enforcement.

Pursuant to the principles of ethical conduct issued in Executive Order 12674, as modified by Executive Order 12731, and subsequently issued in the Standards of Conduct, executive branch employees "shall disclose waste, fraud, abuse, and corruption to appropriate authorities". The Whistleblower Protection Act of 1989, as amended, provides for protection against retaliation and procedures for redress. OSC receives disclosures of wrongdoing and complaints of retaliation. If, after an investigation, retaliation is established, and if the employing agency does not agree to correct its decision, OSC may pursue corrective action through MSPB. Similarly, any decision of OSC not to investigate a complaint may be appealed to MSPB. However, this Act does not cover non-employees (contractors, special government employees, etc.) or congressional staff. In

addition, at the time of the country visit, MSPB had no Board members, a situation that affected its adjudicatory functions.

Appointments to and removals from federal judicial positions are regulated by section 2 of article II of the Constitution. The Judicial Conference of the United States is the main policymaking body of the federal judiciary and operates through a network of committees that advise the Conference on issues including integrity, conflicts of interest and discipline. The Ethics in Government Act applies to members of the federal judiciary and requires the filing of financial disclosure reports. The recusal framework is formally governed by 28 USC §§ 144, 455(a). The Code of Conduct for United States Judges applies to all members of the federal judiciary except members of the Supreme Court.

All federal prosecutors are employees of the executive branch and are subject, with additional appropriate restrictions, to the executive branch ethics programme described above.

Public procurement and management of public finances (art. 9)

Public procurement in the United States is decentralized. Title 41 of USC, the Federal Acquisitions Regulations and other laws and regulations establish detailed procurement rules and procedures. The Office of Federal Procurement Policy in OMB provides overall direction for government-wide procurement policies, regulations and procedures.

Part 6 of the Federal Acquisitions Regulations requires, with certain limited exceptions, the use of competitive procedures and sets thresholds and conditions for the use of micro-purchases and simplified acquisitions (part 13), sealed bidding (part 14), contracting by negotiation (part 15) and other procurement methods. Public advertisement of procurement notices and selection criteria are mandatory in most cases (41 USC § 1708). An online portal (https://sam.gov/) contains all federal procurement opportunities and awards valued at more than $25,000.

Interested parties, such as actual and prospective bidders, may challenge procurement processes informally with the agency concerned, in a protest to GAO and/or by way of judicial process (Federal Acquisitions Regulations, part 33). Part 9 of the Federal Acquisitions Regulations specify qualifications as well as requirements and procedures for debarment, suspension (e.g. on the grounds of commission of fraud, bribery or other offences in connection with public procurement) and ineligibility of contractors. Suspensions and debarment of contractors are also regulated under the Procurement Integrity Act.

Procurement officials are subject to the ethics programme for the executive branch, as well as additional requirements of the Procurement Integrity Act, such as the prohibition on discussing possible employment with bidders during the conduct of procurement (see generally 41 USC § 423).

Pre- and post-award audits of federal contracts may be conducted by OIGs, internal audit offices, the Defense Contract Audit Agency or non-federal government/private auditors in certain cases. Contract audits may include examinations of internal controls and accounting and financial management systems of the contractor.

The framework of the federal budget process is provided principally by the Constitution and the Budget and Accounting Act of 1921. This Act and the relevant rules of each chamber of Congress ensure transparency at every stage of the budget process.

The Chief Financial Officers Act of 1990, as amended by the Government Management Reform Act of 1994, and the Accountability of Tax Dollars Act of 2002 require executive branch agencies to submit audited financial reports to OMB for consolidation and for preparation of the Financial Report of the United States Government. Under the Government Management Reform Act, GAO is responsible for the audit of the Financial Report using the generally accepted government auditing standards, performing that audit in cooperation and coordination with OIGs and independent public accountants. The Financial Report of the United States Government and the GAO auditor's report are then submitted to Congress and the President as public documents.

The Department of the Treasury also publishes daily, monthly and annual Treasury statements which summarize the revenues and expenditure of the federal Government for a given period. Additionally, the Federal Funding Accountability and Transparency Act of 2006 and the Digital Accountability and Transparency Act of 2014 outline specific financial data that must be published through the www.usaspending.gov website.

The Chief Financial Officers Act, as amended, mandates relevant government agencies to have financial management systems that comply with, inter alia, appropriate accounting principles and standards and internal control standards. Furthermore, OIGs in key agencies conduct audits, programme inspections and evaluations and recommend changes to strengthen control and mitigate risks through semi-annual reports to Congress.

The Federal Records Act, as amended, relevant parts of the Code of Federal Regulations and other guidelines issued by the National Archives and Records Administration (NARA) establish the framework for retention, disposal and transfer of public records, including records related to public procurement and finances. Destruction, concealment and falsification of such records are criminal offences (18 USC §§ 2071, 2073).

Public reporting; participation of society (arts. 10 and 13)

The primary mechanism for accessing documentary administrative information is the Freedom of Information Act (5 USC § 552), under which every person has the right, enforceable in court, to obtain federal agency records. Congress and legislative branch agencies are exempt from the Freedom of Information Act. The Office of Information Policy of the Department of Justice issues guidance on the Freedom of Information Act to encourage compliance.

Requests under the Freedom of Information Act may be submitted by post or email to the relevant agency, or by using online portals, such as www.foia.gov. Agencies may withhold information if there is a foreseeable harm to an interest protected by the nine exemptions from disclosure (5 USC § 552(b)). However, the Freedom of Information Act requires that agencies segregate such information and release any non-exempt portions of requested records.

A requester may seek court review of the propriety of agency withholdings, and the agency bears the burden of proof to show that its action was justified. As an alternative to litigation, the Office of Government Information Services (OGIS) within NARA may be requested to mediate disputes between requesters under the Freedom of Information Act and requested agencies. The Office of Government Information Services also reviews the compliance of agencies and their related policies and procedures with the Act.

Comprehensive information on the Government of the United States and its services is systematically and proactively posted on a single online portal (www.usa.gov). As part of the Open Government Partnership, the United States is committed to improving in areas such as e-government, open data, public participation and civic space.

The Administrative Procedure Act (5 USC §§ 551 et seq.) requires the publishing of proposed rules and regulations in the Federal Register, and opportunities for the public to comment. Other legislation, such as the Government in the Sunshine Act and Federal Advisory Committee Act, provides mechanisms for public participation in the work of agencies headed by a collegial body (commissions and boards) and of advisory bodies.

OGE publishes reports and data on agency ethics programme compliance, financial disclosures and ethics agreements of presidentially appointed officials, and policy guidance. Similarly, CIGIE publicizes its work and reports of audits, inspections and investigations.

Members of the public can report acts of corruption to local, state and federal law enforcement agencies and OIGs through those bodies' respective websites or hotlines, including anonymously.

Private sector (art. 12)

The United States has taken a number of legislative and policy measures to prevent corruption and conflicts of interest involving the private sector at the federal level.

The formation of companies, transparency of company ownership and management, internal control and risk management measures and other corporate governance issues are regulated by state legislation. At the federal level, corporate governance is primarily regulated by disclosure requirements of the Securities Act, as amended, the Securities Exchange Act, as amended (the Securities Exchange Act, including provisions on prohibited foreign trade practices introduced through the Foreign Corrupt Practices Act), the Sarbanes-Oxley Act and relevant rules promulgated by SEC.

18 USC § 207 provides for either an absolute ban or specified "cooling off" periods for former public officials, depending on the type of activities concerned. Public officials shall disclose entering into any negotiations or arrangements for outside employment. Agency-specific post-employment laws also exist, supplementing the above-mentioned Government-wide post-employment laws.

The Foreign Corrupt Practices Act and relevant SEC rules require all public companies to, inter alia, maintain books and records that, in reasonable detail, accurately and fairly reflect the companies' transactions and dispositions of company assets and maintain a system of appropriate internal accounting controls.

It is prohibited for a person to knowingly circumvent a system of internal accounting controls, knowingly falsify any book, record or account, or make or cause to be made materially false or misleading statements or omissions to an accountant in connection with an audit or materially false and misleading statements in annual or quarterly reports (sect. 13(a)(b)(5) of the Securities Exchange Act and rules 12b-20, 13a-1 and 13a-13, 13b2-1, 13b2-2 thereunder).

The Department of Justice and SEC regularly raise awareness among private sector representatives about the anti-bribery and accounting provisions of the Foreign Corrupt Practices Act by publishing guidance and organizing conferences and other public events. The Foreign Corrupt Practices Act Corporate Enforcement Policy of the Department of Justice incentivizes corporations to self-report wrongdoing and cooperate with the Department.

The Internal Revenue Code (26 USC § 162(c)(1) and (2)) disallows the tax deductibility of illegal bribes or kickbacks or other illegal payments. "Facilitating payments" to foreign public officials that are lawful under the Foreign Corrupt Practices Act are tax deductible.

Measures to prevent money-laundering (art. 14)

The United States has a comprehensive system designed to prevent and detect money-laundering, although some gaps remain, especially with regard to beneficial ownership transparency and coverage of certain designated non-financial businesses and professions. The 2018 National Money Laundering Risk Assessment shows a strong awareness of existing significant vulnerabilities, including with regard to beneficial ownership transparency, but as the scope of the present review extended to the federal level only, the review did not cover gaps specific to the state or territorial level.[1]

The Bank Secrecy Act is a central legislative instrument for combating money-laundering and contains reporting, risk assessment and record-keeping requirements for financial institutions as defined in 31 USC § 5312(a)(2). Covered financial institutions are required to report suspicious transactions related to a potential violation of a law or regulation (31 USC § 5318(g)). Suspicious activity report filings are available electronically and in real time to law enforcement and supervisory agencies through a nationwide database.

[1] After the country visit, the United States enacted legislation addressing the lack of disclosure obligations at the time of company formation. Enacted in January 2021 as part of the National Defense Authorization Act, the Corporate Transparency Act requires reporting companies to disclose their beneficial owners when they are formed (or, in the case of non-United States companies, when they register with a state to do business in the United States) and when they change beneficial owners. On 29 September 2022, FinCEN issued a final rule establishing a beneficial ownership information reporting requirement pursuant to the Corporate Transparency Act. The rule requires specified corporations, limited liability companies and other entities created in or registered to do business in the United States to report information about their beneficial owners to FinCEN.

Regulations implementing the Bank Secrecy Act also establish enhanced disclosure requirements in relation to the information that must be submitted to FinCEN by various private businesses, including title insurance companies of beneficial owners involved in major real estate purchases in certain markets, because of the potential risk for corruption-related and other money-laundering. Since May 2018, financial institutions have also been required to collect beneficial ownership information pertaining to certain account holders upon the opening of an account.

The anti-money-laundering requirements of the Bank Secrecy Act can generally be enforced through civil and criminal penalties, injunctions, examinations, and summons authority (31 USC §§ 5321, 5322). The United States employs a risk-based approach; the latest National Money Laundering Risk Assessment was conducted and published in 2018.

Separate anti-money-laundering laws establishing criminal penalties for the carrying out of financial transactions aimed at concealing or promoting criminal activity in certain circumstances also provide specifically for the prosecution of laundering activity in the United States linked to foreign corruption offences and domestic corruption offences (for example, 18 USC, §§ 1956 and 1957). Enforcement can include various civil and criminal penalties and civil and criminal forfeiture (see, for instance, 18 USC §§ 981 and 982). Exposure to certain criminal and civil penalties is believed to have a preventive role, in addition to certain punitive sanctions.

Cooperation and exchange of information take place at the policy, supervisory and law enforcement levels and involve relevant authorities, including at the state and local levels. Under the leadership of the Treasury, the inter-agency Anti-Money-Laundering Task Force, established in 2012, is in charge of assessing the anti-money-laundering framework and implementing necessary legal and operational changes. A law enforcement subgroup advises on money-laundering and terrorist financing risks identified in the course of investigations.

Internationally, FinCEN (as the financial intelligence unit), law enforcement agencies and supervisory authorities can cooperate with foreign counterparts and share, spontaneously or upon request, information regarding money-laundering and terrorist financing. FinCEN exchanges financial information with an average of 100 financial intelligence units annually, on the basis of treaties or through the Egmont Group of Financial Intelligence Units. Federal law enforcement agencies, through international offices, can coordinate and engage directly with foreign counterparts in investigations into money-laundering or predicate offences.

All cross-border transportation of currency and other monetary instruments valued at more than $10,000 is subject to declaration (31 CFR § 1010.340) and civil or criminal sanctions in cases of non-compliance (see, for example, 31 CFR § 1010.840).

Ordering and intermediary financial institutions located within the United States are required to include, for all wire transfers, the originator's name, account number and address in any transmittal order above $3,000 (31 CFR § 1010.410(f)). Ordering financial institutions are required to verify the identity of the originator and include the beneficiary information with the transmission order.

The United States is a member of FATF and an observer in six FATF-style regional bodies, a member of APG and a cooperating and supporting nation of the Caribbean Financial Action Task Force.

The United States provides technical assistance, training and capacity-building in relation to anti-money-laundering and anti-corruption activities and maintains multi-agency strategic dialogues on illicit finance with partner countries as well as public/private banking-related working groups with countries whose financial systems are particularly entwined with that of the United States.

2.2. Successes and good practices

- *Extensive and innovative use of online platforms to increase transparency and improve the efficiency of various corruption prevention measures (arts. 7, 8, 9 and 10)*

- *The United States actively participates in relevant international instruments and initiatives and assists other States and civil society in developing preventive measures (art. 5, para. 4)*
- *The regular awareness-raising activities conducted by the Department of Justice and SEC for private sector representatives in relation to the anti-bribery and accounting provisions of the Foreign Corrupt Practices Act and policy measures to incentivize corporations to self-report wrongdoing and cooperate with the Department of Justice and SEC (art. 12, para. 2)*

2.3. Challenges in implementation

It is recommended that the United States:

- *Provide greater independence to the Director of OGE and Inspectors General by ensuring that they can be removed from their positions only for cause (art. 6, para. 2)*
- *Consider taking appropriate measures to limit any adverse effect of vacancies in the Merit Systems Protection Board on whistle-blowers and persons seeking the review of an employment decision (art. 7, para. 1, and art. 8, para. 4)*
- *Consider extending the protections of the Whistleblower Protection Act of 1989 or adopting equivalent measures in relation to non-employees in the executive branch and congressional staff (art. 8, para. 4)*
- *Strengthen efforts to require appropriate public officials to disclose all liabilities of a non-public trade or business in which they or their spouses or children have an interest (art. 8, para. 5)*
- *Consider enhancing the effectiveness of OGE, for example, by requiring oversight bodies and officials such as Inspectors General to seek appropriate assistance of OGE in their investigations of ethics violations and in formulating recommendations for corrective action, or by vesting OGE with similar investigative powers (art. 8, para. 6)*
- *Consider establishing a new agency or entrusting an existing agency with a mandate to perform all federal contract audits (art. 9, para. 1)*
- *Ensure that Congress and legislative branch agencies are subject to similar freedom of information requirements as provided for executive branch agencies under the Freedom of Information Act (art. 10 (a))*
- *Continue efforts to adopt a code of conduct for members of the United States Supreme Court (art. 11, para. 1)*
- *Prohibit the tax deductibility of "facilitating payments" (art. 12, para. 4)*
- *Consider taking measures to require financial institutions to verify identifying information for occasional customers conducting funds transfers below $3,000 when there is a suspicion of money-laundering or terrorist financing (art. 14, para. 1)*
- *Create and effectively implement a comprehensive anti-money-laundering/counter-terrorist financing supervision mechanism for relevant non-financial businesses and professions (art. 14, para. 1)*

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The United States is committed to the recovery and subsequent return of proceeds of corruption offences to countries harmed by corruption, and employs a "whole-of-government" approach to

asset return. In particular, the United States regularly applies laws allowing non-conviction-based forfeiture, in addition to criminal forfeiture, in order to enable the United States to recover assets, often in cooperation with foreign jurisdictions. While forfeiture involving foreign corruption can be sought by any federal prosecutor subject to appropriate evidence and venue, the Department of Justice formally established its Kleptocracy Asset Recovery Initiative in 2010 to provide dedicated resources making it possible to litigate more cases, including in rem proceedings in respect of property located in and outside the United States if the property is traceable to criminal acts involving foreign or domestic corruption in, or partly in, the United States. The Initiative also brings criminal forfeiture cases where appropriate. According to "U.S. Asset Recovery Tools and Procedures: A Practical Guide for International Cooperation", a key objective of the Initiative is "to recover assets for the benefit of the people of the country harmed by the abuse of public office through transparent and accountable means".

Through its Kleptocracy Initiative and the Initiative's predecessor team in the Department of Justice, the United States had, as at July 2019, restrained by United States court order more than $2.6 billion in assets linked to foreign corruption. Also as at July 2019, the United States had successfully obtained by forfeiture and settlement approximately $1 billion and returned or assisted in returning approximately $300 million in assets. A significant proportion of the recovered funds is in the process of repatriation, including over $300 million to Nigeria, approximately $35 million to Equatorial Guinea and several hundred million dollars to Malaysia.[2] *Since 2015, the Initiative has brought criminal charges with a view to seeking the forfeiture of assets. Charges are pending against 13 individuals and one legal entity. Nine persons have been convicted and ordered to forfeit assets through money judgments.*

In addition, the corruption related-returns secured by the Department of Justice are not limited to cash. In 2015, the United States restrained, ordered the forfeiture of and returned to Brazil the offspring of rare snakes that had been illegally sold to a United States breeder by a government official overseeing a zoo in Brazil with custody over the snakes.

The international sharing of proceeds forfeited through foreign law enforcement cooperation and assistance is also practised by United States authorities and is often based on bilateral asset sharing agreements or asset sharing provisions forming part of mutual legal assistance treaties governing forfeiture, which may cover corruption as well as other crimes. The United States may share such proceeds even when a country does not directly request a portion of assets that have been forfeited in connection with assistance provided to the United States by that country.

The United States has two main asset forfeiture funds into which forfeited proceeds of any crime are deposited pending further disposition. As at 31 December 2018, more than $283 million in forfeited assets had been transferred to 55 countries since 1989 from the fund administered by the Department of Justice, mostly in recognition of forfeiture assistance. In recent years (fiscal years 2013–2015), the Department of Justice has shared $19,714,313 with 18 countries. Since 1994, the Treasury has transferred from its Assets Forfeiture Fund more than $37 million to 29 countries, mostly in recognition of forfeiture assistance. The United States can also accept assets from other countries when it has provided law enforcement or judicial assistance leading to the forfeiture of assets under foreign law. The aforementioned statistics relate to forfeitures involving all types of crimes.

The United States has published multilingual guidance materials on international cooperation in asset recovery cases and has hosted, co-hosted or participated in various forums for asset recovery specialists from around the world, including multiple Arab forums on asset recovery involving the Arab Spring countries, the Ukraine Forum on Asset Recovery following the Dignity Revolution in

[2] As at January 2022, the Kleptocracy Initiative and its predecessor team in the Department of Justice had recovered or assisted in recovering more than $1.8 billion in assets and returned or assisted in returning more than $1.6 billion, including $1.2 billion to Malaysia, $311 million to Nigeria in February 2020, $115 million for Kazakhstan, $100 million to Italy, over $26 million to Equatorial Guinea and smaller sums to a number of other countries. Approximately $2 billion in additional assets are currently restrained pending forfeiture litigation in civil and criminal cases. Since 2022, the Kleptocracy Initiative has brought criminal charges against 35 individuals and two legal entities, seeking forfeiture in all but one case, in which the corporation concerned was ordered to pay significant fines.

2014, and the Global Forum on Asset Recovery in 2017, which focused on the recovery of assets linked to corruption in Ukraine, Nigeria, Tunisia and Sri Lanka.

Disclosure of information to foreign authorities is possible on the basis of judicial orders (Federal Rules of Criminal Procedure 6(e)(3)(E)(iii) and (iv)), through Egmont Group channels, bilaterally through agreements providing for mutual legal assistance or through informal channels, such as direct police-to-police communication or networks such as the Camden Asset Recovery Inter-Agency Network and several other regional asset recovery inter-agency networks in which the United States participates or provides a supporting role.

While United States legislation allows for the provision of mutual legal assistance in the absence of a treaty, the United States has concluded mutual legal assistance treaties with over 80 countries and is an active party to several multilateral treaties.

Prevention and detection of transfers of proceeds and crime; financial intelligence unit (arts. 52 and 58)

The Treasury's Customer Due Diligence Rule, published in 2016 and in full effect as of 2018, enhanced requirements for certain financial institutions covered by the Bank Secrecy Act by obliging them to establish and maintain policies and procedures to identify and verify the identity of customers that are legal entities and of any individual who owns 25 per cent or more of a legal entity opening a new account. Financial institutions subject to the Rule must also put in place policies and procedures for developing customer risk profiles and conducting ongoing monitoring in order to maintain and update customer information on a risk basis. As a general matter, the definition of financial institutions as set out in the Bank Secrecy Act covers certain non-financial businesses and professions such as casinos and dealers in vehicles or precious metals and stones. However, other at-risk non-financial businesses and professions are not subject to anti-money-laundering policy or supervisory measures, most notably real estate agents and intermediaries such as lawyers. A general obligation exists for all trades and businesses to report cash transactions that exceed a value of $10,000.

At the discretion of the Treasury, cash transactions in the real estate sector can be partially addressed – since 2016 – through the issuance of Geographic Targeting Orders (31 USC § 5326), which require financial institutions to identify the beneficial owner of legal persons involved in cash acquisitions of luxury real estate objects in designated United States real estate markets.

All records must be kept for a minimum period of five years (12 USC § 1829b, 31 USC §§ 5311, 5318(l), 5325 and 5326).

Private banking accounts of senior foreign political figures, their immediate family members and close associates, with a value of at least $1,000,000, are subject to enhanced due diligence (sect. 31 USC § 5318 (i)(3)(B)). For politically exposed persons not subject to enhanced due diligence, banks should obtain risk-based due diligence information and provide for appropriate scrutiny and monitoring, in line with the Federal Financial Institutions Examination Council (FFIEC) Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual. Some financial institutions voluntarily subject domestic politically exposed persons to enhanced due diligence.

FinCEN also provides, on its website, a wealth of information related to compliance with laws and regulations on combating money-laundering and the financing of terrorism. FinCEN can locate accounts and transactions of persons potentially involved in significant money-laundering, and may relay subject and business names, addresses and as much identifying data as possible to a wide range of financial institutions and require those financial institutions to provide real-time responses (sect. 314(a) of the USA PATRIOT Act).

Section 313 of the USA PATRIOT Act prohibits covered financial institutions from establishing, maintaining, administering or managing correspondent accounts in the United States for, or on behalf of, shell banks. Covered financial institutions shall further ensure that any correspondent account for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank (31 CFR 1010.6 30 (a)(ii)).

Under the Bank Secrecy Act, United States citizens, residents and legal entities as defined in the Act are required to annually disclose to the federal Government their interests in foreign financial accounts if the aggregate value of the amount in the accounts is $10,000 or more in a year. Failure to do so can result in civil or criminal penalties (31 USC §§ 5321(a), 5322(a) and 31 CFR §103.59(b).

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Foreign States can initiate civil action in United States courts, with the same rights and obligations as other private litigants. United States law does not preclude or prohibit its courts from ordering persons convicted of offences established under the Convention from paying restitution as part of a criminal sentence, including to another State party. Numerous case examples of foreign States litigating in United States courts were presented during the country visit.

A criminal forfeiture order remains preliminary if a third party − which may be a State − files a petition asserting an interest in the property to be forfeited. The court must then conduct an ancillary proceeding in which all potential third-party claimants may challenge the forfeiture by asserting a superior interest in the property and may seek return or compensation (rule 32.2 of the Federal Rules of Criminal Procedure). Notice and claim procedures exist in both civil and criminal forfeiture proceedings and all notices to prospective legitimate owners of property are published on a government website, as well as in any foreign State that may bring a claim of legitimate ownership.

Federal courts can enforce final judgments of forfeiture, including those not based on a criminal conviction, issued in foreign States as if the judgment had been handed down by a court in the United States (28 USC § 2467). A prerequisite for enforcement is certification by the Attorney General that enforcement of the foreign judgment is in the interest of justice. Other considerations when deciding on enforceability relate to finality, non-appealability and whether or not due process was afforded to property holders and third parties in obtaining the foreign judgment.

Property originating from predicate offences to money-laundering committed abroad may be subject to forfeiture (18 USC §§ 982, 1956).

United States courts can order non-conviction-based forfeiture, including in relation to bribery or money-laundering proceedings in which the offender who committed the predicate offence cannot be prosecuted (18 USC § 981).

To preserve the availability of property subject to civil or criminal forfeiture under foreign law, 28 USC § 2467 (d)(3) allows the registration and enforcement of restraining orders issued by a foreign court, or the application for a domestic restraining order on the basis of an affidavit setting forth a reasonable basis to believe that the property to be restrained will eventually be subject to forfeiture proceedings by a foreign nation. 18 USC § 981(b)(4) provides for the temporary restraint of assets on the basis of a foreign arrest or charge of a suspect or defendant for an offence that would give rise to forfeiture had the same offence been committed in the United States. Restraint may be ordered ex parte for up to 30 days with the possibility of extension. At the time of the country visit, the United States had restrained approximately $125 million in assets by enforcing foreign restraining orders.

Assistance in identifying and tracing assets can be provided to other States on the basis of informal channels, such as police-to-police communication and information-sharing networks, in connection with non-compulsory measures. The United States can also obtain evidence on behalf of a foreign State through the application of compulsory measures under 18 USC § 3512.

Mutual legal assistance can be provided pursuant to a bilateral mutual legal assistance treaty or, in the absence of such a treaty, pursuant to the Convention or any other multilateral treaty, or on the basis of comity and reciprocity. Requirements for mutual legal assistance requests are laid out in multilingual guidance material. The United States retains the ability to decline assistance where the matter involved is of a proportionally de minimis nature, for example, where a request for

assistance would require the commitment of resources substantially greater than the amount sought. Before declining assistance in such instances, the United States takes into account all aspects of the case in order to determine whether, for example, the case might be part of a larger scheme involving a greater aggregate loss amount or more serious harm. Other grounds for refusal to execute a request are set forth in mutual legal assistance treaties, the Convention and other multilateral treaties.

Consultations with requesting States before and after formal requests are submitted, including with a view to supplementing incomplete mutual legal assistance requests with additional evidence or explanations, are standard procedure and open communication channels are maintained between the Department of Justice and its foreign counterparts. The Office of International Affairs, as the designated central authority for the United States in criminal matters, seeks annual consultations with its largest mutual legal assistance treaty and extradition treaty partners.

Return and disposal of assets (art. 57)

The domestic asset recovery regime permits the transfer of confiscated assets as remission or restoration to a victim that has suffered a financial loss, including a requesting State (18 USC §§ 981(e)(6), 982(b)(1), 21 USC § 853(i)). Confiscated assets may further be returned to a foreign Government which has directly or indirectly participated or assisted in the seizure of criminal proceeds and/or their related forfeiture (18 USC §§ 981(i), 982(b)(1), 21 USC §§ 853(i)(4), 881(e)). In sum, even where there is no victim having suffered a pecuniary loss, United States authorities encourage asset-sharing, which is possible on the basis of bilateral or multilateral asset-sharing agreements or treaties (18 USC § 981(i), 21 USC § 881(e)(1)(E), 31 USC § 9703(h)(2)). The United States may initiate processes to transfer forfeited assets, for the benefit of those harmed by corruption, even in the absence of a request from another State or the assistance of that State in the forfeiture proceedings. All means of asset return are at the discretion of and must be approved by the Attorney General or the Secretary of the Treasury. At the same time, the United States considers itself bound by the provisions of the Convention regarding asset recovery, including the mandatory return provisions of article 57 and the mutual legal assistance provisions of articles 46 and 55.

The United States generally deducts reasonable expenses incurred in seizure or forfeiture proceedings (18 USC § 981(i)).

The United States has concluded numerous agreements and other mutually acceptable arrangements regarding the disposal of forfeited property.

3.2. Successes and good practices

- *As demonstrated by the amounts of forfeited assets returned to other States, the United States is strongly committed to asset recovery and return and pursues recovery proceedings in cooperation with foreign competent authorities. Much of this work may be attributed to the Department of Justice Kleptocracy Asset Recovery Initiative, which is augmented by the work of other prosecutors and law enforcement authorities at all levels of government. The United States makes active use of the instrument of civil forfeiture, and criminal forfeiture where possible, and subsequently transfers successfully forfeited assets (art. 51).*
- *A whole-of-government approach is employed in asset recovery cases, and forensic investigators and accountants, as well as business professionals, support investigations and legal proceedings, often using intelligence information provided by FinCEN (art. 51).*
- *United States law allows for the ex parte order of the temporary restraint of assets on the basis of a foreign arrest or charge of a suspect or defendant for an offence that would give rise to forfeiture if the same conduct constituted an offence giving rise to forfeiture under United States law (art. 52, para. 2 (c)).*

3.3. Challenges in implementation

It is recommended that the United States:

- *Extend beneficial ownership transparency requirements to relevant non-financial businesses and professions and apply the Customer Due Diligence Rule to existing accounts (art. 52, para. 1, and art. 14, para. 1).*
- *Continue the practice whereby the Attorney General and the Secretary of the Treasury exercise discretion in a way that respects the binding obligations established under the Convention, in particular with regard to requests for asset return in cases of embezzlement or laundering of public funds (articles 54, 55 and 57).*
- *Continue to take measures to strengthen the fight against money-laundering and corruption and take measures pursuant to its legal system to uniformly enforce and implement the provisions of the Convention throughout its jurisdiction.*

IV. Implementation of the Convention

A. Ratification of the Convention

Pursuant to Article II(2) of the U.S. Constitution and Senate Resolution 150906/109-6, the Convention was approved by the United States Senate on 15 September 2006. The ratification documentation was then deposited with the U.N. on 30 October 2006 at the direction of the Secretary of State, which included a reservation preserving the right to assume obligations under the Convention in a manner consistent with the fundamental U.S. principles of federalism, pursuant to which both federal and state criminal laws must be considered in relation to the conduct addressed in the Convention. Article VI of the U.S. Constitution states that such ratified treaties, along with federal law, constitute the "supreme Law of the Land." The Convention, therefore, ranks high among the laws of the United States.

In U.S. practice, treaty provisions may be self-executing or non-self-executing. A self-executing provision is one which requires no implementing legislation to take effect as U.S. law; a non-self-executing provision is one which requires implementing legislation to be enforced as domestic law. Excepting Articles 44 (Extradition) and 46 (Mutual Legal Assistance), the obligatory provisions of the Convention would require legislation, but, with the reservations taken, the existing body of federal and state law and regulations is adequate to satisfy the Convention's requirements for legislation, and thus further legislation to implement the Convention was not required, and the Convention is consistent with existing U.S. law.

B. Legal system of the United States of America

The governmental system in the United States is a federal one, consisting of a national (federal) government and various state and local governments. The legal system of the United States is developed from the common law tradition of England. The law of the land derives from the U.S. Constitution, legislative enactments, and judicial decisions that interpret custom and precedent.

The U.S. Constitution creates the federal government and assigns limited powers to each of

three branches: executive, judicial, and legislative. The U.S. Constitution anticipates checks and balances among the various branches of government through shared responsibilities and oversight so that power is not concentrated in one person or branch. All remaining powers are reserved to the state governments and the people.

The President, who is chosen through a public election process, leads the federal executive branch. The U.S. Constitution assigns the President powers over the military and to execute the laws of the land and conduct foreign policy. The executive is also responsible for prosecuting crimes, including those involving the legislature or judiciary. The President delegates official responsibility for exercising these powers to subordinate Departments, agencies, and officers within the executive branch.

The federal legislative branch consists of representatives elected by popular vote to the House and Senate, known collectively as the U.S. Congress. Congress enacts laws within its jurisdiction that are considered to be the supreme law of the land. Congress can investigate the activities and conduct of personnel and officials in the other branches, and, for certain causes, may impeach the President, Vice President and members of the judiciary. Although the President is responsible for seeing that the laws are faithfully executed, Congress oversees their implementation and the President's stewardship.

The federal judicial branch is composed of judges, appointed by the President and confirmed by the Senate, and various employees hired to support judicial functions. Judges receive a lifetime appointment without diminution of pay and can only be removed by the Congress after impeachment. Federal judges, located at various U.S. district and appeals courts throughout the United States, can check the legislature's and executive's actions to ensure that they do not violate constitutional prerogatives and limits.

The fifty states each have their own constitutions and governments, including subordinate local and municipal governments. All states have created their own branches of government, complete with their own judicial systems and legislatures. The state governments hold powers not granted to the various federal branches via the U.S. Constitution, which allows them broad control over areas such as land use, corporate entities, and local crimes. However, laws enacted legitimately by the federal legislative branch are considered the "supreme law of the land" and, thus, binding on the states and their citizens.

As mentioned earlier, the legal system of the United States revolves around laws enacted by Congress and the various state legislatures. The federal and state judicial branches are responsible for resolving legal disputes and ensuring that enacted laws do not violate the U.S. or state constitutions. Under the U.S. common law system, judges may also interpret custom and tradition, and establish binding judicial precedent for interpreting the application of laws. The federal and state court systems are generally three-tiered, consisting of trial level courts, appeal level courts, and a supreme or ultimate court of appeal.

One issue that arises throughout the Convention is the question of how it can be implemented in a way that is consistent with the United States federal system. With respect to articles of the Convention that require States Parties to establish criminal offenses or related measures, if they have not already done so (in particular Articles 15, 16, 17, 23, 25, 27, 29, 31-32, 35-37), it should be noted preliminarily that these obligations apply at the national level. Existing federal criminal law has limited scope, generally covering conduct involving interstate or foreign commerce, or another important federal interest. Under the fundamental principles of federalism, offenses of a local character are generally within the domain of the states, but not all forms of conduct proscribed by the Convention are criminalized by all U.S. states in the form set forth by the Convention. For example, some states may not criminalize all of the forms of conduct set forth under Article 25, Obstruction of Justice. In the absence of a reservation, there would be a narrow category of such conduct that the United States would be obligated

under the Convention to criminalize, although under the federal system, such obligations would generally be met by state governments rather than the federal government. Because there may be situations where state and federal law will not be entirely adequate to satisfy an obligation in Chapters II and III of the Convention, the United States made a reservation: "The Government of the United States of America therefore reserves to the obligations set forth in the Convention to the extent that they (1) address conduct that would fall within this narrow category of highly localized activity or (2) involve preventive measures not covered by federal law governing state and local officials. This reservation does not affect in any respect the ability of the United States to provide international cooperation to other States Parties in accordance with the provisions of the Convention.

Furthermore, the United States submitted the following understanding: The United States understands that, in view of its federalism reservation, the Convention does not warrant the enactment of any legislative or other measures; instead, the United States will rely on existing federal law and applicable state law to meet its obligations under the Convention. The present review focuses on measures taken by the United States at the federal level only.

The legislative framework for preventing corruption and recovering assets includes, notably, the Ethics in Government Act, the Civil Service Reform Act, the Inspectors General Act, the Freedom of Information Act, the Federal Acquisitions Regulations, criminal laws against money-laundering and related criminal and civil forfeiture laws, the Foreign Corrupt Practices Act, titles 18 and 31 of the United States Code (USC) and the Bank Secrecy Act (as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act).

Available assessments of measures to combat corruption and mechanisms to review the implementation of such measures:

- Council of Europe's Group of States against Corruption (GRECO): http://www.coe.int/en/web/greco/evaluations/usa
- Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC): http://www.oas.org/juridico/english/usa.htm
- Financial Action Task Force: https://www.fatf-gafi.org/content/fatf-gafi/en/countries/detail/United-States.html
- OECD Working Group on Bribery: http://www.oecd.org/daf/anti-bribery/unitedstates-oecdanti-briberyconvention.htm

Relevant information regarding the preparation of the responses to the self-assessment checklist:

The State Department, as the focal point agency, worked with 12 U.S. agencies and offices (as listed above) to compile relevant information for each article. These 12 agencies each have a role in implementing measures of the UN Convention against Corruption. The State Department then reviewed the document, provided additional relevant information, and prepared it for submission through the self-assessment software.

The key institutions involved in corruption prevention and asset recovery include the Department of Justice, the Office of Government Ethics (OGE), the Council of the Inspectors General on Integrity and Efficiency (CIGIE), the Offices of Inspectors General (OIGs), the Office of Special Counsel (OSC), the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Securities and Exchange Commission (SEC), the

Department of the Treasury and that Department's Financial Crimes Enforcement Network (FinCEN).

Practices that the United States considers to be good practices in the implementation of the chapters of the Convention that are under review:

U.S. Office of Government Ethics (OGE): Preventing Conflicts of Interest for Incoming High-Level Executive Branch Officials through Ethics Agreement Compliance.

In the executive branch, the positions at the highest levels (i.e., non-elected positions) must be filled by Presidential appointment following the advice and consent of the Senate. These Presidentially appointed, Senate-confirmed (PAS) officials generally occupy positions of heightened responsibility and trust, such as agency heads, their deputies, and Inspectors General. Because of these greater responsibilities, there is a greater risk of and vulnerability to conflicts of interest or the appearance of such conflicts of interest. As a result, OGE has developed a rigorous process for ensuring that such individuals are free from potential conflicts of interest before they are appointed to their positions.

This process generally begins before the formal nomination of the PAS official by the President for consideration by the Senate. At this point, the potential nominee is required to file a public financial disclosure report with the White House, OGE, and the potential nominee's future agency. Although nominees to PAS positions are required by statute to file a public financial disclosure report only after their nomination is announced, the early review of these reports allows OGE and the agency to identify any potential conflicts of interest and determine an appropriate resolution of conflicts of interest before the potential nominee's consideration for the position is made public.

As a result of that review, the potential nominee will be required to enter into an "ethics agreement" with his or her prospective agency. An ethics agreement is a statement of relevant, specific, concrete commitments that the potential nominee will take to avoid conflicts of interest if he or she is appointed to office and becomes a PAS official. These commitments include resignations from outside positions, divestiture of conflicting assets, recusal from matters that may come before them in their government role, and other specific steps they will take to resolve conflicts of interest. These commitments are placed into writing and are transmitted to the White House and to the Senate for consideration. Importantly, because the ethics agreement is an agreement between the PAS official, their future agency's Designated Agency Ethics Official (DAEO), and OGE, commitments cannot be changed or rescinded without first obtaining OGE's approval. These ethics agreements are made public on OGE's website and can be requested along with the nominee's financial disclosure report after they have been finalized and transmitted to the Senate. OGE has provided a guide for drafting ethics agreements, which can be found here:

https://www.oge.gov/web/oge.nsf/0/E4716CFB6F236C1285258610004943C7/$FILE/Ethics%20Agreement%20Guide%20October%202020.docx

Once a PAS official has been appointed, he or she must comply with the commitments set forth in his or her ethics agreement within the timeframes described in the agreement. Generally, PAS officials have up to 90 days to meet their commitments. To ensure compliance, OGE requires that each PAS official complete and sign a "Certification of Ethics Agreement Compliance." This certification requires the PAS official to declare whether they have met all requirements set forth in their ethics agreement, including any resignations, divestitures, or recusals, and also requires the PAS official to declare that they have received their required ethics briefing. Once the form is completed, it is transmitted to the DAEO of the PAS official's agency who will then send it to OGE. OGE posts the Certification on OGE's website for public

viewing. If a PAS official fails to submit a certification by the deadline set forth in his or her ethics agreement, OGE will post a statement on its website that the PAS official has not submitted the Certification by the deadline.

This rigorous process ensures that high-level officials agree to their commitments prior to entering into service and are held accountable to those commitments. The process also ensures that there is transparency at all points in the process, from the disclosure of a nominee's assets on a public financial disclosure report, to their commitment to take steps to avoid or mitigate conflicts of interest arising from those assets in a publicly disclosed ethics agreement, to their compliance with those commitments in the publicly accessible Certification of Ethics Agreement Compliance.

House Committee on Ethics:

As a best practice, the House Committee on Ethics provides confidential advice to Members of the House of Representatives and staff of the House on prospective activities that may have ethical implications. Advice is provided by the Committee's nonpartisan, professional staff. Members and staff are encouraged to contact Committee staff for any question that may involve an ethical concern. It provides clients the opportunity to conform their actions to the ethics requirements. Additionally, Committee rule 3(k) states that good faith reliance on written opinions will protect against Committee sanctions.

Senate Select Committee on Ethics:

As a best practice, the Senate Select Committee on Ethics (Senate Ethics Committee) provides confidential advice to Members, officers, and employees of the Senate on prospective activities that may have ethics implications. Advice is provided by the Committee's nonpartisan, professional staff. Members, officers, and employees are encouraged to contact Committee staff for any question that may involve an ethical concern. It provides clients the opportunity to conform their actions to the ethics requirements. Additionally, Supplementary Procedural Rules 10(e)(2) and 11(e) state that any person relying on, in good faith, a Committee advisory opinion or interpretative ruling will not be subject to Senate sanctions.

Department of Justice - Non-Conviction Based Forfeiture:

The United States continues to make use of its non-conviction-based forfeiture laws to confiscate the proceeds of crime. The Department of Justice initiates non-conviction-based (NCB) confiscation proceedings against corruption proceeds and instrumentalities, including against both property located in and outside of the United States, if the property is traceable to criminal acts in the United States or to criminal conduct occurring in part in the United States. The implementation and use of non-conviction-based confiscation proceedings are particularly useful in instances where an offender cannot be prosecuted for reasons of death, flight, or official immunity.

UNODC

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The United States implements and enforces a comprehensive framework of laws, policies, and regulations that promote accountability, transparency, and integrity within the public sector. Within the executive branch of the federal government, responsibility for the day-to-day implementation of ethics programmes falls to the individual departments and agencies, which receive support and guidance from the U.S. Office of Government Ethics (OGE). The U.S. ethics framework is outlined in further detail under Article 5, paragraph 3. To promote public sector transparency, the Freedom of Information Act (FOIA) provides the public the right to request access to records from any federal agency. Generally, any person – United States citizen or not – can make a FOIA request. In addition to responding to specific FOIA requests, agencies are also required to automatically disclose certain information, including frequently requested records. The Office of Information Policy at the Department of Justice is responsible for issuing government-wide guidance on the FOIA as part of its responsibilities to encourage all agencies to fully comply with both the letter and the spirit of the FOIA. The U.S. Department of Justice's Public Integrity Section is responsible for enforcing laws pertaining to public sector corruption. The Section has exclusive jurisdiction over allegations of criminal misconduct on the part of federal judges and also monitors the investigation and prosecution of election and conflict of interest crimes. Apart from the Public Integrity Section, prosecutions are undertaken at the federal level by individual United States Attorney's Offices, each of which is assigned a jurisdiction within the U.S. and which in total cover the entire country.

The United States, through the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) has investigated and prosecuted cases involving various business sectors and various modes of bribing foreign public officials. In addition, it has been conducting proactive investigations, using information from a variety of sources, and resolving cases through plea agreements (PAs), Deferred Prosecution Agreements (DPAs), Non-Prosecution Agreements (NPAs), and the appointment of corporate monitors. Vigorous enforcement and the imposition of meaningful penalties, alongside increased private sector engagement, have encouraged the establishment of robust compliance programmes and measures, particularly in large companies.

In addition to the domestic implementation of laws, policies, and regulations in place to prevent and combat corruption, the United States has also incorporated anti-corruption into its national security and foreign policies. In December 2022, the White House released a new National

Security Strategy. As required by law, this strategy outlines the worldwide interests, goals, and objectives vital to the national security of the United States. The current National Security Strategy treats the fight against corruption as a core national security interest. Based on this strategy, the United States will use economic and diplomatic tools to target corrupt foreign officials and work with countries to improve their ability to fight corruption.

The United States also published its first ever Strategy on Countering Corruption in 2021, which directs and guides executive branch departments and agencies to elevate and integrate anti-corruption efforts and includes five pillars:

- Modernizing, Coordinating, and Resourcing U.S. Government Efforts to Better Fight Corruption;
- Curbing Illicit Finance;
- Holding Corrupt Actors Accountable;
- Preserving and Strengthening the Multilateral Anti-Corruption Architecture; and
- Improving Diplomatic Engagement and Leveraging Foreign Assistance Resources to Advance Policy Goals.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

To ensure that both executive branch employees and the public are aware of the scope and interpretation of the ethics laws and regulations, OGE shares all legal and programme management advisories that it issues through its public-facing website at the time they are published. In 2017, OGE's homepage was viewed over 230,000 times and the landing page for OGE's legal advisories was viewed over 26,000 times. OGE also uses social media to connect with public sector employees and the public. In 2017, there were over 10,500,000 views of OGE's social media posts on X and over 25,000 visitors to OGE's X page that were led back to OGE's website from X.

Following is a summary of the statistics relating to public corruption prosecutions by the Department of Justice's Public Integrity Section and the United States Attorney's Offices across the country drawn from the Public Integrity Section's 2013 through 2016 annual reports."

Defendants Charged

	Federal Officials	*State Officials*	*Local Officials*	*Other Individuals*	***TOTAL***
2013	*337*	*133*	*334*	*330*	***1,134***
2014	*364*	*80*	*231*	*241*	***916***
2015	*458*	*123*	*259*	*262*	***1,102***
2016	*354*	*139*	*234*	*255*	***982***

Defendants Convicted

	Federal Officials	*State Officials*	*Local Officials*	*Other Individuals*	***TOTAL***
2013	*315*	*119*	*303*	*300*	***1,037***
2014	*364*	*109*	*252*	*264*	***989***
2015	*402*	*97*	*200*	*205*	***904***
2016	*326*	*125*	*213*	*222*	***886***

In fiscal year 2017, the federal government received a record high of more than 800,000 federal FOIA requests.[3] Agencies responded by processing more than they received at over 820,000. Statistics on other years can be found on the Department of Justice Office of Information Policy website.

(b) Observations on the implementation of the article

The United States has a comprehensive set of laws, policies, and regulations to prevent and combat corruption in both the public and private sectors. They establish ethics frameworks to prevent conflicts of interest in public and private sectors, promote transparency in electoral funding and in government operations, and protect the integrity of public procurements and public finances.

The Ethics in Government Act and other relevant rules and policies set out a comprehensive, decentralized ethics programme and institutional framework for the prevention of corruption in the federal government consisting of dedicated bodies and functions, enforceable standards of ethical conduct, financial disclosure programmes, relevant training and education and restrictions on gifts, lobbying and other outside activities for entering, existing and separating public officials.

There are several mechanisms to ensure a uniform understanding of the ethics programme among agencies and public officials and to implement it consistently and effectively across the Federal Government. For example, the U.S. Office of Government Ethics (OGE) issues legal and programme management advisories and engages in public awareness activities on issues of ethics and integrity. Inspectors General in key government agencies conduct audits and investigations into any waste, fraud and abuse and recommend specific actions. The enforcement of relevant criminal statutes and other ethics laws is the responsibility of the Department of Justice.

Each specific component of the ethics programme is described further below.

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

[3] https://www.justice.gov/oip/page/file/1069396/download#:~:text=In%20FY%202017%2C%20the%20federal,requests%20received%20during%20FY%202016.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

As described more fully in the response to Article 7, the United States has established a comprehensive programme for the prevention of conflicts of interest and the establishment of ethical standards in the executive branch. This programme is based on written, enforceable conflict of interest statutes and Presidential Executive Orders as well as the executive branch-wide Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) and agency-specific supplemental regulations that augment the Standards of Conduct. Practices aimed at ensuring the prevention of conflicts of interest, described below, include the establishment of a supervising ethics office, the U.S. Office of Government Ethics (OGE); the requirement that each agency designate a Designated Agency Ethics Official (DAEO) and Alternative Designated Agency Ethics Official (ADAEO) to oversee the day-to-day activities of the ethics programme; the requirement that agencies conduct comprehensive and risk-tailored ethics education and training for their employees; the requirement that agencies provide individual advice and counsel to current and former employees to allow them to understand and conform their conduct to appropriate expectations; the establishment of two financial disclosure systems, one public and the other confidential; oversight of agency ethics programmes by OGE through periodic programme compliance reviews and through an annual questionnaire; and ongoing collaboration between agency ethics officials and OGE.

Minimum requirements for ethics programmes in individual agencies

OGE has established by regulation the minimum required functions of the ethics programme at each agency, as well as the specific Government ethics responsibilities of agency heads, agency ethics officials, human resource officers, supervisors and Inspectors General.[4] Core elements of the ethics programme are spelled out with particularity in the ethics programme regulations. For example, each agency must have a financial disclosure program, an advice and counsel program, and an ethics education and training program. More granularly, each agency is responsible for establishing effective written procedures for core elements of the ethics programme, such as the procedures to be used to review, certify, and publicly release financial disclosure reports. Employee ethics records are required to be maintained and disposed of in accordance with General Records Schedule 2.8, as well as other applicable General Records Schedules promulgated by the National Archives and Records Administration.[5] OGE has also established a standardized procedure that requires that information regarding any referral of conflict of interest violations made by an agency to the Department of Justice be sent to OGE.

OGE's regulations generally permit significant flexibilities in the implementation and organization of the ethics programme at each agency as a result of both the decentralized nature of the executive branch ethics programme, and because of wide variances in the organization, size, geographic location, and mission of each agency. Empowering agencies to control implementation of the ethics programme allows for "right-sizing" of the core elements of the program, sensitive to cultural and organizational differences.

As the supervising ethics office, OGE takes a number of steps to assist agencies in making informed decisions about the architecture of their ethics programmes. OGE routinely issues "Program Advisories" that inform agencies about ethics programme responsibilities, and changes thereto, as well as provide guidance to agencies in conducting ethics programme

[4] 5 C.F.R. part 2638.
[5] https://www.archives.gov/records-mgmt/grs/grs02-8.pdf.

management.[6] For example, OGE recently published a Program Advisory on assessing agency ethics risks and developing ethics education tools to mitigate those risks, as well as practical advice on how to do that.[7] OGE paired this Program Advisory with an ethics education risk questionnaire,[8] planning worksheet,[9] self-assessment evaluation form,[10] and maturity model.[11] These tools enable agencies to make evidence-based decisions about how to tailor their ethics education programmes to effectively mitigate actual and potential corruption risks.

OGE ensures that the regulatory ethics programme requirements are met through ethics programme reviews conducted by OGE's Compliance Division. There are three types of ethics programme reviews:

- plenary reviews
- inspections
- follow-up reviews

A plenary review examines, in-depth, all elements of an agency's ethics programme and results in a written report providing a narrative description of the ethics programme: 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 programme 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 Compliance Division to conduct a more comprehensive plenary review of an ethics programme. This would occur if the findings of an inspection indicated the ethics programme had deficiencies that could be more adequately addressed through a plenary review. OGE often provides the inspection format to agencies that are interested in proactively ensuring that their programme has met all required elements. The inspection format is available online.[12]

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 programme reviews are supplemented by an Annual Agency Ethics Programme Questionnaire. This Questionnaire is administered by OGE each year and is filled out by the ethics programme at each of the 130 plus executive branch agencies. The Questionnaire seeks extensive information about agency ethics programmes, including core elements of the ethics

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6 https://www.oge.gov/web/oge.nsf/Program%20Management%20Advisories.

7 https://www.oge.gov/Web/oge.nsf/Legal%20Docs/AD93D77821CC4D7A852585BA005BEC21/$FILE/PA-19-05.pdf?open

8 https://extapps2.oge.gov/Training/OGETraining.nsf/xsp/.ibmmodres/domino/OpenAttachment/training/ogetraining.nsf/A918F3824A1ECDA3852583E500442749/Body/Ethics%20Education%20Risk%20Questionnaire%20.docx.

9 https://extapps2.oge.gov/Training/OGETraining.nsf/xsp/.ibmmodres/domino/OpenAttachment/training/ogetraining.nsf/A918F3824A1ECDA3852583E500442749/Body/Ethics%20Educations%20Planning%20Worksheet.docx.

10 https://extapps2.oge.gov/Training/OGETraining.nsf/xsp/.ibmmodres/domino/OpenAttachment/training/ogetraining.nsf/A918F3824A1ECDA3852583E500442749/Body/Ethics%20Education%20Long%20Evaluation%20Form.doc.

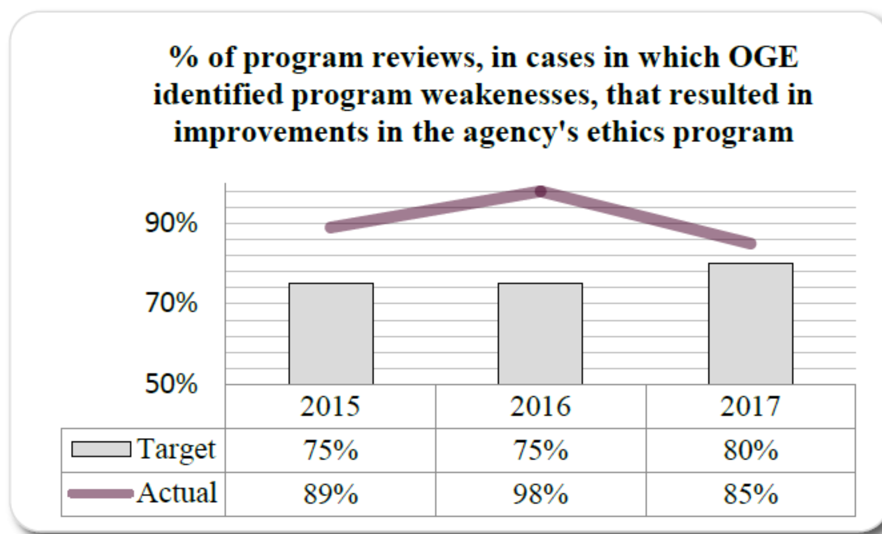
11 https://extapps2.oge.gov/Training/OGETraining.nsf/xsp/.ibmmodres/domino/OpenAttachment/training/ogetraining.nsf/A918F3824A1ECDA3852583E500442749/Body/Ethics%20Education%20Maturity%20Model.docx.

12 https://www.oge.gov/Web/OGE.nsf/Resources/U.S.+Office+of+Government+Ethics+(OGE)+Sample+Inspection+Report

programme 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 programme as well as the aggregate numbers and compliance rates for each of the main programme areas designed to prevent, detect, and resolve conflicts of interest.

Outcomes of compliance reviews and questionnaires

The purpose of each programme review is to ensure programme improvements at the agency under review. On average, 90% of OGE's ethics programme reviews have resulted in improvements in agencies' ethics programmes.



	2015	2016	2017
Target	75%	75%	80%
Actual	89%	98%	85%

Although deficiencies vary depending on each agency, OGE has identified a few consistent themes regarding agency programme deficiencies. These include deficiencies in the process for the collection and timely review of financial disclosure reports, and in the timely notification of officials who are onboarding, terminating, or undergoing a personnel action that makes them accountable for new responsibilities.

To address these issues, OGE recently implemented new regulations concerning the responsibilities of human resource officers in timely notifying agency ethics officials of the appointment or termination of any person required to file applicable financial disclosure forms.[13] OGE has also instituted a requirement that reports transmitted to OGE be reviewed and sent by agency officials in the applicable timelines,[14] and OGE tracks such information to ensure that such reports are received in a timely manner. OGE also issues a "year-end" report each year to the head of each agency regarding their agency's compliance with their financial disclosure responsibilities under the Ethics in Government Act, including the requirement to timely submit reports to OGE and to promptly provide any additional information necessary for OGE to certify the reports.

OGE also notes that a persistent theme identified by agencies in the Annual Questionnaire relates to challenges with resources (including budget, personnel, and technology) as well as information. Because of the decentralized nature of the ethics programme, OGE does not have

13 5 C.F.R. § 2638.105.
14 https://www.oge.gov/web/oge.nsf/ethicsofficials_financial-disc

direct authority over resource allocation at agencies. Rather, Congress and agency heads are responsible for ensuring that the ethics programme has the appropriate resources. As a result of these concerns, OGE's Director has recently issued a memorandum to all agency heads, calling on them to demonstrate a commitment to ethical leadership by, among other things, meeting with ethics staff to ensure that they have the support needed.[15] OGE's Director has also recently met with the heads of Cabinet-level agencies to discuss ways that they can support the ethics programme at their agencies.

Measures to establish the effectiveness of preventive practices

Measuring the effectiveness of prevention is extremely difficult. No baseline exists for how many individuals would act corruptly absent the ethics programme. As such, OGE does not have direct evidence regarding the number of corrupt acts prevented because of the programmes administered by OGE. Although OGE does track the number of administrative and criminal enforcement actions that are based in part on the ethics laws, changes in the level of enforcement actions and prosecutions do not necessarily equate with increases or decreases in the efficacy of preventative actions. In some cases, increased enforcement actions may suggest greater awareness of the laws, or, it may suggest that because of counseling and financial disclosure programmes there is better proof that someone intended to violate the law and therefore, prosecutions are more easily handled. Likewise, a decrease in enforcement may be the result of lower interest in enforcement cases, fewer resources dedicated to enforcement actions, or other matters unrelated to whether the preventative programme is overall effective.

What OGE does measure directly and through each agency ethics programme is the level of awareness of ethics laws and ethics programmes. For example, whether employees have reasonable guidance and standards, sufficient training to help them understand those standards, and on-call advice from their own agency ethics officials.

OGE has identified a high-level of awareness by employees of the ethics programme through a recent randomized survey of executive branch employees administered by the Merit Systems Protection Board.[16] That survey evidenced that 80% of employees were either "familiar" or "very familiar" with their agency's ethics programme, 89% were aware that there were officials at their agency who could provide them with advice on ethics issues and 78% knew how to contact those officials. Over 80% of respondents identified that ethics training they had received was useful for understanding the applicable ethics rules, increasing awareness of potential ethics issues, and in guiding their decisions and conduct. Moreover, 94% of respondents stated that they "agreed" or "strongly agreed" that they understood the importance of ethical behavior in the federal workplace.

OGE also evaluates how well agencies are doing in implementing effective ethics programmes, both through OGE's Annual Questionnaire and through programme reviews. OGE notes that agencies have a high rate of compliance for core elements of the ethics programme, including compliance with financial disclosure requirements, training, and advice and counseling programmes. For example, agencies had 99% compliance with financial disclosure requirements and over 90% compliance with training requirements in calendar year 2017.[17]

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15 https://www.oge.gov/web/oge.nsf/News+Releases/AA1DAC2965F151A2852585B6005A1C8A?opendocument

16 The portions of the survey related to ethics awareness are available here: https://www.oge.gov/web/oge.nsf/0/44B8C70719A52E3A852586530070037C/$FILE/2019%20AQ%20Summary%20Report%20FINAL.pdf.

17 U.S. Office of Gov't Ethics, Annual Agency Ethics Programme Questionnaire – Summary Report https://www.oge.gov/web/oge.nsf/0/87394876D4CD3D708525865300703F1E/$FILE/2017%20AQ%20summary%20FINAL%20(rev.8.10.18).pdf.

(b) Observations on the implementation of the article

As described above and elsewhere in the report, the United States has established and promotes effective practices aimed at the prevention of corruption and conflicts of interest in both the public and private sectors.

The Ethics in Government Act and other relevant rules and policies set out a comprehensive, decentralized ethics programme for the prevention of financial conflicts of interest in the public sector consisting of enforceable standards of ethical conduct, financial disclosure programmes, training and education and restrictions on gifts, lobbying and other outside activities for public officials who are entering service, holding office or separating from service. OGE provides overall oversight and leadership of the ethics programme in the executive branch while the heads of agencies and entities lead the implementation of the programme in their respective agency or entity. Ethics committees in each chamber of Congress set ethical rules and standards for Members and staff of Congress.

OGE develops rules and regulations on conflicts of interest and ethics and provides technical assistance in relation to proposed legislation. OGE informs the public and other key stakeholders about its work and the ethics programme through its website and social media tools.

Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The core statutory conflicts of interest laws for the executive branch were enacted in 1962. The Ethics in Government Act (EIGA), which established the U.S. Office of Government Ethics (OGE) and the public financial disclosure programme for the Federal government, was enacted in 1978. Over the course of the past fifty years, these laws have been reviewed, amended, and augmented by Congress on a number of occasions. Important amendments occurred as part of the Ethics Reform Act of 1989, which made comprehensive changes to EIGA and post-employment laws, and the Honest Leadership and Open Government Act of 2007. More recent legislative changes include the passage of the Stop Trading on Congressional Knowledge (STOCK) Act of 2012, which established periodic financial disclosure reporting of securities for high-level executive branch officials, prohibited high-level executive branch employees from participating in initial public offerings of securities, and established additional restrictions on the use of non-public information. As described more fully in the response to Article 6, OGE is charged with periodically evaluating the effectiveness of legislation and regulations related to conflicts of interest and ethics in the executive branch, and proposing necessary amendments to those laws to ensure they continue to adequately prevent corruption in the executive branch. In this regard, OGE has issued a number of comprehensive regulatory updates within the past two years, including significant revisions of the ethics programme management regulations, regulations implementing the financial disclosure program, and regulations governing executive branch employees' acceptance of gifts from outside sources.

The Administrative Conference of the United States is an independent federal agency dedicated to improving the administrative process through consensus-driven applied research and providing nonpartisan expert advice and recommendations for improvement of federal agency procedures. Its membership is composed of innovative federal officials and experts with diverse views and backgrounds from both the private sector and academia. Research results are embodied in the Conference recommendations. Like its recommendations, the Conference's research covers general administrative law topics that cut across many federal agencies and includes specific ways agencies can improve particular procedures.

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, nonideological, 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 programmes 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.

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 Federal Government agencies and to increase the professionalism and effectiveness of the Offices of Inspectors General workforce.

The concept of a statutory Inspector General (IG) was broadly introduced to the civilian side of the Federal government by the Inspector General Act of 1978 (IG Act). The original Inspectors General (IGs) were established in 12 Federal agencies. The concept has proved so successful that today, there are 72 statutory IGs across the Federal government.

Statutory IGs are structurally unique within the Federal government. The stated purpose of the IG Act is to create independent and objective units within each agency whose duty it is to combat waste, fraud, and abuse in the programmes and operations of that agency. To this end, each IG is responsible for conducting audits and investigations relating to the programmes and operations of its agency, and providing leadership and coordination and recommending policies for, and to conduct, supervise, or coordinate other activities for the purpose of promoting economy, efficiency, and effectiveness and preventing and detecting fraud and abuse in those programmes and operations. Significantly many OIG's employ sworn law enforcement officers who work closely with the Department of Justice to investigative allegations of fraud, including

public corruption, targeting Federal programmes.

Importantly, each IG is also to keep the agency head and the Congress "fully and currently informed" about problems and deficiencies relating to the administration of agency programmes and operations. The IG Act contains a variety of statutory guarantees of Office of Inspector General (OIG) independence, designed to ensure the objectivity of OIG work and to safeguard against efforts to compromise that objectivity or hinder OIG operations. It is these guarantees of independence that make statutory IGs unique.

Identification of right stakeholders and engagement thereof during the evaluation or amendment of ethics laws

In the United States, the U.S. Congress is responsible for the passage and amendment of the statutory ethics laws. In many cases, Congress seeks input from interested parties during the consideration of new or amended ethics laws. This often is done through formal hearings. For example, Congress recently held a hearing on an omnibus legislative measure that would make comprehensive changes to the ethics laws.[18] Representatives of five civil society organizations testified at that hearing.[19] OGE also has a role in "assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments" to Congress for consideration.[20] In the past, OGE has solicited the input of interested parties prior to providing suggested amendments to the financial disclosure laws or the conflict of interest laws. This has included requesting comments from non-Government organizations as well as the Designated Agency Ethics Official of each agency, posting notices requesting comment from the general public in the Federal Register, and inviting individuals to focus group meetings.[21]

In relation to administrative regulations, OGE posts notices of proposed regulations in the Federal Register for feedback and comment from the public. OGE also posts proposed regulations on its website, as well as all comments received. As is required by law, OGE considers each comment and OGE will make changes to the regulation based on those comments. OGE also provides opportunities for the DAEOs of each agency to comment on proposed regulations throughout the process, and seeks input from specific groups with interests in such matters. In certain cases, OGE also actively seeks input from the public and interested parties prior to proposing a regulation. For example, OGE recently published a request in the Federal Register, on OGE's website, and on OGE's social media page requesting comments regarding the need for regulations on legal expense funds. OGE also held a virtual hearing on the issue, where representatives of civil society organizations, a former DAEO, and an academic shared views on this issue.

Outside of the context of the ethics laws, OGE also solicits feedback on other areas from parties with interests in OGE's work. For example, to develop OGE's Strategic Plan (Plan), OGE utilized a participatory and inclusive process that included input from a wide array of key stakeholders. For example, OGE sought feedback from the Congress, executive branch ethics officials, the American public, and Government watchdog groups. A preliminary draft of the Plan was posted on OGE's public website, and a Federal Register notice was issued. The final Plan reflects feedback provided to OGE by these external stakeholders.

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18 For the People Act of 2019, H.R. 1, 116th Cong. (2019), http://docs.house.gov/meetings/GO/GO00/20190206/108837/BILLS-116HR1ih.pdf.

19 https://oversight.house.gov/legislation/hearings/hr-1-strengthening-ethics-rules-for-the-executive-branch.

20 5 U.S. Code § 13122.

21 *See, e.g.*, U.S. Office of Gov't Ethics, Report to the President and to Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment (2006), https://www.oge.gov/web/OGE.nsf/0/F3127FD1FD0A2415852585B6005A126D/$FILE/fb1bb9d5af124e6ca85c3cab2db6ac582.pdf.

Monitoring and evaluations to ensure that the amendments made, or reforms brought, are properly executed, having the desired impact and that they can be revised as and when necessary.

Congress, as the legislative branch of the United States, is tasked with determining whether the statutory ethics laws meet their objectives. OGE, on the other hand, has a primary role in ensuring the proper implementation of newly passed ethics legislation. OGE does so through implementing regulations, training and education, as well as Legal and Program Advisories. In doing so, OGE often works closely with stakeholders, including agency ethics officials. For example, when Congress passed the Stop Trading on Congressional Knowledge Act of 2012, OGE worked closely with agency ethics officials to ensure the smooth implementation of various new ethics requirements found in that law.

At the regulatory level, OGE has a responsibility to evaluate "with the assistance of the Attorney General and the Office of Personnel Management, the need for changes in rules and regulations issued by the Director and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws."[22] As a result, OGE routinely reviews its regulations to consider whether updates or amendments are necessary. This process is informed by various factors, including information received by OGE through Desk Officer consultations, public reports of employee behaviors, and OGE's review of financial disclosure reports.

With regard to implementation, as noted above, OGE conducts regular programme reviews of agencies to ensure that they have implemented appropriate ethics programme elements. OGE also has continuous contact with agencies through agency support initiatives. For example, OGE's Desk Officer programme and General Counsel and Legal Policy Division provide ongoing advice and counsel to agencies across the executive branch on the proper interpretation and application of the ethics laws and regulations. This is generally done through informal requests for assistance from agency ethics officials, but also includes the issuance of Legal and Program Advisories, ethics training, and other informal discussions. In 2018, OGE fielded over 16,000 requests for assistance from agencies on issues related to legal interpretation, ethics programme management, and financial disclosure. These consultations ensure that the ethics laws are being applied uniformly and even-handedly across the executive branch. OGE also uses the information from these consultations to identify trends in questions and behavior that may require additional or more formal interventions, such as the issuance of a Legal or Program Advisory.

OGE's agency support also includes a robust "train the trainer" program. The purpose of this programme is twofold: first to provide agency ethics officials with programmatic tools and a framework for building an effective prevention programme at their agency; and second to inform ethics officials of the meaning and scope of the ethics laws and regulations. In regards to this first objective, OGE's Institute for Ethics in Government has created a framework to assist ethics officials in identifying anti-corruption risks at their agency, and then to tailor the content and timing of agency training to best counter those risks as well as to evaluate the results of that training. OGE has also provided a research blog for ethics officials that details specific cognitive biases and how they can deal with those biases in administering their ethics programmes. In regards to the second objective, OGE has created an extensive compendium of training videos and tools on various ethics laws and regulations for ethics officials, as well as tools that ethics officials can use with the employees of their agencies. In addition, when new ethics laws are passed, or OGE issues new administrative regulations, it is OGE's policy

[22] 5 U.S.Code § 13122.

to provide additional training on those new laws and regulations. This training ensures that there is a uniform understanding of these laws and regulations, and also provides opportunities for ethics officials to ask questions, either during the training or later through the OGE Desk Officer program.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

Each year, CIGIE reports its results to the President and the Congress in a public report. In the most recent publicly available report for Fiscal year 2017, CIGIE reported the following outcomes:

- 3,828 audit, inspection, and evaluation reports issued (many of them publicly available);
- 21,568 investigations closed;
- 518,755 hotline complaints processed;
- 4,749 indictment and criminal information;
- 4,383 successful prosecutions;
- 1,471 successful civil actions;
- 4,662 suspensions or debarments from activity in federal programmes; and
- 4,086 personnel actions.

Cumulatively, the results of audit and inspections work conducted by OIG's identified $32.7 billion in potential savings from report recommendations.

In addition, as a result of criminal and other investigative actions an additional $21.9 billion was ordered or recovered.

Each individual OIG reports its activity to Congress every 6 months in a public report that highlights its activities and the more significant investigations results.

(b) Observations on the implementation of the article

The United States Congress is tasked with determining whether the statutory ethics laws meet their objectives and has reviewed, amended and augmented these laws on a number of occasions over the course of the past fifty years.

In the executive branch, OGE is charged with periodically evaluating the effectiveness of ethics laws and regulations, and proposing necessary amendments to those laws to ensure that they continue to adequately prevent corruption. OGE has issued a number of comprehensive regulatory updates recently, including significant revisions of the ethics programme management regulations, regulations implementing the financial disclosure program, and regulations governing executive branch employees' acceptance of gifts from outside sources.

In addition, the Administrative Conference of the United States is an independent agency dedicated to improving the administrative process through consensus-driven applied research and providing nonpartisan expert advice and recommendations for improvement of federal agency procedures. The Government Accountability Office (GAO) advises Congress and the heads of executive agencies about ways to make government more efficient, effective, ethical, equitable, and responsive.

Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The United States is an active State Party to several anticorruption-related conventions and legal instruments, such as the Inter-American Convention Against Corruption, the Anti-Bribery Convention, and the Financial Action Task Force. As a State Party, the United States also actively engages in related review mechanisms to strengthen compliance with these frameworks. For example, the United States anti-corruption framework has been reviewed under the Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption (MESICIC) and the Council of Europe's Group of States against Corruption (GRECO).

The United States is also a member of several multistakeholder initiatives, such as the Open Government Partnership. The Open Government Partnership (OGP) is an international initiative aimed at securing concrete commitments from governments to promote transparency, increase civic participation, fight corruption, and harness new technologies to make government more open, effective, and accountable. A multi-stakeholder International Steering Committee, co-chaired by the United States and Brazil in its inaugural year, is comprised of government and civil society representatives from around the world.[23]

The United States published its first Open Government Partnership National Action Plan in September 2011, pledging commitments to promote transparency, empower citizens, fight corruption, and harness the power of new technologies. The action plan contained detailed commitments in a wide variety of areas, developed by governments in consultation with citizens.[24] In addition to supporting multilateral and bilateral assistance requests, the U.S. Office of Government Ethics (OGE) frequently hosts foreign delegations through its International Outreach and Assistance Program. The audiences for these programmes are primarily comprised of public officials but often times include business leaders, journalists, leaders of non-governmental organizations, attorneys, academics, and military leaders. Through these programmes, foreign delegations come to OGE to learn about the Executive branch's ethics programme and how that programme fits under the broader rubric of anti-corruption, good governance, and transparency. In fiscal year 2017, OGE briefed 20 foreign delegations comprising 260 individuals representing 101 countries. In fiscal year 2018, OGE briefed 19 foreign delegations comprising 267 individuals representing 122 countries. Recent delegations included a round table session with the President and staff from Brazil's Public Ethics Committee (Comissão de Ética Pública), a meeting with representatives from South Korea's Public Ministry of Management, and meetings with legislators from the Republic of Indonesia.

[23] The United States is again serving on the OGP Steering Committee, beginning a three-year term on the leadership body in October 2023.

[24] The United States has published four subsequent OGP National Action Plans, the most recent in December 2022.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

As referenced above, the United States is a member of several anticorruption-related conventions and legal instruments. The evaluations and reviews of the United States conducted by the review bodies of these conventions and instruments can be found at the following links:

- Council of Europe's Group of States against Corruption (GRECO): http://www.coe.int/en/web/greco/evaluations/usa
- Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC): http://www.oas.org/juridico/english/usa.htm
- Financial Action Task Force: https://www.fatf-gafi.org/content/fatf-gafi/en/countries/detail/United-States.html
- OECD Working Group on Bribery: http://www.oecd.org/daf/anti-bribery/unitedstates-oecdanti-briberyconvention.htm

The United States also created a website describing its participation in each of these review mechanisms and can be found here: https://www.state.gov/reviews-of-u-s-anti-corruption-efforts/

(b) Observations on the implementation of the article

The United States participates in several international instruments and initiatives related to corruption, such as the Inter-American Convention Against Corruption, the Organisation for Economic Co-operation and Development Anti-Bribery Convention, GRECO, FATF and several of the FATF-style regional bodies, the Open Government Partnership and the anti-corruption working groups of the Group of 20 and the Asia-Pacific Economic Cooperation.

The United States also assists other States and civil society in developing and implementing specific corruption prevention measures, such as through the Bureau of International Narcotics and Law Enforcement Affairs of the U.S. Department of State and the Anti-Corruption Center of the United States Agency for International Development.

These measures are praiseworthy and shall be highlighted as a good practice:

(c) Successes and good practices

The United States is the only State Party which participates in every major international anti-corruption review mechanism. The United States actively participates in relevant international instruments and initiatives and assists other States and civil society in developing preventive measures.

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

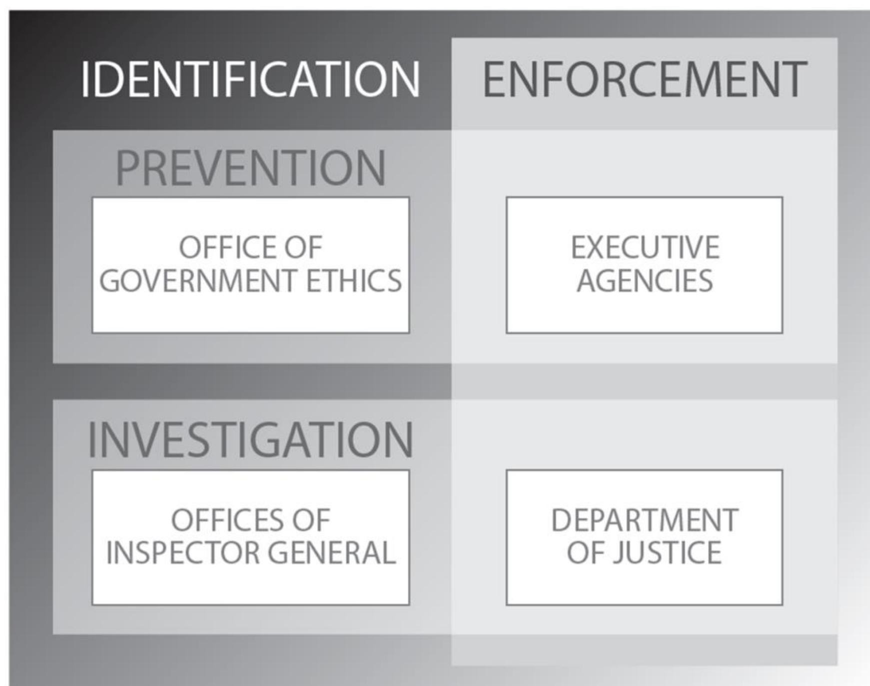
(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

As detailed above, the 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 programmes 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 government as a whole, CIGIE conducts cross cutting projects.

OGE

OGE is an oversight and policy body focused on preventing violations of ethics rules from occurring in the first place. This mission is spelled out in OGE's establishing legislation, which tasks OGE with providing "overall direction of executive branch policies related to preventing conflicts of interest."[25] OGE is not a law enforcement body, nor does it have a dedicated team tasked with investigating instances of individual violations. As noted in the below figure, other bodies in the Federal Government are tasked with investigating and enforcing the ethics laws, including the Inspectors General and the Department of Justice.



25 5 U.S.C. app. § 402(a).

The traditional separation of responsibilities allows each component to focus on, and specialize in, the area under their jurisdiction. At the same time, OGE does have limited investigative authorities for individuals. OGE has not exercised this authority because other elements, including Inspectors General, the Department of Justice, and agencies, are in a better position to engage in investigations and are authorized to take actions against employees who are found to have violated ethics laws. OGE is prohibited from making a finding that any criminal law has been violated, and cannot take disciplinary or corrective action against any person. OGE is therefore limited to making recommendations to agencies. In practice, and pursuant to OGE's regulations, upon receiving information of a possible violation of non-criminal ethics laws, OGE will work with the agency and may recommend that the agency head or Inspector General conduct an investigation.[26] If OGE had information regarding a potential violation of a criminal ethics law, OGE would refer that information to the agency's Inspector General or to the Department of Justice.[27]

Discussion about whether to provide OGE with expanded investigatory tools is ongoing, and a number of bills have been considered by the current Congress that would do so.

OSC

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 is currently reauthorized through 2023. 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 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.

OSC investigates claims of whistleblower retaliation, which includes taking certain personnel actions against an employee (removal, suspension, etc.), not taking certain personnel actions (such as failing to promote), and threatening to take or not take a personnel action. If OSC makes a finding that retaliation occurred, it works with the relevant agency to ensure that they take the appropriate corrective action which is typically the *status quo ante* (reversing a removal or suspension) or providing other appropriate relief (such as damages). If the agency

[26] 5 C.F.R. §§ 2638.503, .504.
[27] 5 C.F.R. § 2638.502.

refuses to cooperate in light of the findings, OSC can pursue quasi-litigation through a hearing before an administrative judge at the Merit Systems Protection Board (MSPB), and if successful, obtain the appropriate corrective action. A similar process occurs if OSC determines that discipline of the subject official(s) is warranted: either OSC, the agency, and the official negotiate disciplinary action, or OSC can seek it at the MSPB.

A finding of retaliation and successful attainment of corrective action and relief, as well as attainment of discipline against a subject official who retaliated, all serves to deter future retaliation.

Furthermore, OSC can pursue a stay, or an abeyance, of a personnel action (such as a removal or suspension) or a threatened personnel action (such as a proposed removal or proposed suspension), pending further investigation by OSC, if there are reasonable grounds to believe that a prohibited personnel practice has occurred or will occur. OSC will typically obtain a stay through informal negotiation with the employing agency, or if an agreement on a stay cannot be reached, OSC can pursue a binding order from the Merit Systems Protection Board to stay the action or threatened action. This allows the employee to remain in place pending further investigation, rather than suffer the personnel action and then wait for the completion of an investigation.

Every year, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and GAO hold a conference specifically designed to ensure coordination between GAO and the IG community's efforts, as well as identify emerging area and priorities for the future. OIGs and GAO also regularly engage in deconfliction efforts to ensure that they are not duplicating efforts.

GAO is a member of the International Organization of Supreme Audit Institutions (INTOSAI) and its Governing Board. INTOSAI engages internal and external stakeholders, including the United Nations, on anticorruption issues including through the development of international standards for Supreme Audit Institutions, its Working Group on the Fight Against Corruption and Money Laundering, and through a Memorandum of Understanding with the United Nations Office on Drugs and Crime.

The Inspector General Empowerment Act of 2016 mandated that CIGIE conduct an analysis of critical issues that involve the jurisdiction of more than one individual federal agency. In response, CIGIE consulted within the Inspector General community to determine six high-impact issues where coordination and collaboration among OIGs would continue to be most beneficial:

- Strengthening cybersecurity
- Modernizing information technology (IT) infrastructure
- Safeguarding national security
- Ensuring integrity and efficiency in contracting and subcontracting
- Enhancing oversight of grants and
- Preventing fraudulent benefit claims and improper payments.

Specific examples of cross-cutting initiatives include:

- Web Applications Security - Assessing publicly facing web applications across Federal agencies to identify security weaknesses, conduct in-depth reviews of selected systems, and review agency-related security policies and procedures.

- Disaster Assistance Oversight – Providing joint coordination of IG activities involving the response and recovery work associated with recent Hurricanes Harvey, Irma, and Maria, and the development of strategies and coordinated efforts to support stakeholders and the Federal community in future disasters.

- Federal Information Security and Modernization - Creating a model to guide transparency of accomplishments and areas for improvement in information security and to ensure consistency in IGs' annual FISMA reviews.

Congress

The Senate and House Ethics Committees are tasked with interpreting and enforcing the respective chambers ethics rules. The Committees have sole jurisdiction over the interpretation of the Code of Official Conduct, which governs the acts of Members, officers, and employees. The Committees' core responsibilities include providing training, advice, and education to Members, officers, and employees; reviewing and certifying all financial disclosure reports Members, Congressional candidates, officers, and senior staff are required to file; and investigating and adjudicating allegations of misconduct and violations of rules, laws, or other standards of conduct.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

The U.S. Office of Government Ethics (OGE), established by the Ethics in Government Act of 1978 (EIGA), provides overall leadership and oversight of the executive branch ethics programme, which is designed to prevent and resolve conflicts of interest. OGE's mission is part of the very foundation of public service, and is aimed at ensuring that executive branch employees make impartial decisions based on the interests of the public when carrying out the governmental responsibilities entrusted to them, serve as good stewards of public resources, and loyally adhere to the Constitution and laws of the United States. OGE maintains a staff of around 70 full-time employees, including specialized experts in the fields of financial disclosure, ethics law and policy, and ethics education.

To carry out its vital leadership and oversight responsibilities for the executive branch ethics programme, OGE:

- Provides expert guidance and support to stakeholders; strengthening the expertise of officials who are integral to the executive branch ethics programme; and continuously refining ethics policy and issuing interpretive guidance;
- Promulgates, maintains, and advises on enforceable standards of ethical conduct for the nearly three million employees in over 130 executive branch agencies, including the White House;
- Oversees a financial disclosure system that reaches more than 28,000 public and more than 370,000 confidential financial disclosure report filers;
- Holds the Executive accountable for carrying out an effective ethics programme by monitoring agency compliance with executive branch ethics programme requirements; and monitoring senior leaders' compliance with individual ethics commitments;
- Provides education and training to the nearly 5,000 ethics officials executive branch-wide;
- Contributes to the continuity of senior leadership in the executive branch by preparing for the Presidential transition; and providing assistance to the President and the Senate in the Presidential appointment process;
- Conducts outreach to the general public, the private sector, and non-governmental organizations; and

- Provides technical assistance to the Congress, state, local and foreign governments, associations, and international organizations.

OGE's responsibilities include "developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to conflicts of interest and ethics in the executive branch." These regulations are described more in the responses to Article 7 and 8, and include regulations establishing financial disclosure requirements (5 C.F.R. part 2634); the Standards of Conduct for Employees of the Executive Branch (5 C.F.R. part 2635); regulations implementing statutory prohibitions on outside earned income and employment for certain non-career officials (5 C.F.R. part 2636); regulations interpreting and implementing the criminal prohibitions on self-dealing and financial conflicts of interest (5 C.F.R. part 2640) and post-employment restrictions (5 C.F.R. part 2641); as well as regulations establishing ethics programme responsibilities for executive branch agencies (5 C.F.R. part 2638).

OGE is also responsible for "assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments." In the last 15 years, OGE has submitted to Congress various proposed revisions to EIGA for consideration. OGE has also submitted several reports to Congress that contain legislative recommendations and contributed to other Congressionally-mandated reports proposing modifications and augmentations of EIGA and the conflict of interest statutes. OGE also monitors legislation for potential changes to the ethics laws or other laws that might impact the ethics programme, and provides technical assistance to Congress on draft legislative measures at the request of the appropriate committees.

OGE is also responsible for "evaluating, with the assistance of the Attorney General and the Office of Personnel Management, the need for changes in rules and regulations issued by the Director and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws." OGE recently conducted a comprehensive review of the implementing regulations for the financial disclosure system at 5 C.F.R. part 2634, portions of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, and the ethics programme regulations found at 5 C.F.R. part 2638, which resulted in various amendments to modernize the regulations and better align the regulations with best practices and lessons learned. These reviews were done in consultation with agency ethics officials across the executive branch and with other stakeholders, including Inspectors General and the Council of the Inspectors General on Integrity and Efficiency (CIGIE), the U.S. Office of Personnel Management (OPM), and the Department of Justice. OGE has also begun an in-depth review of the existing regulation governing financial disclosure conflict of interest exemptions. OGE also works with individual executive branch agencies to publish agency-specific supplemental ethics regulations that tailor ethics programme requirements to meet specific agency needs. These supplemental regulations are generally responsive to agency-specific risks and are published in consultation with OGE.

As the supervising ethics office, OGE sets policy for the entire executive branch ethics programme. However, the executive branch ethics programme is decentralized, with OGE overseeing a community of ethics practitioners that makes up around 5,000 ethics officials in 136 agencies. For further details, see responses to Article 7.

Congress:

In the 114th Congress, the House Committee on Ethics:

- Issued more than 850 formal advisory opinions regarding ethics rules;

- Fielded nearly 55,000 informal telephone calls, emails, and in-person requests for guidance on ethics issues;
- Released 14 advisory memoranda on various ethics topics to the House;
- Provided training to approximately 11,000 House Members, officers, and employees each year, and reviewed their certifications for satisfying the House's mandatory training requirements;
- Received nearly 16,000 Annual Financial Disclosure Statements and amendments filed by House Members, officers, senior staff, and House candidates; and
- Received more than 3,000 Periodic Transaction Reports filed by House Members, officers, and senior staff, containing thousands of transactions.
- Commenced or continued investigative fact-gathering regarding 78 separate investigative matters;
- Filed 5 reports with the House totaling nearly 2,100 pages regarding various investigative matters;
- Resolved 40 additional investigative matters confidentially;

In the 114th Congress, the Senate Ethics Committee:

- Issued more than 1,755 ethics advisory letters and responses including, but not limited to, 1,484 travel and gifts matters (Senate Rule 35) and 176 conflicts of interest matters (Senate Rule 37).
- Fielded approximately 20,001 telephone inquiries and 4,364 inquiries by email for ethics advice and guidance;
- Provided 8 new Member and staff ethics training sessions; 49 Member and Committee office campaign briefings; 41 employee Code of Conduct training sessions; 21 public financial disclosure clinics, seminars, and webinars; 45 ethics seminars and customized briefings for Member DC offices, state offices, and Senate committees; 9 private sector ethics briefings; and 12 international briefings;
- Received 6,377 public financial disclosure and period disclosure of financial transaction reports filed by Senate Members, officers, employees, and Senate candidates;
- Received 118 alleged violations of Senate rules;
- Conducted 12 preliminary inquiries;
- Dismissed 8 alleged violations, after conducting a preliminary inquiry into the matters, for lack of substantial merit or because it was inadvertent, technical, or otherwise of a de minimis nature;
- Dismissed 79 alleged violations for lack of subject matter jurisdiction or in which, even if the allegation in the complaint were true, no violation of Senate rules would exist; and
- Dismissed 27 violations because they failed to provide sufficient facts to any material violation of the Senate rules beyond mere allegation or assertion.

(b) Observations on the implementation of the article

The United States has established a comprehensive ethics programme within the executive branch of the federal government. The programme inter alia covers conflict of interest, Presidential Executive Orders, standards of conduct. It is implemented by individual departments and agencies, under the guidance and support of OGE.

OGE provides expert advice and training to more than 5,000 ethics officials in over 130 executive branch agencies through, inter alia, ethics training, advice and counselling for executive branch employees. OGE evaluates agencies' performance in implementing the ethics programme through the OGE annual questionnaire and programme reviews.

OGE provides overall oversight and leadership of the ethics programme while the heads of agencies and entities lead the implementation of the programme in their respective agencies. OGE develops rules and regulations on conflicts of interest and ethics, assists in evaluating the effectiveness of relevant legislation and in recommending appropriate amendments. OGE informs the public and other key stakeholders about its work and the ethics programme through its website and social media tools.

Additionally, Offices of Inspectors General (OIGs) in key agencies as well as the Government Accountability Office as the supreme audit institution of the United States, conduct audits, evaluations, and investigations to prevent and combat any waste, fraud, abuse and corruption. Representatives of OGE, OIGs, GAO, and other relevant bodies participate in the Conference of Inspectors General on Integrity and Efficiency (CIGIE) to identify, review and develop coordinated responses to integrity, economy and effectiveness issues that transcend individual agencies and to aid in the establishment of a professional, well-trained and highly skilled workforce in OIGs.

The U.S. Office of Special Counsel (OSC) protects federal employees from certain personnel actions and safeguards the merit system.

There exist the Senate and House Ethics Committees that are responsible for interpreting and enforcing the respective chambers ethics rules.

Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

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 programme 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 programme to ensure their understanding of the ethics laws.

OGE also pursues efforts to increase employees' understanding and commitment to a performance culture using a variety of internal communications methods. For example, OGE conducts regular "all hands" meetings with the entire OGE staff to discuss progress toward meeting agency goals and to promote an understanding of OGE's priorities and direction. OGE also holds regular executive and senior staff meetings to discuss agency goals, priorities, and the status of significant programme activities. OGE holds supervisors accountable for ensuring ongoing communication regarding OGE goals and priorities with all staff.

Appointment of OGE's Director

The Director of OGE is appointed by the President, with the advice and counsel of the Senate (Presidential appointment and Senate confirmation (PAS)). OGE's Director may be chosen from public or private life, although the past two directors have been selected from OGE senior career staff. As with other PAS appointees, the Director is required to submit to significant scrutiny prior to his or her appointment. This includes the filing of a public financial disclosure report (OGE Form 278e), submission of a senate questionnaire containing questions concerning all facets of the potential candidate's life and career, and completion of a background questionnaire (SF 86) and investigation conducted by the Federal Bureau of Investigations. The President and Senate may also seek additional information from PAS nominees, including the Director. Congress also generally holds meetings and confirmation hearings with potential candidates for Director. OGE has posted the confirmation hearing testimony of the past two Directors on its website at: https://www.oge.gov/web/OGE.nsf/0/139F6008CEEB936F852585B6005A1602/$FILE/Shaub-OGE-Statement-12-16-15.pdf.

OGE's budget

OGE receives an annual budget from Congress through the regular appropriations process. OGE's annual budget justification is prepared and submitted to Congress on an annual basis and is posted to OGE's website: https://www.oge.gov/web/OGE.nsf/about_budget-performance. OGE's budget development is driven by its long-term strategic plan and strategic objectives, as well as short-term and unanticipated needs. Although OGE has been able to operate effectively with the budget that it has received in the past, OGE's Director believes that

additional budgetary and staff resources are essential for OGE to carry out its statutory mission. OGE's budget Genables OGE to make critical investments in the human and systems resources needed to strengthen both the agency and the overall executive branch ethics programme. OGE notes that while its appropriations have increased over the past years, OGE was operating under fiscal constraints imposed by continuing resolutions during various periods. During a continuing resolution, limits are placed on the type and amount of expenditures made, which has occasionally placed limits on OGE's ability to engage in new work projects, hire new staff, and assign staff for external training.

OGE Appropriations by Fiscal Year; Fiscal Years 2009-2019

Fiscal Year	Appropriations Amount (in $)
2019	17,019,000
2018	16,439,000
2017	16,090,000
2016	15,742,000
2015	15,420,000
2014	15,325,000
2013	18,664,000*
2012	13,664,000
2011	14,000,000
2010	14,000,000
2009	13,000,000

*This amount included $5,000,000 dedicated to development and deployment of the executive branch electronic financial disclosure filing system.

As noted above, OGE is subject to the normal appropriations process. OGE's budget requests are submitted initially to the White House Office of Management and Budget, and thereafter to Congress. Pursuant to the U.S. Constitution, Article 1, Section 9, clause 7, Congress determines whether and how much OGE is appropriated in a given year.

To ensure that OGE is operating in a fiscally sound way, OGE annually submits a statement of its financial position and results of operations to Congress, pursuant to 31 U.S.C. § 3515(b). Part of the annual financial report includes an independent auditor's report prepared by a third-party auditor in accordance with generally accepted government auditing standards issued by the Federal Accounting Standards Advisory Board. OGE's annual financial reports can be found on OGE's website: https://www.oge.gov/web/oge.nsf/about_budget-performance.

Congress may also request additional review of OGE programmes and operations through the Government Accountability Office.

Recruitment of OGE staff

Besides the Director and the Director's confidential assistant (currently vacant), all positions at OGE are career positions. Recruitment and hiring of OGE staff is completed in accordance with generally applicable laws, regulations, and policies concerning hiring in the merit-based career civil service. In this regard, vacancy announcements are posted to USAJOBS.gov, the

official hiring website of the United States government. OGE also may post recruitment advertisements in other forums, for example, on the jobs board of the Council on Government Ethics Laws.

Accountability

The Director of OGE is appointed by and ultimately accountable to the President of the United States. The Director is also accountable to the Congress through a number of avenues. As an agency of the United States, Congress determines the scope of OGE's jurisdiction and mission, determines whether to authorize OGE's continued existence, and determines OGE's annual appropriations. OGE regularly provides Congress with information about its performance and stewardship of taxpayer resources. These documents can be found on OGE's website: https://www.oge.gov/web/oge.nsf/about_appropriations

Congress also has an oversight role over OGE. Congressional committees in both the Senate and the House of Representatives have the authority to request information and testimony from the Director of OGE. OGE responds to requests from congressional committees on a routine basis. To ensure transparency and accountability, OGE posts, to the greatest extent possible, formal correspondence with congressional committees on its website. https://www.oge.gov/web/oge.nsf/Resources/Congressional+Correspondence+Released+via+FOIA OGE further assists Congress in a variety of ways and the results of that work are available to the public. For example, OGE provides expertise on proposed legislative reforms. In order to help Congress develop effective ethics legislation, OGE tracks bills, actively responds to congressional requests about how proposals would affect the executive branch ethics programme, and provides legislative proposals of its own. Recently, OGE published an analysis of legislative trends, and a revision of the compilation of federal ethics laws. OGE also directly supports the Senate in its constitutional duty to provide advice and consent to nominees for senior executive branch positions.

OGE does this by ensuring nominees comply with financial disclosure requirements and enter into agreements to avoid potential conflicts of interest. OGE provides this information directly to the Senate and makes it available to the public. In addition, OGE supports Congress in its oversight of the executive branch ethics programme.

OGE also provides expertise and substantive input on Government Accountability Office reviews. In the past these reviews have focused on the programmes of OGE, as well as discrete ethics issues in the executive branch. Various GAO reports that are of interest to the ethics community or that involved OGE input are posted on OGE's website. https://www.oge.gov/web/oge.nsf/ethicsofficials_enforcement-resp

Reporting obligations

As mentioned above, OGE is required to prepare and submit to Congress a number of annual reports, including OGE's Congressional Budget Justification, Annual Performance Plan, Annual Performance Report, and Annual Financial Report. OGE also submits four-year strategic plans that establish OGE's long-term goals. These documents are available on OGE's website: https://www.oge.gov/web/oge.nsf/about_budget-performance

Security of tenure

Pursuant to the United States Constitution, Article II, Section 2, the Director, as a principal officer of the United States, must be appointed by the President with the advice and consent of

the Senate. This requirement is echoed in the provisions of the Ethics in Government Act establishing OGE. *See* 5 U.S.C. app. § 401(b). OGE's Director serves a 5-year term, thereby guaranteeing a bridge across the Director's term and a 4-year Presidential Administration. With the typical exception of a Director's special assistant, all other OGE employees are career civil servants. This helps to prevent even an appearance of political influence over the agency. Congress appropriates money to OGE in a public budgeting process and can provide more or less than the President has asked them to give the agency. These features help ensure the independence and political neutrality of OGE.

CIGIE

The Council of the Inspectors General on Integrity and Efficiency (CIGIE or Council) 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.govinfo.gov/content/pkg/USCODE-2016-title5/pdf/USCODE-2016-title5-app-inspector.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 programmes 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 programmes and operations; and keep the head of the agency and the Congress informed as to deficiencies in such programmes 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 programmes 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 discussed below, 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 discussed below, 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 Council 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).

Independence of IGs

Although IGs generally serve at the pleasure of the President or DFE head, the IG Act contains procedural safeguards to help ensure the independence of IGs and to ensure that Congress is informed of the reasons for their removal or transfer before such action takes place. These safeguards are meant to prevent IGs from being removed for political reasons or simply because they are doing an effective job of identifying fraud, waste, and abuse.

Specifically:

a. Establishment IGs [IG Act, §3(b)]: An establishment IG may be removed from office or transferred to another position within the agency by the President; however, the President must communicate the reasons for the action in writing to both Houses of Congress at least 30 days before the removal or transfer.

b. DFE IGs[IG Act, §8G(e)]: Likewise, a DFE IG may be removed from office or transferred to another position within the agency by the entity head; however, the entity head must communicate the reasons for the action in writing to both Houses of Congress at least 30 days before the removal or transfer. In a DFE agency with a board or commission, removal or transfer of a DFE IG requires the written concurrence of two-thirds of the members of the board or commission.

In both cases, Congressional notification letters must be sent by the President (for establishment IGs) or the entity head (for DFE IGs) to "both Houses of Congress." Entity heads are also requested to provide copies of the Congressional notifications to the CIGIE Chair.

Further, the IG Act is clear that, although IGs fall under the "general supervision" of an agency, that supervision is limited and may not be exercised in a way that would inhibit an IG's full discretion to undertake an audit or investigation, issue subpoenas, and see these matters through to conclusion. There is one exception to the prohibition on agency interference with IG audits, investigations, and subpoenas. Under the IG Act, the heads of seven agencies (the Departments of Defense, Homeland Security, Justice, Treasury, plus the Federal Reserve Board and Consumer Financial Protection Bureau, and the Postal Service) may prevent their respective IGs from initiating or completing an investigation or audit, or issuing a subpoena, but only for reasons specified in the IG Act [IG Act, § 8]. These reasons include, among others, preserving national security interests, protecting ongoing criminal prosecutions, or limiting the disclosure of information that could significantly influence the economy or market behavior [IG Act, §8D]. If an agency head invokes this power, he or she must send an explanatory statement to certain Congressional Committees within 30 days.

Another significant aspect of independence for Inspectors General is a unique reporting relationship with Congress. The IG Act creates a rare dual reporting obligation for IGs to keep both the head of the agency and the Congress "fully and currently informed" about deficiencies in agency programmes and operations, its recommendations for addressing those problems, and progress in correcting those deficiencies [IG Act § 4(a)(5)]. IGs generally satisfy this dual-reporting obligation through two types of reports. First, IGs provide Congress with a periodic snapshot of their oversight activities through semiannual reports, which describe whatever problems or deficiencies the OIG identified during the preceding six-month period, summarize

any current or pending recommendations to the agency, and list any prosecutorial referrals made to the Justice Department or other law enforcement authorities during the period.

A second type of report, the so-called “seven-day letter,” ensures that the IG can, if necessary, inform Congress of serious problems within the agency in relatively short order. Whenever an IG becomes aware of “particularly serious or flagrant problems, abuses, or deficiencies” relating to agency programmes or operations, it is authorized to report such matters immediately to the agency head. Within seven days of receipt, the agency head must transmit the IG’s report, along with any comments of its own, to the appropriate congressional committees. Although seven-day letters are rare, they nevertheless provide IGs with considerable leverage vis-à-vis agency management in fulfilling their oversight duties.

In addition to these reports, IGs often fulfill their dual-reporting obligation in ways not expressly provided for under the IG Act. For instance, IGs regularly communicate with Members of Congress, submitting formal reports and letters and holding informal briefings. Some OIGs are required, pursuant to other legal authority, to submit agency or program-specific reports to Congress. IGs also regularly testify before Congressional committees and meet with Members and staff.

Source of budget for OIG, and determination of the financial requirements of OIGs

Throughout the budgetary formulation, justification, and execution process, OIGs maintain their independence by coordinating their appropriation requests directly with Congressional oversight committees as well as internally as an independent component of their agency’s formal budget submission. The parent agency cannot control the budget formulation or justification process to impact how OIGs identify funding needs nor can they impact how OIGs execute their appropriated dollars. Congress recognizes and supports OIG independence throughout the appropriations process and typically funds operations and training irrespective of the parent agency’s budgetary request.

The role of an IG in selecting their staff

Under the Inspector General Act, each OIG shall be considered a separate agency, and the IG shall have the functions, powers, and duties of an agency head or appointing authority under such provisions [IG Act §6e]. As such, the IG may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the OIG subject to provisions identified in U.S. code and established pay rates [IG Act §6a(7)].

Security of tenure

The tenure of IGs varies across the Federal government. However, the vast majority of IGs remain in their positions for greater than the length of the Presidential term in which they were confirmed or appointed. Because IG appointments to do not end at the conclusion of a Presidential term, there is inherent security to their tenures within the Federal government. Although an IG may be removed from office by the President, he or she must communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer [IG Act §3b].

There are currently 13 vacant IG positions across 74 Federal agencies or entities. During periods of vacancy, there is typically an Acting Agency Head (often the Deputy Inspector General) who assumes responsibility for the continuity and operations of the OIG. In certain situations, the President or agency head, depending on the OIG in question, can name an acting

Inspector General other than the Deputy Inspector General.

Regarding manpower, expertise, and technical capacity, IGs have the independence to conduct meaningful oversight, including managing their office staffs through staffing and training decisions. IGs can identify their own budgetary requirements and make budgetary requests to Congress, effectively independently of their agency. In the event an OIG's requirements are not met through the annual Congressional appropriation process or due to a major event that exceeds OIG resource capacity, IGs may notify Congressional oversight committees accordingly and request additional appropriations.

CIGIE also provides support on technical capacity, as one of its primary mission tenets is to "aid in the establishment of a well-trained and highly skilled workforce" within the IG community. CIGIE accomplishes that mission through facilitated training courses, shared best practices, and guidance related to matters involving all OIGs.

In terms of legal authority, IGs have independence and authority to conduct meaningful oversight. For instance, IGs have broad legal authority to conduct oversight activities as they see fit. Only under narrow circumstances can an agency prevent or prohibit an IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. Under the IG Act, the heads of seven agencies (the Departments of Defense, Homeland Security, Justice, Treasury, plus the Federal Reserve Board and Consumer Financial Protection Bureau, and the Postal Service) may prevent their respective IGs from initiating or completing an investigation or audit, or issuing a subpoena, but only for reasons specified in the IG Act [IG Act, § 8]. These reasons include, among others, preserving national security interests, protecting ongoing criminal prosecutions, or limiting the disclosure of information that could significantly influence the economy or market behavior [IG Act, §8D]. If an agency head invokes this power, he or she must send an explanatory statement to certain Congressional Committees within 30 days.

IGs also have legal authority to access materials from their agencies. Under Section 6(a) and (b) of the Inspector General Act of 1978, as amended in 2016, OIGs are entitled "to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable establishment which relate to programmes and operations with respect to which that Inspector General has responsibilities under this Act", and to have such access "notwithstanding any other provision of law, except pursuant to any provision of law enacted by Congress that expressly (i) refers to the Inspector General; and (ii) limits the right of access of the Inspector General . . . ." IGs also generally have broad authority under the IG Act to subpoena any information—whether in the form of documents, reports, answers, records, accounts, papers, data in any medium (including electronically stored information), or a tangible thing—that is necessary to performance of their responsibilities. Subpoenas, which are enforceable in federal district court, provide a powerful means by which IGs may compel the production of evidence from sources outside the federal government.

In sum, OIGs generally have sufficient resources and authorities to conduct meaningful oversight. That said, OIGs have very small budgets in comparison to their agencies and therefore must make difficult choices about resource allocations and oversight priorities. OIGs could conduct additional important oversight activities with increased resources. Some OIGs have also experienced budget reductions in recent years, which has naturally impacted the scope of their oversight over their parent agencies.

<u>Congress</u>:

The House created the Committee on Ethics (originally known as the Committee on Standards of Official Conduct) in 1967. The Senate created the Senate Ethics Committee (originally

known as the Select Committee on Standards and Conduct) in 1964. The Committees' rules have been periodically revised since they were established to reflect changes in Committee structure and procedures implemented by the Senate and House. Current rules also reflect changes necessitated following experience under prior rules. The current House rules provide for an Office of Advice and Education within the House Committee on Ethics and the bifurcation of the Committee's investigatory and disciplinary process. The rules also govern the issuance of advisory opinions, the receipt of complaints, and the conduct of Committee investigations. The Ethics Committees are tasked with interpreting and enforcing each Chamber's ethics rules. The Committees have sole jurisdiction over the interpretation of the Code of Official Conduct, which governs the acts of Members, officers, and employees. The Committees are the only standing committees with equal numbers of Democratic and Republican Members. The operative staff of the Committees are required by rule to be professional and nonpartisan.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

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 a 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.

Congress:

The House Committee on Ethics believes that a broad, active programme for advice and education is an extremely important means for attaining understanding of, and compliance with, the ethics rules.

In the 114th Congress, the House Committee on Ethics:

- Trained more than 4,000 employees in person at live ethics briefings, and nearly 17,000 employees used an on-line training option.
- Issued more than 850 formal advisory opinions regarding ethics rules;
- Fielded nearly 55,000 informal telephone calls, emails, and in-person requests for guidance on ethics issues;
- Released 14 advisory memoranda on various ethics topics to the House;
- Provided training to approximately 11,000 House Members, officers, and employees each year, and reviewed their certifications for satisfying the House's mandatory training requirements;

- Received nearly 16,000 Annual Financial Disclosure Statements and amendments filed by House Members, officers, senior staff, and House candidates; and
- Received more than 3,000 Periodic Transaction Reports filed by House Members, officers, and senior staff, containing thousands of transactions.
- Commenced or continued investigative fact-gathering regarding 78 separate investigative matters;
- Filed 5 reports with the House totalling nearly 2,100 pages regarding various investigative matters;
- Resolved 40 additional investigative matters confidentially;

The Senate Ethics Committee also believes that a broad, active programme for advice and education is an extremely important means for attaining understanding of, and compliance with, the ethics rules.

In the 114th Congress, the Senate Ethics Committee:

- Issued more than 1,755 ethics advisory letters and responses, including, but not limited to, 1,484 travel and gifts matters (Senate Rule 35) and 176 conflicts of interest matters (Senate Rule 37).
- Fielded approximately 20,001 telephone inquiries and 4,364 inquiries by email for ethics advice and guidance;
- Provided 8 new Member and staff ethics training sessions; 49 Member and Committee office campaign briefings; 41 employee Code of Conduct training sessions; 21 public financial disclosure clinics, seminars, and webinars; 45 ethics seminars and customized briefings for Member DC offices, state offices, and Senate committees; 9 private sector ethics briefings; and 12 international briefings;
- Received 6,377 public financial disclosure and period disclosure of financial transaction reports filed by Senate Members, officers, employees, and Senate candidates;
- Received 118 alleged violations of Senate rules;
- Conducted 12 preliminary inquiries;
- Dismissed 8 alleged violations, after conducting a preliminary inquiry into the matters, for lack of substantial merit or because it was inadvertent, technical, or otherwise of a de minimis nature;
- Dismissed 79 alleged violations for lack of subject matter jurisdiction or in which, even if the allegation in the complaint were true, no violation of Senate rules would exist; and
- Dismissed 27 violations because they failed to provide sufficient facts to any material violation of the Senate rules beyond mere allegation or assertion.

(b) Observations on the implementation of the article

The prevention bodies mentioned under article 6(1) are established by statutes and have sufficient budgetary and human resources.

However, the Director of OGE serves "at the pleasure of the President" and may be removed from office any time. Similarly, Inspectors General serve at the pleasure of the President or, where applicable, the head of a designated federal entity. Of the two types of Inspectors General, "establishment Inspector Generals" are appointed by the President subject to Senate confirmation and may be removed or transferred by the President subject to prior written communication to Congress of the reasons for any such removal or transfer. GAO is an independent agency under the United States Congress and is headed by the Comptroller General of the United States, who is subject to removal only for cause. Inspectors General in designated federal entities are appointed by the agency head and may be removed or transferred by the agency head subject to prior written communication to Congress; however, for designated federal entities with a board or commission, the removal or transfer of an Inspector General from a designated federal entity requires the written agreement of two-thirds of the board or commission members.

It is recommended that the United States provide greater independence to the Director of OGE and Inspectors General by ensuring that they could be removed from their positions only for cause.

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

In July 2017, the United States responded to Note Verbale CU 2017/226/DTA/CEB/CSS thereby providing contact information for U.S. government authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption. The United States provided contact information for the Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) and the U.S. Agency for International Development's Anti-Corruption Center. INL's mission is to combat crime by helping foreign governments build effective law enforcement institutions that counter transnational crime-everything from money laundering, cybercrime, and intellectual property theft to trafficking in goods, people, weapons, drugs, or endangered wildlife. INL combats corruption by helping governments and civil society build transparent and accountable public institutions. Areas of assistance include working with foreign law enforcement and judicial officials to strengthen their capacity to investigate, prosecute, and adjudicate cases of corruption. INL also supports governments and civil society to effectively implement countries' domestic and international anticorruption commitments, including those under the UN Convention against Corruption. TUSAID and its field missions support activities to improve the accountability, transparency, and responsiveness of governing institutions, systems, and processes. USAID also promotes legal and regulatory frameworks that improve order and security, legitimacy, checks and balances, and equal application and enforcement of the law. These efforts include working with governments but also include promoting citizen participation and engagement in governance and rule of law activities to build confidence and assure rights, privileges, and obligations are equally accessible and fairly applied to all.

(b) Observations on the implementation of the article

The United States has informed the secretariat that the following bodies may assist other States parties in developing and implementing specific measures for the prevention of corruption:

United States Agency for International Development

Anti-Corruption Task Force

1300 Pennsylvania Ave., NW
20523 Washington D.C.
United States of America

U.S. Department of State

Anti-Corruption team, Office of Global Programs and Policy, Bureau of International Narcotics and Law Enforcement Affairs.

2401 E Street, NW
20037 Washington D.C.
United States of America

Article 7. Public sector

Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Office of Personnel Management (relevant to subpara. 1, 1(a) and 1(b)):

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.

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.

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.

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.

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. Merit System Protection Board (relevant to Para. 1b and 1d): 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.

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.

Public positions prone to corruption

Certain positions have long been recognized as being inherently more susceptible to corruption risks. For example, it is understood that high-level officials are more vulnerable to corrupt acts. As a result, Congress requires that all high-level officials file public financial disclosure reports.[28] In addition, high-level non-career employees, including heads of agency and other Presidential appointees, are subject to various statutory and administrative limitations on outside employment and outside pay, regardless of a nexus between activity and their government positions.[29] Congress has also applied additional post-employment provisions for officials occupying high-level positions in the executive branch. For example, in addition to other post-Government employment restrictions applicable to other employees, former "senior" employees are subject to a one-year "cooling off" period and former "very senior" employees are subject to a two-year "cooling off" period.[30] During this cooling off period, these employees may not contact any employee of their former agency on behalf of another person seeking to influence any government matter pending at the agency. In addition, the President has required all non-career appointees to sign an ethics pledge that includes a number of restrictions above those generally applicable to executive branch employees. These include limitations on accepting gifts from lobbyists, limitations on participating in certain matters related to former clients and employers, and additional post-employment restrictions.

Congress has also identified other positions that are at higher risk of corruption, such as procurement officials, and has applied specific conflict of interest laws to such officials. These include, e.g., the Procurement Integrity Act.[31] Likewise, Congress has determined that prosecutors and investigators in the Department of Justice may be prone to conflicts of interest and has required that the Attorney General publish regulations specific to the Department of Justice as part of the Ethics in Government Act.[32]

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[28] 5 U.S.C. app. § 101(f). It should be noted that certain other "at risk" positions, such as commissioned White House officials, Administrative Law Judges, and most non-career employees occupying positions of a confidential or policymaking character are required to file public financial disclosure reports as well. *Id.*

[29] 5 U.S.C. app. § 502; Executive Order 12674, § 102 (1989).

[30] 18 U.S.C. § 207(c), (d).

[31] 41 U.S.C. §§ 2101-07.

[32] 28 U.S.C. § 528.

Because each agency has a distinct mission and relationship with the private sector, agencies are generally responsible for assessing whether other positions or job duties have increased risks of corruption. At the same time, OGE's regulations require that agencies identify risk-sensitive activities and require incumbents in positions engaged in those activities to file confidential financial disclosure reports.[33] Higher-risk functions include activities involving: contracting or procurement; administering or monitoring grants, subsidies, licenses, or other federally-conferred financial or operational benefits; regulating or auditing any non-Federal entity; and any other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity. An individual who is required to file a confidential financial disclosure report is also required to receive additional annual training as a result. This helps to ensure that such employees are routinely apprised of the ethics laws and provides tools for the agency to assist such employees avoid conflicts of interest.

In addition, agencies are authorized to supplement the general Standards of Ethical Conduct for Employees of the Executive Branch with more tailored, risk-sensitive standards of conduct applicable only to their agency or to a subset of agency employees. Currently fifty-four agencies have supplemental standards of conduct. These supplemental standards of conduct can contain provisions ranging from pre-approval review of outside activities to prohibitions on ownership of certain investments in companies related to the work of their agency. Agencies must publish supplemental standards jointly with OGE and must consult with OGE during the development of supplemental standards. OGE has provided comprehensive guidance to assist agencies in considering whether they need a supplemental regulation,[34] and works with agencies to ensure that proposed regulations are risk-responsive.

<u>Periodic rotation of public officials</u>

There is currently no law or Government-wide practice that requires that officials periodically rotate to different positions for anticorruption reasons. As a starting point, hiring of career officials is done on a merit-based system and individuals in the competitive service must have the knowledge, skills, and abilities to carry out the duties of their positions. All career positions are classified and position vacancies are publicly announced. As a result, individuals occupy these positions on a merit basis. Pursuant to Executive Order 13770, political appointees are also required to sign an Ethics Pledge in which they "agree that any hiring or other employment decisions [they] make will be based on the candidate's qualifications, competence, and experience."[35]

In an individual case, however, an employee may be reassigned different responsibilities when the agency has identified that participation in the employee's normal duties would create a substantial likelihood of a conflict of interest. In those instances, OGE's regulations note that the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.[36]

<u>Relevant to 1(d):</u>

Since 1981, the U.S Office of Government Ethics (OGE) has required that all agencies in the

[33] 5 C.F.R. § 2634.904.
[34] OGE Legal Advisory LA-11-07 (2011), available at https://www2.oge.gov/web/oge.nsf/Resources/LA-11-07:+The+OGE+Supplemental+Agency+Regulation+Process.
[35] Executive Order 13770, § 1, para.8 (2017).
[36] 5 C.F.R. § 2635.402(f).

executive branch establish effective education programmes for their employees. This requirement effectuates OGE's authority under Title IV of the Ethics in Government Act of 1978 (EIGA) to promote understanding of ethical standards in executive branch agencies. In 1992, following the issuance of Executive Order 12674 by President George H.W. Bush, which established the 14 General Principles of Ethical Conduct and provided additional guidance on procedures and processes related to the executive branch ethics programme, OGE implemented comprehensive regulatory measures for ensuring that agencies provide uniform ethics education to employees as part of the executive branch-wide ethics programme management regulations found at 5 C.F.R. part 2638.

These regulations require that each executive branch agency maintain a programme of ethics training consisting of, at a minimum, initial ethics orientation for all employees and annual ethics training for specified categories of employees occupying sensitive positions.

Pursuant to OGE regulations, all prospective employees must be alerted 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. (5 C.F.R. § 2635.303)

Under the ethics programme regulations, supervisory officials are seen as having additional obligations to the ethics programme, including modeling good behavior and assisting subordinates to adhere to the ethics laws (5 C.F.R. § 2635.103). As a result, employees entering supervisory positions are required to be notified of their heightened responsibilities for advancing government ethics and modeling ethical behavior (5 C.F.R. § 2638.306).

All executive branch employees are thereafter required to receive instruction on the ethics laws and regulations within, at the latest, three months of entry into service. 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 employees a summary of the Standards of Conduct; relevant agency supplemental standards; and contact information for the ethics office. Training must be interactive, which means that the employee must take some action with regard to the subject of the training. This training can be accomplished through a mixture of written, oral, and electronic means. In 2017, 98 agencies used written materials, 93 agencies used one-on-one briefings, 89 agencies reported using in-person classroom instruction, 49 agencies used self-paced web-based training, 22 agencies used satellite broadcast/videoconferencing, 18 agencies used instructor-led web-based training, 14 agencies used video, and 15 agencies used other means of providing initial ethics training. Agencies are required to track all employees who are required to receive initial ethics training, whether they have received training, and whether they received the training within the required time period. A limited number of lower-level employees who occupy positions that are not likely to create conflicts of interest can be excluded from the requirement to receive interactive training, but must receive written materials describing the ethics laws and how to contact an agency ethics official. In 2017, over 330,000 executive branch employees received initial ethics training.

High-level officials who are appointed by the President with advice and consent of the Senate (PAS) are also required to receive a "live" personal ethics briefing within 15 days of entering government service. (An exception exists for PAS who are nominated to a position as an officer in the uniformed services or a Foreign Service officer. These excluded officials are generally career officials who are receiving PAS appointments as a result of advancement within the civil service. 5 C.F.R. § 2638.305(a); 5 C.F.R. § 2634.201(c)(2). In addition, time extensions may

be provided to covered PAS in individual circumstances. 5 C.F.R. § 2638.305(b)(2).) A training is considered live if done in-person or through electronic means, such as by video conferencing or telephone. Agencies must track how many PAS were required to receive the ethics briefing, whether they received the training, and whether they received the training within the required time period. During this individualized briefing, the agency ethics official discusses the appointee's basic recusal obligations, 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's financial disclosure report is filed. This ethics briefing is in addition to, and does not supplant, the initial ethics training required for all employees.

In addition to initial ethics training, all officials who are required to file financial disclosure reports or are in other positions that have a higher potential for conflicts of interest must also receive annual training (5 C.F.R. §§ 2638.307, 308). In 2017, over 470,000 officials were required to receive annual ethics training. In addition to those individuals who are required to receive annual training, agencies are authorized to and encouraged to extend additional tailored annual ethics training to specific groups of employees. In 2017, agencies reported providing additional annual training to all agency employees (47 agencies); human resources personnel (18 agencies); information technology personnel (11 agencies); procurement personnel (34 agencies); supervisors (32 agencies); and other select groups such as bank examiners and grant managers.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Number of Employees Required to Receive Initial Ethics Training (in thousands)[37]	289	267	229	189	278	353	390	404	356	337

The number of officials requiring annual ethics training tends to be more static than the number of officials requiring initial ethics orientation. Between 2008 and 2017, there was an average of slightly less than 483,000 officials (including PAS and DAEOs) required to receive annual ethics training per year. Since 2013, the yearly average of employees required to receive annual ethics training and who did receive that training was 98.6%. In 2017, agencies had a 97% (460,501 out of 475,970) compliance rate for annual ethics training. Importantly, 96% (131 of 136) of agency heads (who are PAS) completed either initial ethics training or annual ethics training or were not required to receive such training. Agencies also went above and beyond minimally required training. In 2017, 76% of agencies provided annual training to persons not required by the regulation to receive training.

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Number of Employees Required to Receive Annual Ethics Training (in thousands)[38]	437	515	574	564	430	432	462	463	475	476

37. Numbers rounded to closest 1,000.
38. Numbers rounded to closest 1,000.

(b) Observations on the implementation of the article

The recruitment, retention, promotion and retirement of federal civil servants, including Senior Executive Service members, are governed by title 5 of USC, relevant presidential executive orders and other laws and regulations. OPM was created by the Civil Service Reform Act to lead as the primary independent human resources and personnel policy management agency for the federal Government. OPM is responsible for issuing most of the title 5 implementing regulations governing the civil service, including the Hatch Act, and oversees a merit-based hiring process. OPM provides, inter alia, guidance and services to agencies (vetting, personnel background investigations, leadership development and training, etc.) and directly to civil servants.

Federal government vacancies are posted on a central online portal (www.usajobs.gov). Recruitment to civil service is competitive and merit-based, and all applicants or employees are investigated for their suitability for federal employment on the basis of their character or conduct that may have an impact on the integrity or efficiency of the service (Executive Order 10577). Pursuant to Executive Order 13488, individuals in positions of public trust are reinvestigated periodically (e.g. positions with responsibilities involving access to or operation or control of financial records, with a significant risk for causing damage or realizing personal gain (5 Code of Federal Regulations (CFR) § 731.106 (b)). Appeals against employment decisions may be lodged with the Merit Systems Protection Board (MSPB).

There is currently no requirement for civil servants to periodically rotate to different positions, but civil servants may be assigned different responsibilities to prevent conflicts of interest. Pursuant to 18 USC § 208, executive branch employees are prohibited from participating in certain Government matters affecting their own financial interests or the interests of certain persons with whom they have ties outside the Government.

Pursuant to 5 C.F.R §§ 2638.301 and 2638.304, each executive branch agency must carry out a government ethics education programme and each new employee must complete an initial ethics training course.

It is recommended that the United States consider taking appropriate measures to limit any adverse effect of vacancies in the Merit Systems Protection Board on persons seeking the review of an employment decision.

(c) Successes and good practices

The use of a central secure online portal that contains employment opportunities in the federal government with extensive functionalities for both applicants and recruiters.

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The United States Constitution outlines criteria concerning candidature for and election as President of the United States, Representative in the House of Representatives, and Senator in the U.S. Senate. Article 2, Section 1, Clause 5 states that "No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution shall be eligible to the Office of the President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States." Article 1, Section 2, Clause 2 states that "No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." Article 1, Section 3, Clause 3 states "No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that Sate for which he shall be chosen."

State governments can prescribe their own criteria concerning candidature for and election to public office within its own state. Candidates can also be refused by the U.S. Congress and the electoral college.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

More information about candidates running, or who have run, for federal office can be found on the Federal Election Commission website: https://www.fec.gov/

(b) Observations on the implementation of the article

Article II, section 1, clause 5, and article I, section 2, clauses 2 and 3 of the Constitution outline criteria concerning candidature for and election as President, Representative in the House of Representatives, and Senator in the Senate, respectively. Criteria only relates to age, citizenship and residency, and cannot be augmented by any other state or federal legislation.

Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

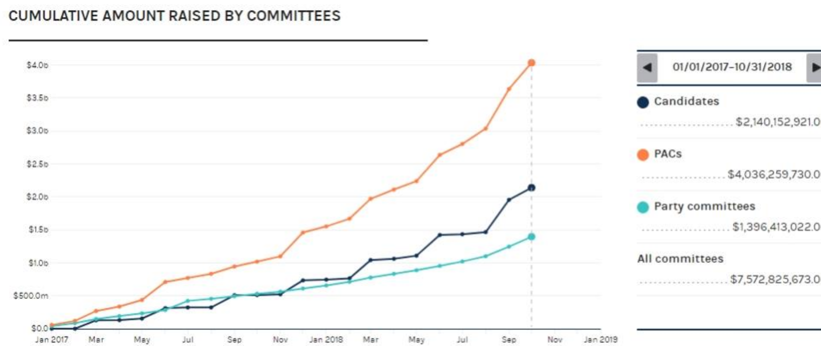
The Federal Election Commission (FEC), an independent regulatory agency, administers and enforces the Federal Election Campaign Act, the statute that governs the public and private financing of federal elections. The duties of the FEC are to disclose campaign finance information, to enforce the provisions of the law such as the limits and prohibitions on contributions, and to oversee the public funding of Presidential elections.

The Federal Election Commission's Campaign Finance Disclosure Portal (www.fec.gov) provides a single point of entry to campaign finance data. It includes easy-to-navigate maps

and charts that display campaign finance data, as well as many search tools. Many of the data sets are customizable and downloadable so users can perform their own analyses. Graphic presentations allow users to search for specific candidates, political party committees and political action committees. Users can also explore independent expenditures for and against Presidential, House, and Senate candidates.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

Data on campaign finance can be found on the FEC’s website https://www.fec.gov/data/). Below are illustrative charts of the type of data that can be compiled from this website.



(b) Observations on the implementation of the article

The Federal Election Campaign Act, administered and enforced by the Federal Election Commission, governs public and private financing of candidates, political parties and others in federal elections by, inter alia, setting limits and prohibitions on contributions and their sources and specifying reporting requirements. Detailed campaign finance data are published on the Commission’s Disclosure Portal.

(c) Successes and good practices

Public disclosure of detailed campaign finance data on the Federal Election Commission's Campaign Finance Disclosure Portal

Paragraph 4 of article 7

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Office of Government Ethics:

The U.S. Office of Government Ethics (OGE) provides overall leadership and oversight of the executive branch ethics programme designed to prevent and resolve conflicts of interest. OGE oversees the executive branch ethics programme 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 programme 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 programme and by making ethics information publicly available. OGE also monitors congressional activity for ethics-related legislation that affects the executive branch ethics programme and shares its expertise with Congress.

Because of the breadth of the executive branch, the executive branch ethics programme is a shared responsibility. As the supervising ethics office, OGE sets policy for the entire executive branch ethics programme. The head of each agency is statutorily responsible for leading the programme 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 programme. 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 programme and coordinating with OGE, as well as an Alternate Designated Agency Ethics Official (ADAEO). The DAEO and ADAEO are employees of their agency, however, they are required by regulation to carry out an effective ethics programme that meets the minimal requirements set forth by regulation at 5 C.F.R. § 2638.104. This includes serving as an effective liaison to OGE, promptly furnishing records and documents to OGE, providing advice and counselling to employees, carrying out ethics training, and assisting in the agency’s enforcement of the ethics laws. Often, additional professional ethics staff is necessary to effectively carry out important ethics programme responsibilities. As of 2016, there were approximately 6,895 officials assisting the ethics programmes of over 130 agencies. Not all individuals who support the ethics programme are ethics officials; rather, this number includes almost 2,000 individuals who provide less than 1 hour per a week on ethics programme duties. Included in these numbers may be support staff, human resources staff who have ethics adjacent duties, and information technology staff. Around 1,000 individuals spent between 21-40 hours per a week on ethics programme duties. This accounts for around 14% of all individuals performing ethics programme duties.

Each agency is required by law to have one DAEO and one ADAEO. Agencies may not have more than one DAEO or one ADAEO but may assign as many additional staff as are appropriate and necessary to serve as deputy ethics officials. Limiting each agency to a single DAEO and ADAEO ensures clear lines of accountability for agency ethics programmes. In 2016, 131 agencies had designated DAEO and ADAEO. Four agencies had not designated a DAEO or ADAEO, although it has been a historic practice that some agencies have acting DAEOs and ADAEOs who conduct the responsibilities of the DAEO or ADAEO without formal designation.

Each agency's employees, supervisors, human resources officials, and Inspector General also play a significant role in maintaining the integrity of government programmes and operations. These responsibilities are set forth in ethics programme management regulations promulgated by OGE and published at 5 C.F.R. part 2638. As the supervising ethics office for the executive branch, OGE works with the DAEO and ADAEO of each agency to ensure that the ethics laws and regulations are uniformly implemented. The main ways in which OGE coordinates with DAEOs include: the provision of advice to agency ethics officials through OGE's Desk Officer program; education and "train the trainer" activities; and ongoing informal and formal communication, including holding quarterly in-person meetings with DAEOs. The focus of the executive branch ethics programme is principally on preventing violations from occurring in the first instance. The focus of the ethics programme is on proactive training, education and counseling programme focused upon the criminal, civil and administrative standards and the use of tools such as financial disclosure to engage in the early detection and resolution of potential conflict of interests so as to prevent the need for reactive criminal prosecutions. This proactive programme is supported by an effective enforcement system with a range of penalties. Potential violations of legal authorities established under this framework, including government ethics authorities, are primarily investigated by the thousands of Office of Inspector General staff members across the executive branch. In addition, the Department of Justice has enforcement authority that includes both civil and criminal penalties. In the executive branch, the programme 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; the financial disclosure program; training, education and counseling; and enforcement. Of course, this programme complements enforceable, transparent, public administration systems particularly in the areas of procurement, internal financial controls, budget, and human resources.

Enforceable, Written Conflicts of Interest Standards:

The core of the executive branch ethics programme is a body of enforceable standards comprised of complementary criminal statutes, civil ethics statutes, Executive Orders (including Executive Order 12674 (as modified by Executive Order 12731), which established the 14 Principles of Ethical Conduct), and administrative regulations known as the Standards of Ethical Conduct for Employees of the executive Branch (Standards of Conduct) that amplify and build on the underlying public service concepts found in the Principles. These laws are described more fully in the response to Article 8, paragraphs 2 and 3, below.

Financial Disclosure:

The financial disclosure program, described more in-depth in the response to Article 8, paragraph 5, is designed to help executive branch agencies identify and prevent conflicts of interest before they occur and to promote confidence in the integrity of Government decision-making. Through regulation, OGE establishes the procedures for administering the statutory based executive branch financial disclosure system that includes public and confidential disclosure (5 C.F.R. part 2634). OGE recently updated these implementing regulations after a comprehensive multi-year review that included significant agency input. Through monitoring and oversight, discussed below, OGE ensures that agencies implement effective financial disclosure processes. Although financial disclosure reports sometimes reveal evidence of an actual violation of law or regulation, the primary purpose of financial disclosure is to assist agencies in identifying potential conflicts of interest between a filer's official duties and the filer's personal financial interests and affiliations. Once a reviewing official identifies a potential conflict of interest (and consults, as necessary, with the filer's supervisor), several

remedies are available to avoid an actual or apparent violation of Federal ethics laws and regulations. These steps can include divestiture of assets, resignation from outside positions, recusal, waiver, reassignment of duties, or creation of a blind trust. Individuals in Presidentially-appointed, Senate-confirmed positions memorialize in written, publicly available ethics agreements the steps they will take to alleviate an actual or apparent conflict of interest.

Various ethics laws include provisions allowing for the waiver of the applicability of the law under certain circumstances or authorization for an employee to participate in a government matter notwithstanding a conflict of interest. These provisions allow agencies to balance various important government equities when the potential for corruption is low. Authorizations and waivers have different criteria depending on the type of conduct normally prohibited, the circumstances in which an authorization or waiver is permitted, and whether the conduct is prohibited by criminal, civil, or administrative law.

Systematic Training and Education:

One of the real strengths of the ethics programme of the executive branch is the systematic training of employees with regard to the regulatory standards and conflict of interest statutes. These educational requirements are discussed in the response to Article 7, paragraph 1. In addition, OGE provides significant support to agency ethics officials to ensure that agency ethics officials have a uniform understanding of the law, and are able to provide uniform, high-level training to all employees. This is accomplished through in-person training with DAEOs and other ethics officials, through summits and conferences, and through the Institute for Ethics in Government (IEG) learning portal, which provides hundreds of on-demand training resources for ethics officials in the performance of their ethics programme duties. In particular, OGE offers an intensive and comprehensive curriculum of courses to new ethics officials in supervisory ethics roles. This curriculum includes courses such as: the New Ethics Official Certificate Program; Introduction to Conflicts of Interest; Public Financial Disclosure Review; Gifts from Outside Sources; and Conflict-Free Post-Employment Activities. Course participants meet one day per week for eight weeks and are assessed at the close of each unit. Upon the successful completion of all units, OGE provides a "Certificate of Accomplishment" from the IEG to the participants. The IEG also provides a number of live, instructor-led courses. For example, prior to and during the financial disclosure filing seasons, the IEG offers a limited number of workshops and seminars for confidential and public financial disclosure reviewers. These courses are filled on a first-come, first-served basis.

OGE also offers quarterly one-day orientation sessions to newly appointed DAEOs and ADAEOs, who are the principal officers responsible for the day-to-day activities of the ethics programme at a specific agency. The objectives of these orientation sessions are to: familiarize them with the government ethics programme leadership and management responsibilities they have; communicate OGE's expectations regarding the roles and responsibilities of the DAEO and ADAEO; and discuss best practices and available resources. In addition, OGE biannually offers newly appointed DAEOs and ADAEOs an intensive curriculum in ethics. This curriculum typically consists of four to six half-day workshops that address the primary ethics laws and regulations. In 2018, OGE hosted 23 DAEOs and ADAEOs for the one-day orientation and has hosted 13 new DAEOs and ADAEOs for the intensive curriculum on ethics.

Furthermore, OGE maintains a growing library of on-demand training courses covering topics such as the ethics laws and regulations, ethics programme management, enterprise risk management, and behavioral insights for DAEOs and ADAEOs. OGE makes these and other materials available to agency ethics officials at no cost through its online IEG portal. Offerings include practical job aids and reference guides, among other products, to assist agency ethics

officials in the day-to-day operations of their programmes. The online IEG portal is also a place where members of the ethics community can share similar products that they have created, including materials to assist with annual employee ethics training. The online IEG portal is an efficient way for agency ethics officials to obtain the educational materials that are most pertinent to their particular needs. More importantly, all educational resources found in the IEG store are available to the public at no cost: https://extapps2.oge.gov/Training/OGETraining.nsf/IEGHome.xsp.

OGE also provides tools to DAEOs and ADAEOs to support ethical culture within their agencies. Through publications, distance learning events, in-person workshops, and symposia, OGE shares research, model practices, and techniques for developing and supporting ethics within organizational cultures. In addition to the products available in the online IEG portal, OGE makes available all of the video and audio recordings of its distance-learning events, as well as the informational slide decks, job aids, and reference materials created to support those events. OGE frequently encourages agencies to use these on-demand courses and materials to train their own staffs and agency employees. OGE also shares model practices for ethics officials' engagement with agency leaders, programme managers, and staff. For example, OGE supports agency ethics programmes efforts to assist with agency risk management, performance planning, and measurement. OGE has also recently established a research blog aimed at informing ethics officials of studies in "behavioral ethics," which reflects insights from research in behavioral economics, cognitive science, and organizational psychology aimed at identifying the drivers of ethical and unethical behavior within organizations. OGE's goal in the blog is to share with the ethics community summaries and links to this research and the insights they contain, so that DAEOs and ADAEOs will be able to apply those insights to agency ethics programmes to help foster a strong and resilient ethical culture within executive branch agencies.

Training provided by OGE and the IEG are not mandatory for ethics officials, but are highly recommended based on the needs of the agency and the topic of the training. IEG produces and posts online content on various topics to ensure that ethics officials are able to view training that is pertinent to ongoing matters at their agency. IEG catalogs its course content by type, ethics programme function, topic, and skill level (beginner, intermediate, advanced). This allows Designated Agency Ethics Officials to select courses based on the ethics officials' needs and skill levels. Twice per year OGE holds an Intensive Curriculum in Ethics (ICE) for ethics officials newly assigned to critical roles within their agencies' ethics programmes. The programme is responsive to identified training needs of the participants and generally comprises 4-6 half-day in-person courses and covers the ethics laws, regulations, and programme management techniques that are required to effectively lead an ethics programme.

Advice and Counseling:

Each agency is required by OGE to provide advisory services to employees of the agency, because agency ethics officials are apt to have a more direct understanding of the responsibilities of the employee and the programmes administered by the agency. Each agency therefore must have an ethics official or officials who are available to answer questions that any employee within the agency might have with regard to potential conflicts of interest or the application of any of the provisions of the Standards of Conduct, civil ethics statutes, or criminal conflict of interest statutes. In 2017, 57 agencies identified that providing advice and counselling constituted a very significant proportion of time spent in administering the ethics programme. Employees who seek prior guidance from an ethics official and rely on the guidance in good faith have "safe harbor" from disciplinary measures, so long as they have disclosed all relevant and material facts (5 C.F.R. § 2635.107(b)). The Department of Justice

will give fair consideration when determining whether to prosecute an individual for violation of a criminal or civil statute as to whether they sought and followed guidance from an ethics official. This aspect of the programme is intended to encourage employees to ask questions first before they engage in conduct about which they are unsure.

To assist agencies in the provision of advice, OGE provides both informal and formal advisory services to ethics officials upon request. Through OGE's Desk Officer program, OGE staff provides timely and accurate advice to ethics officials in response to questions regarding unique or emerging ethics-related issues. In 2017, OGE desk officers responded to almost 1,700 requests for advice from agencies. In addition to responding to requests for advice, OGE desk officers also actively reach out to the ethics community to address issues and challenges that are of common interest in order to arrive at and share collaborative solutions. In addition, OGE issues Legal Advisories, Program Advisories, and Education Advisories. These advisory opinions provide written guidance on the interpretation and application of the ethics laws and regulations, and provide policy guidance applicable across the entire executive branch. For example, OGE issued a Program Advisory in 2016 setting out expectations for agencies as it relates to alerting incoming officials of their ethical responsibilities in written offers of employment, including template language for agencies to use (OGE Program Advisory PA-16-11 (2016)). In developing these advisories, OGE draws upon the expertise of agency ethics officials by consulting with key members of the ethics community. OGE solicits their views, convenes focus groups, and obtains their feedback on draft advisories. With this community input, OGE increases its ability to effectively mitigate risks, reduce inconsistencies in the application of ethics laws and regulations, and address current issues confronting executive branch ethics officials. In 2017, OGE issued 24 Legal and Program Advisories. All OGE advisories dating back to 1979 can be found on OGE's website at: https://www.oge.gov/web/oge.nsf/All%20Advisories.

Oversight of Agency Programmes:

Because the executive branch ethics programme is decentralized, OGE conducts oversight activities to ensure that agencies are in compliance with all regulatory requirements for an effective ethics program. Pursuant to the Ethics in Government Act of 1978 (EIGA), OGE's Compliance Division conducts three types of ethics programme reviews through the Program Review Branch:

- plenary reviews;
- inspections;
- and follow-up reviews.

Through agency ethics programme reviews, OGE ensures consistent and sustainable agency ethics programme compliance with established executive branch ethics laws, regulations and policies, and provides recommendations for meaningful programme improvement. All three types of reviews are designed to identify and remediate systemic risks in agency ethics programmes. They include an examination of agency ethics programme materials, such as financial disclosure reports, documentation of ethics advice provided to employees, training records, and ethics agreement compliance tracking.

A plenary review examines, in-depth, all elements of an agency's ethics programme and results in a written report providing a narrative description of the ethics programme: 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 programme 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 ethics programmes. This would occur if the findings of an inspection indicated the ethics programme had deficiencies that could be more adequately addressed through a plenary review.

When an ethics programme review identifies a deficiency, the resulting report includes a corresponding recommendation directing the agency to take actions necessary to correct the deficiency. In fiscal year 2017, OGE issued 120 recommendations through programme reviews. OGE's recommendations for programme improvement have significant impact. For example, OGE's review of the Food and Drug Administration (FDA) discovered a determination needed to be made about the employment status of state health officials who assist the Federal government in protecting American citizens' health and welfare. As a result of OGE's recommendation, FDA will be able to make sure the conflict of interest statutes and regulations are properly applied to the approximately 3,700 commissioned state health officials. This, in turn, will help ensure that these officials are acting in the public's best interest when making important decisions impacting public health.

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. OGE recently completed a full cycle of agency ethics programme reviews, covering all agencies within the executive branch, which began in January 2014 and was completed in January 2018. Toward this goal, in fiscal year 2017, OGE conducted 48 programme reviews and published a total of 40 programme review reports. OGE also conducted 12 follow-up reviews and published 12 related reports. In addition to programme reviews, OGE collects ethics programme data from each of the more than 130 executive branch agencies through its Annual Agency Program Questionnaire (Annual Questionnaire). This data collection assures that each agency conducts a year-end assessment of its ethics programme. Agency responses to the Annual Questionnaire give OGE a snapshot view of each agency's ethics programme. Further, the compiled data provides OGE with an annual overview of the entire executive branch ethics programme. In fiscal year 2017, OGE administered the Annual Questionnaire using an electronic application developed by OGE specifically for collecting Annual Questionnaire data. Use of this application has improved OGE's ability to analyze information collected and has made the data collection process more efficient. Notably, 100% of agencies complied with the requirement to submit their ethics programme data.

In fiscal year 2017, OGE continued to share key highlights from its Annual Questionnaire with ethics officials and the public. Having access to this data allowed ethics officials to compare aspects of their programmes with those of other agencies, including how best to allocate ethics programme resources. OGE made the Annual Questionnaire data available to the public on its official website. This programme data helps the public gain a better understanding of the scope and impact of the executive branch ethics programme.

Beyond the Annual Questionnaire and other required data submissions, OGE periodically requests ethics programme data from agencies to address current issues that require oversight. For example in fiscal year 2017, OGE issued a Program Advisory requiring agencies to submit information and records related to certain waivers and authorizations issued to a specified class

of appointees during the period from May 1, 2016 through April 30, 2017 (OGE Program Advisory PA-17-02 (2017). Using the requested documents, OGE conducted a special review designed to: (1) evaluate agency procedures for issuing waivers of certain ethics restrictions and authorizations to participate in otherwise prohibited activities under a variety of authorities, and (2) assess agency compliance with these authorities. OGE completed the review and published the report on its website. (U.S. Office of Gov't Ethics, Special Review of executive Branch Agency Waivers & Authorizations (2017).

Also in fiscal year 2017, OGE collected data from each agency regarding special Government employees (SGEs) not serving on federal boards. The data was collected in connection with a recommendation issued by the Government Accountability Office (GAO). (U.S. Gov't Accountability Office, GAO-16-548, Opportunities Exist to Improve Data on Selected Groups of Special Government Employees (2016), https://www.gao.gov/assets/680/678470.pdf) In its report, GAO found (and OGE concurred) that it is important to strengthen the reliability of agency data on SGEs not serving on federal boards. OGE analyzed the data and published a summary report on its website, using it as a reminder of the steps taken by OGE to strengthen the relationship between human resources and agency ethics officials.

Enforcement:

When executive branch agency ethics officials find evidence that an employee may have violated a criminal statute or a provision of the Standards of Conduct, they are to refer the evidence to the appropriate authority for action. Ethics officials 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 regulatory 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.

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. 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. 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. The U.S. may also bring suit against any person who enters into a conspiracy to violate the criminal conflict of interest or bribery laws or who aids and abets an employee in the violation of such laws. As described in the response to Article 8, paragraph 6, OGE collects information regarding disciplinary actions taken as a result of violations of the Standards of Conduct and ethics laws through the Annual Questionnaire, and collects information regarding yearly prosecutions from the Department of Justice that are published in OGE's annual *Conflict of Interest Prosecution Survey*. This information is made publicly available on OGE's website, and has often been used by agency ethics officials as part of their education and training initiatives.

Coordination:

OGE engages in significant intra-branch coordination with the aim at ensuring uniform and

effective prevention mechanisms. For example, OGE convenes quarterly executive branch-wide meetings of key agency ethics officials, including DAEOs, to discuss new initiatives, seek feedback from practitioners, and to present information that has arisen in-between meetings. OGE also requests agency input when proposing to issue general guidance legal advisories or to issue new regulations. In particular, OGE coordinates with agency ethics officials when an agency may have helpful knowledge on a specific issue, or may be especially affected by advice rendered by OGE.

To promote knowledge sharing between the three branches of government, representatives of OGE, the Senate Select Committee on Ethics, the House Committee on Ethics, the Office of Congressional Ethics, and the Administrative Office of the U.S. Courts meet to discuss issues of shared importance or concern on a quarterly basis. Topics of these meetings have included restrictions on accepting gifts and travel reimbursements, rules applicable to engaging in outside employment, impartiality concerns implicated when employees are affiliated with organizations outside the government, and disclosure of personal financial interests. The participants have also traded best practices for managing government ethics programmes and conducting ethics training.

Department of Justice: For more than half a century, the United States has ensured transparency of the operations and activities of the executive branch of the federal government through the Freedom of Information Act (FOIA). Passed by Congress in 1966, the FOIA provides any member of the public with a right, enforceable in court, to obtain access to records. Upon request, agencies must provide copies of the records to the requester except to the extent that any records, or portions of records, contain information that is protected from mandatory disclosure. Congress provided protection for information contained within records that would, for example, invade a person's personal privacy, reveal confidential commercial information, impede law enforcement, or reveal privileged communications. Agencies must segregate such information from within requested records and disclose the remainder. Agencies are also required to proactively post a range of information concerning their organization and functions, so that it is readily available to the public without the need to make a request.

The FOIA is designed to ensure an informed public, vital to the functioning of a democratic society. Given its disclosure mandate, the FOIA also serves as a check against corruption and serves as a mechanism to hold governors accountable to the governed.

The mission of the Office of Information Policy (OIP) is to encourage and oversee agency compliance with FOIA. OIP is responsible for developing government-wide policy guidance on all aspects of FOIA administration. OIP also provides legal counsel and training to agency personnel. To assist agencies in understanding the many substantive and procedural requirements of the FOIA, OIP publishes the *United States Department of Justice Guide to the Freedom of Information Act,* which is a comprehensive legal treatise addressing all aspects of the FOIA. OIP also provides a range of other resources to agencies to guide them in their administration of the Act.

In addition to its policy functions, OIP oversees agency compliance with the FOIA. All agencies are required by law to report to the Department of Justice each year on their FOIA compliance through submission of Annual FOIA Reports and Chief FOIA Officer Reports. OIP develops guidelines for those reports, issues guidance and provides training to agencies to help them complete the reports OIP reviews and compiles summaries and assessments of agency progress in administering the law.

Congress

Training:

All new Members, officers, and employees of the House of Representatives must take one hour of ethics training within 60 days of being sworn in. All officers and employees of the House of Representatives must take one hour of general ethics training every year of employment thereafter. Certain employees, considered "senior staff," must take an additional hour of ethics training every Congress, or every two years. Trainings are performed by nonpartisan staff of the House Ethics Committee and are either performed live or online.

All new Members, officers, and employees of the Senate must take a ninety-minute ethics training within 60 days of being sworn in. Trainings are presented by nonpartisan staff of the Senate Ethics Committee and are either live or online.

Conflicts of Interest:

All Members, officers, and employees of the Senate and House are subject to many conflict of interest statutes, rules, and regulations. The various federal statutes to which Members, officers, and employees of Congress are subject are listed below in the response to Article 8, paragraphs 2 and 3.

All Members, officers, and employees are prohibited from using their official position for their own personal gain, or the personal gain of anyone else. In addition to the statutory limitations listed below, these restrictions can also be found in Senate Rule 37, House Rule 23, clause 3 and paragraph 5 of the Code of Ethics for Government Service. Additionally, Members who are married to registered federal lobbyists, or whose spouses are employed by organizations that retain a federal lobbyist, must prohibit their official staff from engaging in any lobbying contacts with that spouse, as outlined in House Rule 25, clause 7.

Members, officers, and employees are all limited in their ability to accept gifts from any outside source. The Senate and House gift rules list the various exceptions to the general prohibition on the receipt of gifts. More stringent requirements are placed on gifts given by federal lobbyists or organizations that retain a federal lobbyist or foreign agent. Gifts from foreign government and multinational organizations are governed by statutory exceptions to the Emoluments Clause of the Constitution (Article I, section 9, clause 8).

Members, officers, and staff are also limited in their ability to accept employment opportunities and activities outside Congress. Members, officers, and senior staff are prohibited from receiving compensation for performing fiduciary services, including board service, and are limited in the amount of compensation they may receive for other services. Members, officers, and employees, including staff who are not paid at the senior staff rate, may not accept compensation for services in a matter where the United States is a party or has a direct and substantial interest. Members and senior staff may not accept honoraria, and may only accept compensation for activities such as teaching and writing with the House and Senate Ethics Committees' prior written approval. Finally, Members may not engage in advertising when they have a personal financial interest.

Members, officers, and staff who file financial disclosure statements, discussed below, must disclose, among other things, all positions they hold with outside organizations, any earned income from an outside source that is more than $200 in the calendar year, as well as any book royalties more than $200 in a calendar year.

Public Disclosure:

All Members officers, and certain staff of the Senate and House of Representative, must file public annual financial disclosure statements and periodic transaction reports. The House Committee on Ethics certifies all financial disclosure and periodic transaction reports filed by

its Members and staff. The Senate Ethics Committee certifies all financial disclosure and periodic transaction reports filed by its Members and staff. The House and Senate Ethics Committees provide written guidance on the required contents of financial disclosure and periodic transaction reports. The content of the reports and programme of review are governed by the Ethics in Government Act of 1978, as amended (5 U.S.C. app. §§ 101-11).

The House and Senate Ethics Committees do not review financial disclosure statements for the purpose of identifying and resolving potential financial conflicts of interest, but rather to ensure complete and accurate disclosures. However, potential conflicts of interest under other statutes or rules may sometimes be avoided by a close examination of a financial disclosure statement. All financial disclosure and periodic transaction reports filed by Members, officers, and employees are made public through the Secretary of the Senate and the Clerk of the House. House Members' filings are made available on the Clerk's website at http://clerk.house.gov/public_disc/financial.aspx. Senate Members' filings are made public by the Secretary of the Senate, Office of Public Records at https://efdsearch.senate.gov/search/home/.

Congressional candidates must also file financial disclosure statements. Candidate filings are also made available by the Secretary of the Senate and Clerk of the House.

Post-employment:

Members and senior staff of the Senate and House of Representatives are limited in actions they can take both before and after leaving House employment. House Members and senior staff who are considering employment with non-public entities must file a Notice of Negotiations or Agreement for Future Employment with the respective House Committee on Ethics. Members and staff may also file a Statement of Recusal. If a Member files a Statement of Recusal, the Notice of Negotiations or Agreement for Future Employment and Statement of Recusal completed by the Member are also made public through the Legislative Resource Center within the Clerk's office. Senate Members who are considering employment with non-public entities must file a Disclosure by Member of Employment Negotiations and Recusal form with the Secretary of the Senate, Office of Public Records, and file a copy with the Senate Ethics Committee, within 3 business days of beginning the negotiations or arrangements for private employment of compensation. Members are prohibited from negotiating or making any arrangements for jobs involving lobbying activities until after their successor has been elected. Senior staff who are considering employment with non-public entities must file a Non-Public Disclosure by Staff of Employment Negotiations and Recusal form with the Senate Ethics Committee, within 3 business days of beginning the negotiations or arrangements for private employment of compensation.

Additionally, House Members and very senior staff are subject to a one-year cooling-off period following the end of their employment. Senators are subject to a two-year cooling-off period. These restrictions generally do not limit the type of employment a Member or very senior staff person may have following employment but do restrict certain types of activities during these cooling-off periods.

Prospective Guidance: The House and Senate Ethics Committees provide confidential advice to Members, officers, and employees of the Senate and House of Representatives on prospective activities that may have ethics implications. Advice is provided by nonpartisan, professional staff. Members, officers, and employees are encouraged to contact Committee staff for any question that may involve an ethical concern. In the 114th Congress, the House Committee on Ethics staff responded to approximately 55,000 requests for informal guidance, and, the Senate Ethics Committee responded to approximately 24,000 requests for informal

guidance.

The House and Senate Ethics Committees also provide formal written guidance on a range of topics. Formal guidance is provided through advisory opinions, memoranda to the House and Senate communities, and other publications. During the 114th Congress, the House Committee on Ethics issued approximately 850 formal advisory opinions and 14 memoranda to the House community. In that same period, the Senate Ethics Committee issued 1,755 ethics advisory letters and responses.

Enforcement: The House and Senate Ethics Committees enforcement processes is discussed more fully in response to Article 8, paragraph 4.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

OGE tracks three types of waivers annually. The first two types of waivers allow an employee to participate in a government matter notwithstanding the existence of a personal or imputed financial conflict of interest under 18 U.S.C. § 208(a). One waiver is available to all employees (referred to as a § 208(b)(1) waiver), and the other is limited to short-term employees on Federal Advisory committees (referred to as a § 208(b)(3) waiver). The third type is a waiver of one or more provisions of the Ethics Pledge for political appointees of the executive branch, established by Executive Order 13770 (and a similar pledge previously established, but later rescinded, under Executive Order 13490).

In calendar year 2017, agencies reported issuing 132 § 208(b)(1) waivers, 208 § 208(b)(3) waivers, and 37 Ethics Pledge waivers.

Government-wide guidance on the FOIA is available on the OIP Guidance webpage. https://www.justice.gov/oip/oip-guidance

Summaries of agency Annual FOIA Reports, along with the individual Annual FOIA Reports of the more than 100 agencies subject to the FOIA, detailing the numbers of FOIA requests received and processed by agencies, the disposition of such requests, and time taken to respond, are available on OIP's Reports webpage: https://www.justice.gov/oip/reports-1

Summaries of agency Chief FOIA Officer Reports, as well as the individual Chief FOIA Officer Reports of all agencies, which describe steps agencies have taken to improve transparency, including use of technology, proactive posting of records, and improvements in timeliness, are also available on OIP's Reports webpage: https://www.justice.gov/oip/reports-1

(b) Observations on the implementation of the article

The United States has taken a number of legislative, administrative and policy measures to ensure transparency and prevent conflicts of interests in the public sector, including a constitutional prohibition on gifts and other benefits from foreign governments (Emoluments Clause), criminal and civil statutes regulating conflicts of interest, statutory prohibition against nepotism, and comprehensive regulations on lobbying.

Generally, under 18 U.S.C § 208(b)(I), public officials shall not participate personally and substantially in any matter where their financial interests or that of their family members' or of other specified persons may directly and predictably be affected. If a potential conflict of interest is identified, available remedies include divestiture of assets, resignation from outside positions, recusal, waiver and blind trusts as outlined in Title 5 of the Code of Federal

Regulations, § 2640. Divestiture and blind trusts must be approved by OGE and waivers shall be submitted to OGE for publication.

In regard to Congress, all Members, officers, and employees are prohibited from using their official position for their own personal gain, or the personal gain of anyone else. There are detailed rules on disclosure and management of any potential or actual conflicts of interest as well as described further below.

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

As discussed in response to Article 7 and to paragraph 2 and 3 of Article 8, the United States executive branch has established a comprehensive programme for the formal and informal promotion of integrity, honesty and responsibility among public officials. This includes ethics training and education for public officials; advice and counselling services for incoming, current, and former officials; written, enforceable rules of conduct; a financial disclosure programme (composed of public and confidential financial disclosure); ongoing oversight of agency ethics programmes through programme reviews and an annual questionnaire; and various enforcement mechanisms for violations of the ethics laws. In addition, OGE has engaged in significant outreach activities aimed at informing the public as to the ethics laws and ethics programme management procedures.

Congress:

That "public office is a public trust" has long been a guiding principle of the U.S. government. To uphold this trust, the Senate and House of Representatives have bound themselves to abide by certain standards of conduct, expressed in the Code of Official Conduct and the Code of Ethics for Government Service. These codes provide that Members, officers, and employees are to conduct themselves in a manner that will reflect creditably on Congress, work earnestly and thoughtfully for their salary, and that they may not seek to profit by virtue of their public office, allow themselves to be improperly influenced, or discriminate unfairly by the dispensing of special favors.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

See answer to Article 7 and to paragraph 2 and 3 of Article 8.

(b) Observations on the implementation of the article

The key ethics rules and laws consist of criminal law conflict of interest statutes, civil statutes, and the Standards of Ethical Conduct for Employees of the Executive Branch (Standards

of Conduct). Members, officers and employees of Congress are bound by the Code of Official Conduct and the Codeof Ethics for Government Service.

Measures to promote integrity, honesty and responsibility among public officials include:

- ethics training and education for public officials;
- advice and counselling services for incoming, current, and former officials;
- written, enforceable rules of conduct;
- a financial disclosure programme (composed of public and confidential financial disclosure);
- ongoing oversight of agency ethics programmes through programme reviews and an annual questionnaire;
- various enforcement mechanisms for violations of the ethics laws, etc.

OGE engages the public in overseeing government activities by informing the public about the ethics programme and by making ethics information publicly available.

(c) Successes and good practices

Extensive and innovative use of online platforms to increase transparency and improve the efficiency of various corruption prevention measures.

Paragraph 2 and 3 of article 8

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The U.S. Constitution creates a form of government that is designed to ensure that power is not concentrated in one person or function within the federal government or in the federal government rather than the States. The Constitution creates a series of checks and balances between the branches of the federal government and reserves to the States significant authorities. The Constitution contains a specific measure that addresses the potential for undue influence upon U.S. federal officials by those outside the United States. It includes a provision which states, "[No person holding any office of profit or trust under [the United States] shall, without the consent of the Congress, accept any present, emolument, office or title of any kind whatever, from any King, Prince, or foreign State."

Additionally, the U.S. Congress has passed a number of statutes, both criminal and civil, that address the behavior of elected and appointed officials, and there are administrative codes of conduct that govern the activities of officers and employees of each of the three branches of

government. A summary list of the major authorities used in the prevention of corruption follows:

Statutory Provisions

Criminal Conduct Laws, found in Title18 of the United States Code:

Sec. 201 - Bribery of public officials and witnesses

Sec. 203 - Compensation to Members of Congress, officers, and others in matters affecting the Government

Sec. 204 - Practice in the United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit by Members of Congress

Sec. 205 - Activities of officers and employees in claims against and other matters affecting the Government

Sec. 206 - Exemption of retired officers of the uniformed services

Sec. 207 - Restrictions on former officers, employees, and elected officials of the executive and legislative branches

Sec. 208 - Acts affecting a personal financial interest

Sec. 209 - Salary of Government officials and employees payable only by the United States

Sec. 210 - Offer to procure appointive public office

Sec. 211 - Acceptance or solicitation to obtain appointive public office

Sec. 216 - Penalties and injunctions

Sec. 218 – Voiding transaction in violation of chapter; recovery by the United States

Sec. 219 - Officers and employees acting as agents of foreign principals

Sec. 286 - Conspiracy to defraud Government with respect to claims

Sec. 287 - False, fictitious or fraudulent claims

Sec. 431 - Contracts by Members of Congress

Sec. 432 - Officer or employee contracting with Member of Congress

Sec. 433 - Exemptions with respect to certain contracts

Sec. 641 - Public money, property or records

Sec. 1001 - False statements

Sec. 1905 - Disclosure of confidential information.

Ethics in Government Act of 1978, as amended:

Title I – Public Financial Disclosure requirements of Federal Personnel (5 U.S.C. app. § 101 et. seq.)

Title IV– Office of Government Ethics (5 U.S.C. app. § 401 et. seq.)

Title V – Government-wide Limitations on Outside Earned Income and Employment (5 U.S.C. § 501 et. seq.)

Additional judicial branch restrictions:

Judicial discipline, 28 U.S.C. § 372(c)

Practice of law by justices and judges, 28 U.S.C. § 454

Disqualification of a justice, judge, or magistrate, 28 U.S.C. § 455

Ex parte communications with Administrative agencies, 41 U.S.C. § 557(d)

Restrictions regarding procurement activities:

Procurement integrity, 41 U.S.C. § 423

Interest of Member of Congress, 41 U.S.C. § 22

Statutes (non-criminal) involving gifts and travel:

Gifts to federal employees, 5 U.S.C. § 7353

Gifts to superiors, 5 U.S.C. § 7351

Foreign Gifts and Decorations Act, 5 U.S.C. § 7342

Mutual Educational and Cultural Exchange Act, 22 U.S.C. § 2458a

Acceptance of travel and related expenses from non-federal sources, 31 U.S.C. § 1353

Acceptance of contributions, awards and other payments, 5 U.S.C. § 4111

Conflicts (criminal and non-criminal) related to employment, whistle blowing, and political activities:

Criminal:

Expenditure to influence voting, 18 U.S.C. § 597

Coercion by means of relief appropriations, 18 U.S.C. § 598

Promise of appointment by candidate, 18 U.S.C. § 599

Promise of employment of other benefit for political activity, 18 U.S.C. § 600

Deprivation of employment or other benefit for political contribution, 18 U.S.C. § 601

Solicitation of political contributions, 18 U.S.C. § 602

Making political contributions, 18 U.S.C. § 603

Solicitation [for political purposes] from persons on relief, 18 U.S.C. § 604

Disclosure of names of persons on relief [for political purposes], 18 U.S.C. § 605

Intimidation to secure political contributions, 18 U.S.C. § 606

Place of solicitation [of political contributions], 18 U.S.C. § 607

Absent uniformed services voters and overseas voters, 18 U.S.C. § 608

Use of military authority to influence vote of member of Armed Services, 18 U.S.C. § 609

Coercion of political activity, 18 U.S.C. § 610

Non-criminal:

Anti-nepotism law, 5 U.S.C. § 3110

Relatives of Justice or judge, 28 U.S.C. § 458

Recommendations for employment by Members of Congress, 5 U.S.C. § 3303

Restrictions on dual pay, 5 U.S.C. § 5533

Whistleblower protection, subchapter 11 of chapter 12, Title 5, U.S.C.

Political activities (Hatch Act), subchapter 111 of chapter 73, Title 5, U.S.C.

Tax treatment for sales of property in order to comply with conflict of interest requirements, 26 U.S.C. § 1043

Selected Regulatory Provisions

Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. part 2635) includes provisions on gifts from outside sources; gifts between employees; conflicting financial interests; impartiality in performing official duties; seeking other employment; misuse of position; and outside activities. These Standards of Conduct are based upon Executive Order 12674 (as modified by Executive Order 12731) and other authorities.

Executive Order 12993 provides for procedures to be followed to investigate and administratively sanction Inspectors General.

Rules of the House of Representatives (particularly Rules XIII, XIV, XV, and XVI).

The Senate Code of Conduct.

Judicial Branch Codes of Conduct, including a Code of Conduct for United States Judges; for Judicial Employees; and for Federal Public Defender Employees.

Additional Statutory Provisions Governing More than U.S. Public Officials

Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1

Other criminal statutes (Title 18, U.S.C.)

Sec. 371 - Conspiracy to commit offense or to defraud the U.S.

Sec. 666 - Theft or bribery concerning programmes receiving federal funds

Sec. 1341 - Mail fraud–frauds and swindles

Sec. 1342 - Mail fraud–fictitious name or address

Sec. 1343 - Fraud by wire, radio or television

Sec. 1344 - Bank fraud

Sec. 1345 - Injunctions against fraud

Sec. 1346 - Definition of scheme or artifice to defraud

Education and counseling services on the various codes of conduct and the statutory restrictions are provided by the U.S. Office of Government Ethics (OGE) and Designated Agency Ethics Officials (DAEOs) in the executive branch; the Committee on Standards of Official Conduct of the U.S. House of Representatives and the Select Committee on Ethics of the U.S. Senate for the Legislative branch; and the Committee on Codes of Conduct of the Judicial Conference for the Judicial branch.

Executive Branch Conflict of Interest and Ethics Laws:

All employees of the executive branch are subject to various conflict of interest rules.[39] 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 14 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.[40] Senior politically appointed officials are also subject to civil outside activity and employment restrictions.[41] 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 on OGE's website.[42] OGE also publishes a *Compilation of Federal Ethics Laws* that includes various ethics and good governance related statutes, including the conflict of interest statutes.[43] Additionally, OGE's website provides plain-text explanations of the conflict of interest statutes and the Standards of Conduct by topic[44] and interpretive Legal Advisories issued from 1979 through the present.[45]

Criminal Conflict of Interest Laws (18 U.S.C. § 203, 205, 206, 207, 208, and 209)

As set forth above, the U.S. Congress has criminalized various conflict of interest prohibitions through statute. For example, criminal statutes prohibit bribery[46] and the acceptance and payment of salary or salary supplementation for official duties.[47] Employees are also prohibited from taking an official action in which they have a direct or imputed financial interest.[48] Further, employees are prohibited from engaging in unofficial representations of outside parties in matters against the United States, whether for compensation or not.[49] In addition, all government employees are subject to post-employment prohibitions, with additional prohibitions applying to senior- and very senior-level officials.[50] A summary of the primary conflict interest provisions is found below:

18 U.S.C. § 201, Bribery and Gratuities: Prohibits public officials from accepting bribes or gratuities to influence their Government actions.

18 U.S.C. § 203, Representation of Others for Compensation: Prohibits compensation for representational activities involving certain matters in which the United States is a party or has a direct and substantial interest. Significantly, the prohibition applies to compensation in exchange for the representational activities of either the employee or another individual.

18 U.S.C. § 205, Representation of Others with or without Compensation: Prohibits an employee from certain involvement in a claim against the United States or representing another before the Government in matters in which the United States is a party or has a direct and substantial interest.

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39 These include the criminal conflict of interest statutes (18 U.S.C. § 201, et seq.), Executive Order 12674 on Principles of Ethical Conduct as modified by Executive Order 12731, the 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.
40 Executive Order 13770.
41 5 U.S.C. app. §§ 501-505 and implemented, in part, in 5 C.F.R. part 2636.
42 https://www.oge.gov.
43 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.
44 https://www.oge.gov/web/oge.nsf/Topics.
45 https://www.oge.gov/web/oge.nsf/Legal%20Advisories.
46 18 U.S.C. § 201.
47 18 U.S.C. § 209.
48 18 U.S.C. § 208.
49 18 U.S.C. §§ 203, 205.
50 18 U.S.C. § 207.

18 U.S.C. § 207, Post-employment Restrictions: Imposes restrictions on an employee's activities after leaving the Government. Most restrictions are limited to communications with or appearances before the Government on behalf of another, but some restrictions cover behind-the-scenes activities. These post-employment restrictions are discussed more fully in the response to Article 12, paragraph (e).

18 U.S.C. § 208, Conflicting Financial Interests: Prohibits employees from participating in certain Government matters affecting their own financial interests or the interests of certain persons with whom they have ties outside the Government.

18 U.S.C. § 209, Supplementation of Salary: Prohibits employees from being paid by someone other than the United States for doing their official Government duties.

Some ethics provisions that apply to executive branch employees apply differently to an employee who qualifies as a "special Government employee" (SGE), or do not apply at all. Congress created the SGE category in 1962 when it revised the criminal conflict of interest statutes. Congress recognized the need to apply appropriate conflict of interest restrictions to experts, consultants, and other advisers who serve the Government on a temporary basis. On the other hand, Congress also determined that the Government cannot obtain the expertise it needs if it requires experts to forego their private professional lives as a condition of temporary service. Since 1962, the SGE category has been used in a number of statutes and regulations as a means of tailoring the applicability of some restrictions.

As defined in 18 U.S.C. § 202, an SGE is an officer or employee who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. The SGE category should be distinguished from other categories of individuals who serve executive branch agencies but who are not employees, such as independent contractors (who are generally not covered by the ethics laws and regulations at all). Also, although many SGEs serve as advisory committee members, not all members of advisory committees are SGEs.

Civil Statutory Limitations on Outside Earned Income, Employment and Affiliations for Certain Noncareer Employees (5 U.S.C. app. § 502)

In addition to the criminal laws, high-level noncareer employees (those paid at or over $126,148 in 2018) are subject to a number of limitations on their outside activities. These employees may not:

Receive any form of outside earned income in excess of a statutory threshold ($28,050 USD for 2018).

Receive compensation for practicing a profession that involves a fiduciary duty, or for affiliating with or being employed by an entity that provides professional services involving a fiduciary duty;

Permit the employee's name to be used by any firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship.

Receive compensation for serving as an officer or member of the board of any association, corporation or other entity.

Receive compensation for teaching without having first obtained advance authorization

In addition, high-level noncareer employees who are appointed to a position by the President may receive no outside earned income under Executive Order 12674, as modified by Executive Order 12731.

Standards of Ethical Conduct for Employees of the Executive Branch

In addition to the criminal laws, executive branch employees (including heads of agency) must comply with the Standards of Ethical Conduct for Employees of the Executive Branch. The Standards of Conduct set forth a uniform, comprehensive code of conduct. Some of these provisions include:

Gifts from Outside Sources: Employees are prohibited from soliciting or accepting gifts from prohibited sources or gifts given because of their official position.[51] The term "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.[52] For example, a company bidding for an agency contract or a person seeking an agency grant would be a prohibited source of gifts to employees of that agency.

The term "gift" is defined to include nearly anything of market value.[53] However, it does not include items that clearly are not gifts, such as publicly available discounts and commercial loans and it does not include certain inconsequential items, such as coffee, donuts, greeting cards, and certificates. There are several exceptions to the prohibitions against gifts from outside sources. For example, with some limitations, employees may accept:

Unsolicited gifts with a market value of $20 or less per occasion, aggregating no more than $50 in a calendar year from any single source;

Gifts motivated by a family relationship or personal friendship;

Free attendance at certain widely attended gatherings, such as conferences and receptions, when it is in the agency’s interest; and

Food, refreshments, and entertainment at certain meetings or events while on duty in a foreign country.

Gifts Between Employees: The Standards of Conduct also prohibit employees from giving or soliciting a gift to another employee who is an official superior; or accepting a gift from a lower paid employee, unless the two employees are personal friends who are not in a superior-subordinate relationship.[54]

The following are among the exceptions to these prohibitions: On an occasional basis, employees may give and accept items aggregating $10 or less per occasion, food and refreshments shared in the office, or personal hospitality at a residence. This exception can be used for birthdays and those holidays when gifts are traditionally exchanged.

On infrequent occasions of personal significance, such as marriage, and on occasions that terminate the superior-subordinate relationship, such as retirement, employees may give and accept gifts appropriate to the occasion and they may make or solicit voluntary contributions of nominal value for group gifts.

Conflicting Financial Interests: In addition to the provisions of the criminal law, 18 U.S.C. § 208, prohibiting financial conflicts of interest, the Standards of Conduct contain two provisions designed to deal with financial interests that conflict with employees' official duties.

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51 5 C.F.R. § 2635.202.
52 5 C.F.R. § 2635.203(d).
53 5 C.F.R. § 2635.203(b).
54 5 C.F.R. § 2635.302.

The first provision, entitled "Disqualifying financial interests," prohibits an employee from participating in an official government capacity in a matter in which he has a financial interest or in which his spouse, minor child, employer, or any one of several other specified persons has a financial interest.[55] For example, an agency purchasing agent could not place an agency order for computer software with a company owned by his wife. The provision includes alternatives to nonparticipation, which may involve selling or giving up the conflicting interest or obtaining a statutory waiver that will permit the employee to continue to perform specific official duties.

The second provision, entitled "Prohibited financial interests," contains authority by which agencies may prohibit employees from acquiring or retaining certain financial interests.[56] Employees required to sell financial interests may be eligible to defer the tax consequences of that divestiture.

Impartiality in Performing Official Duties: There may be circumstances other than those that would create a financial conflict of interest in which employees should not perform official duties in order to avoid an appearance of loss of impartiality. The Standards of Conduct contain two disqualification provisions addressing those appearance issues.

The first provision, entitled "Personal and business relationships," states that employees should obtain specific authorization before participating in certain Government matters where their impartiality is likely to be questioned.[57] The matters specifically covered by this standard include those:

Involving specific parties, such as contracts, grants, or investigations, that are likely to affect the financial interests of members of employees' households; or

In which persons with whom employees have specific relationships are parties or represent parties. This would include, for example, matters involving recent employers, employers of spouses or minor children, or anyone with whom the employees have or seek a business or financial relationship.

There are procedures by which employees may be authorized to participate in such matters when it serves the employing agency's interests. The process set out in this part of the Standards of Conduct is also encouraged to be used to address any other matter in which an employee's impartiality is likely to be questioned.

The second provision, entitled "Extraordinary payments from former employers," restricts employees' participation in certain matters involving former employers. If a former employer gave an employee an "extraordinary payment" in excess of $10,000 prior to entering Federal service, it bars the employee from participating for two years in matters in which that former employer is a party or represents a party.[58]

Seeking Other Employment: In addition to the criminal prohibition found in 18 U.S.C. § 208 on participating in any matter that would affect the financial interests of an organization with which an employee is “negotiating for or has an arrangement concerning prospective employment,” the Standards of Conduct also prohibit employees from participating in their official capacities in particular matters that have a direct and predictable effect on the financial

55 5 C.F.R. § 2635.402.
56 5 C.F.R. § 2635.403.
57 5 C.F.R. § 2635.502.
58 5 C.F.R. § 2635.503.

interests of persons with whom they are "seeking employment."[59] Employees who are public financial disclosure report filers are subject to additional notification and recusal requirements when they negotiate for or have an agreement of future employment or compensation with a nonfederal entity.[60] In 2016, over 3,500 such statements were filed.

The term "seeking employment" encompasses actual employment negotiations as well as more preliminary efforts to obtain employment, such as sending an unsolicited resume.[61] It does not include merely requesting a job application.

An employee generally continues to be "seeking employment" until the employee or the prospective employer rejects the possibility of employment and all discussions end. A response on the part of an employee that defers discussions until the foreseeable future does not constitute rejection. An employee is no longer "seeking employment" with the recipient of an unsolicited resume after two months have passed with no response.

Misuse of Position: The Standards of Conduct contain four provisions designed to ensure that employees do not misuse their official positions. These include:

A prohibition against employees using public office for their own private gain for the private gain of friends, relatives, or persons with whom they are affiliated in a non-Government capacity, or for the endorsement or any product, service, or enterprise;[62]

A prohibition against engaging in financial transactions using nonpublic information, or allowing the improper use of nonpublic information to further private interests;[63]

An affirmative duty to protect and conserve Government property and to use Government property only for authorized purposes; and[64]

A prohibition against using official time other than in an honest effort to perform official duties and a prohibition against encouraging or requesting a subordinate to use official time to perform unauthorized activities.[65]

Outside Activities: The Standards of Conduct contain a number of provisions governing employees' involvement in outside activities including outside employment. These provisions include:

A prohibition against engaging in outside activities that conflict with employees' official duties;[66]

Authority by which individual agencies may require employees to obtain approval before engaging in outside activities;[67]

An outside earned income ban applicable to certain Presidential appointees and certain noncareer employees;[68]

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59 5 C.F.R. § 2635.604.
60 5 C.F.R. § 2635.607.
61 5 C.F.R. § 2635.603(b).
62 5 C.F.R. § 2635.702.
63 5 C.F.R. § 2635.703.
64 5 C.F.R. § 2635.704.
65 5 C.F.R. § 2635.705.
66 5 C.F.R. § 2635.802.
67 5 C.F.R. § 2635.803.
68 5 C.F.R. § 2635.804.

A prohibition against serving as an expert witness, other than on behalf of the United States, in certain proceedings in which the United States is a party or has a direct and substantial interest;[69]

A prohibition against receiving compensation for teaching, speaking, or writing related to their official duties;[70]

Limitations on fundraising in a personal capacity;[71] and

A requirement that employees satisfy their just financial obligations.[72]

Senior government employees holding certain non-career positions, to include Presidential appointees, are subject to more stringent restrictions on their outside activities and limitations on earned income.[73] Senior officials are subject to limitations on the amount of outside earned income they can receive while in office and also are banned from receiving any outside income for: the provision of professional services involving fiduciary duties; affiliating with or being employed by organizations that perform such services; or serving as a board member or officer.[74] Presidential appointees are fully banned from receiving any outside income.

Future employment: Executive branch employees are subject to a robust set of conflict of interest laws relating to future employment. Some of these laws apply before an employee leaves government. For example, employees are required to disqualify themselves from government matters involving outside parties with whom they are seeking future employment or have an arrangement for future employment. High-level officials must also notify ethics officials that they are negotiating for future employment within three days of beginning those negotiations, and must disclose any arrangement or agreement for future employment on their public financial disclosure forms.

Executive branch employees are also subject to numerous post-employment laws. These laws generally do not prohibit an employee from accepting employment with any outside party, but rather limit the types of activities an employee can undertake after he or she leaves the government. Most government-wide post-employment restrictions are found at 18 U.S.C. § 207.

Restrictions pursuant to 18 U.S.C. § 207

- A former employee is generally prohibited from having contact with an employee of any Federal agency or court, on behalf of another person or entity, concerning an official matter involving a specific party with which the former employee was involved as a Government employee. 18 U.S.C. § 207(a).
- A former high-level employee is generally prohibited from having contact with an employee of his or her former Federal agency (and perhaps certain officials at other agencies), on behalf of another person or entity, concerning any official matter. 18 U.S.C. §§ 207(c) and (d).
- A former employee may be prohibited from using non-public information concerning an ongoing trade or treaty negotiation to provide certain assistance to another person or entity concerning the negotiation (even though the assistance does not involve contact with a Government employee). 18 U.S.C. § 207(b).

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69 5 C.F.R. § 2635.805.
70 5 C.F.R. § 2635.807.
71 5 C.F.R. § 2635.808.
72 5 C.F.R. § 2635.809.
73 5 U.S.C. app. § 501, et seq.
74 5 U.S.C. app. § 502; 5 C.F.R. §§ 2636.305, .306.

- A former high-level employee may be prohibited from representing or assisting in representing a foreign government or foreign political party (even though the assistance does not involve contact with a Government employee). 18 U.S.C. § 207(f).

Additional Restrictions pursuant to Executive Order 13770

- A former political appointee is prohibited from, within five years after terminating employment as an appointee in any executive agency in which appointed to serve, engaging in lobbying activities with respect to that agency. E.O. 13770, sec. 1, par. 1.
- A former political appointee is prohibited from engaging in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration. E.O. 13770, sec. 1, par. 3.
- A former political appointee is prohibited from engaging in any activity on behalf of any foreign government or foreign political party which would require the appointee to register under the Foreign Agents Registration Act of 1938, as amended. E.O. 13770, sec. 1, par. 4.

Restrictions on Accepting Compensation or Employment

- A former employee may be prohibited from sharing in profits earned by others if the money was earned from having contact with the Government on behalf of third parties (e.g., clients) while the former employee was still in Government. 18 U.S.C. § 203.
- A former employee may be prohibited from accepting compensation from a contractor if the former employee served in a Government position or made a Government decision involving more than $10,000,000 given to that contractor. 41 U.S.C. § 2104 (formerly 41 U.S.C. § 423).
- A retired member of the uniformed services may not accept employment (or compensation for that employment) from a foreign government unless he or she first obtains approval from the Department of State. The Emoluments Clause of the U.S. Constitution.

Other Restrictions: A former executive branch employee may be subject to additional restrictions imposed by agency-specific laws. Also, every former employee must ensure that his or her post-Government activities are in compliance with other requirements that may apply without regard to the individual's employment by the Government. For example, if a former employee will serve as the agent of a foreign principal, the individual must comply with the Foreign Agents Registration Act.

Non-employees: The ethics laws do not apply to contractors and other non-employees, but there are other ways in which the conduct of contractor personnel can be controlled. Some agencies include clauses in their contracts that require contractors to abide by certain provisions of the executive branch Standards of Ethical Conduct. Some agencies go further and provide an initial orientation to contractors regarding the standards of conduct. Acquisition regulations also require contracting officers to identify and address organizational conflicts of interest – that is, cases where the contractor has a business interest that may bias its judgment or the advice it gives the government. And for certain very large contracts (value of contract is expected to exceed $5.5 million and the performance period is 120 days or more), business codes of ethics and conduct are mandatory.

UNCL

In addition, with limited exceptions, a contracting officer may not knowingly award a contract to a government employee or to a business or organization owned or substantially controlled by one or more government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their government duties and to avoid the appearance of favouritism or preferential treatment by the government toward its employees

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

On January 28, 2017, the President signed Executive Order 13770. This order requires non-career employee who are appointed to a full-time position on or after January 20, 2017, to sign an Ethics Pledge, in addition to the ethics statutes and the Standards of Conduct. Under the pledge, each non-career employee makes the following commitments:

- not to accept gifts or gratuities from registered lobbyists or lobbying organizations (subject only to certain exceptions);
- to recuse for two years from any particular matter involving specific parties in which a former employer or client is or represents a party, if the appointee served that employer or client during the two years prior to the appointment;
- if the appointee was a registered lobbyist during the prior two years, to recuse, for two years after appointment, from any particular matter on which the appointee lobbied during the two years prior to appointment; and
- to agree that any hiring or other employment decisions will be based on the candidate's qualifications, competence, and experience.

In addition, non-career appointees are required to abide by additional post-employment provisions, which are discussed in the response to Article 12, paragraph (e).

(b) Observations on the implementation of the article

The executive branch ethics programme consists of enforceable standards of conduct comprised of criminal statutes, civil ethics statutes, presidential executive orders, and administrative regulations known as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) codified in Title 5 of the Code of Federal Regulations. In addition to the statutory restrictions and limitations Members, officers, and employees of Congress are bound by the Code of Official Conduct (for House of Representatives), the Senate Code of Official Conduct and Code of Ethics for Government Service.

Generally, public officials are prohibited from participating in any matter where their financial interests or those of their family members or of other specified persons may directly and predictably be affected (18 USC § 208 (a).

These are in addition to the relevant statutes laws that require disclosure of financial interests and transactions, regulate lobbying and ensure overall transparency of the legislative process as described above and elsewhere in the report.

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

As established by Executive Order 12674, as modified by Executive Order 12731, and the Standards of Ethical Conduct for Employees of the Executive Branch, it is a fundamental principle of ethical conduct that executive branch employees "shall disclose waste, fraud, abuse, and corruption to appropriate authorities."[75]

The Office of Special Counsel (OSC) handles claims of wrongdoing within the executive branch of the federal government from current federal employees, former employees, and applicants for federal employment. (For purposes of this section, former and current employees, and applicants for federal employment are all "employees.") The OSC unit responsible for this work is the Disclosure Unit.

The Disclosure Unit reviews five types of disclosures specified in the statute:

1. Violation of a law, rule, or regulation;
2. Gross mismanagement;
3. A gross waste of funds;
4. An abuse of authority; and/or
5. A substantial and specific danger to public health or safety.

Federal law establishes a unique process for disclosures made to OSC. This process is intended to guarantee the confidentiality of the whistleblower and ensure that wrongdoing is investigated and corrected. In brief, when a whistleblower disclosure is filed with OSC:

The Special Counsel may order an agency head to investigate and report on the disclosure;

After the investigation, the Special Counsel may send the agency's report, the whistleblower's comments, and the Special Counsel's determination as to the completeness and apparent reasonableness of the agency report, to the President and congressional oversight committees; and

The information transmitted to the President may be made public on OSC's website.

OSC does not have independent investigative authority in these cases. However, Congress has given OSC an important oversight role in reviewing government investigations of potential misconduct.

The system can be beneficial to improving government operations in two ways. First, based upon a complaint by a whistleblower, OSC may require an agency to investigate the alleged wrongdoing, even if it is reluctant to do so. Second, OSC provides an important accountability and quality control function in the investigative process. The whistleblowers, who are commonly experts on the subject matter of the allegations, are invited to comment on the quality of the agency investigation and corrective actions prescribed. OSC also maintains a dialogue with the investigating agency to make sure that the actions taken are reasonable and address the concerns raised by the whistleblowers.

[75] 5 C.F.R. § 2635.101(b)(11).

OSC offers training to Federal agencies and non-Federal organizations in the various areas within OSC's jurisdiction, as well as a certification programme for agencies. Specifically, OSC offers training on (1) prohibited personnel practices, including reprisal for whistleblowing; (2) whistleblower disclosures filed with OSC's Disclosure Unit; (3) the Hatch Act and its application both to Federal employees and to state and local employees; and (4) the USERRA. In addition, OSC seeks feedback on the quality of its published information, and what information users identify as priorities for future publication.

Finally, OSC has worked with partners in Congress to modernize the laws it enforces, allowing OSC to be more effective in its role as a watchdog and guardian of employee rights. For example, in 2012, Congress passed the Whistleblower Protection Enhancement Act (WPEA), which overturned several legal precedents that had narrowed protections for federal whistleblowers, provided whistleblower protections to employees who were not previously covered, and restored OSC's ability to seek disciplinary actions against agency officials who retaliate against whistleblowers. (OSC Performance and Accountability Report FY 2017). Furthermore, recent legislation enacted in 2017 requires agency heads to educate their employees, in consultation with OSC, about their whistleblower rights and protections, and requires agencies to include whistleblower protection as a component in supervisors' job requirements and performance appraisals.

As recently as 2017, additional legislative changes further strengthened whistleblower rights as well as OSC's ability to achieve resolution for whistleblowers. The Follow the Rules Act of 2017 strengthened protections for federal employees who refuse to follow orders that would violate a law, rule, or regulation. The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 added a provision to the governing statute that makes it a prohibited practice to access a whistleblower's medical records and use it against the whistleblower in furtherance of an act of retaliation. The legislation also mandates that agencies, in consultation with their own Offices of Inspectors General and OSC, provide training to supervisors with regard to responding to whistleblower retaliation complaints, as well as information to employees about their protections, the role of OSC with regard to those protections, and how to make lawful disclosures of classified information. Lastly, the Act requires that agencies propose mandatory minimum penalties against supervisors found to have committed retaliation, and requires that where a supervisor is found to have committed a prohibited practice a second time, the agency must propose their removal.

Additionally, the OSC Reauthorization Act of 2017 further enhanced OSC's capabilities and tools. For example, the legislation 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. The Act also adds protections for whistleblowers subject to retaliatory investigations, such that OSC may investigate an agency's own investigation of a whistleblower, even if there is no resulting personnel action at issue.

Furthermore, the law relaxes requirements with regard to whistleblowers who make disclosures in the normal course of their duties, such that it is more difficult now to preclude such disclosures from protection. The law also ensures protection of disclosures made prior to the whistleblower's federal employment or application for federal employment. A new provision mandates that agency heads ensure, in consultation with OSC, that supervisors' job requirements and performance appraisals include criteria concerning how to respond appropriately to whistleblower disclosures, and how to create an environment that makes employees feel secure enough to make disclosures without fear of retribution. The Act also reiterates provisions similar to the Kirkpatrick Act concerning education of federal employees with regard to their whistleblower protections and rights, again in consultation with OSC.

Lastly, the Reauthorization Act extends the time from 15 days to 45 days for OSC's Disclosure Unit to assess disclosures of covered wrongdoing for possible referral to the relevant agency for investigation and report back to OSC.

Other federal agencies under OSC's jurisdiction sometimes do not adequately cooperate, such as failing to turn over all responsive information and records in response to OSC's requests; delaying responses to the requests; and witnesses and subject employees not being responsive on an individual basis when asked to sit for interviews and turn over responsive material. Newer legislation has clarified and enhanced OSC's ability to gather responsive information and records, including the ability to report to Congress when an agency has failed to adequately cooperate. Additionally, OSC has faced an increase in complaints over recent years that contributes to a higher-volume docket. This is commensurate with the passage of legislation during the previous several years that has expanded protections for whistleblowers.

A note on receiving disclosures of wrongdoing (not prohibited personnel practices claims): OSC does not take a position on the question of independent investigative authority and refers the reviewers to OSC's referral authority under 5 U.S.C. 1213. If this concerns the investigation of prohibited personnel practices, OSC has that independent investigative authority.

Covered persons

Interns, contractors, and volunteers are not covered persons who can make disclosures to OSC's Disclosure Unit. They can, however, make disclosures to their agency's respective Office of Inspector General and other appropriate internal investigative offices within their agency. They are also not covered for purposes of retaliation claims, except contractors may be protected under the National Defense Authorization Act and can file such complaints with their agency's respective Office of Inspector General. They can also make disclosures to other appropriate entities within the government to deal with the particular type of alleged wrongdoing, such as the Occupational Safety and Health Administration (OSHA).

Whistleblowers can opt to remain anonymous when OSC refers their allegations to the agency for investigation. However, whistleblowers are reminded that based on the nature of the allegations, it may be possible for agency officials to surmise the source of the allegations.

OSC considers the office that investigated the allegations and the investigators themselves to ensure they were not involved in any activity related to the underlying allegations such that this could present a conflict of interest or impair their objectivity. OSC may include any such concerns with objectivity in OSC's assessment of the reasonableness of the report.

In assessing the reasonableness of the report, OSC considers the scope of investigation and the level of detail in the report to assess whether it appears reasonable and sufficient. OSC relies on the whistleblower(s) to review the report and provide feedback because they were the original source of information and are in a unique position to ascertain whether the report appears reasonable.

Training

OSC provides training specifically targeted for supervisors to educate them on how to receive and respond to whistleblower disclosures as well as claims of retaliation. OSC also provides training to agencies (supervisors and employees) on whistleblower protections, and for those agencies that complete the training, OSC provides a certification so those agencies can demonstrate their compliance with statutory requirements under 5 U.S.C. 2302(c) to inform their employees about rights and remedies available under whistleblower protection laws.

Legislative updates also require agencies to include whistleblower protection as a performance metric in supervisors' performance plans and evaluations.

Psychological support

Whistleblowers may seek support through their own agency's Employee Assistant Program (EAP). To the extent they experience negative effects of reporting that they believe to be a result of retaliation, they can file a retaliation complaint with OSC. If there is a finding of retaliation, the whistleblower may receive corrective action and/or damages for their suffering.

Complaints of retaliation

Employees can file retaliation complaints with OSC. OSC will assess the claims and determine whether to investigate. If OSC does not investigate, the employee can file a de novo appeal to the Merit Systems Protection Board (MSPB) to have their claims heard by an administrative judge. If OSC does determine to investigate and ultimately makes a finding that retaliation occurred, OSC will work with the employing agency to achieve a corrective action, which consists of a reversion to the status quo ante (such as reversal of a removal or suspension) plus any other appropriate relief such as damages. If the agency does not agree, OSC can prosecute the matter before an administrative judge at the MSPB and pursue the appropriate corrective action through an MSPB order.

OIGs

Each Office of Inspector General establishes a system to receive and process allegations from any individual, including public officials of the aforementioned laws, rules, and regulations. The system should ensure that an appropriate disposition, including appropriate disposition is made for each allegation.

According to the Quality Standards for Offices of Inspector General, the following are the elements of a system for receiving and reviewing allegations.

"This system should ensure that:

1. The OIG has a well-publicized mechanism through which agency employees and other interested persons can submit allegations of fraud, waste, abuse, and mismanagement.

2. The OIG's website has a direct link on the homepage for individuals to submit allegations. Those using the direct link shall not be required to provide personally identifiable information.

3. The OIG shall not disclose the identity of an individual who submits allegations through the OIG's website link without the consent of the individual, unless the OIG determines such disclosure is unavoidable during the course of the investigation. Concerning agency employees who provide information or complaints to their OIG, the OIG shall not disclose the identity of such employees without their consent, unless the OIG determines such disclosure is unavoidable during the course of the investigation, regardless of whether the information or complaint was submitted through the OIG website.

4. Each allegation is retrievable and its receipt, review, and disposition are documented.

5. Each allegation is initially screened to ensure that urgent and/or high priority matters receive timely attention and facilitate early determination of the appropriate courses of action for those complaints requiring follow-up action.

6. Based on the nature, content, and credibility of the complaint, allegations are appropriately

reviewed."

Congress:

The Code of Ethics for Government Service directs all people in government service, including Members of Congress to "[e]xpose corruption wherever discovered." The House Committee on Ethics may exercise its investigative authority in several scenarios. Among those, the Committee may exercise its investigative authority when: (1) information offered as a complaint by a Member of the House of Representatives is transmitted directly to the Committee; or (2) information offered as a complaint by an individual not a Member of the House is transmitted to the Committee, provided that a Member of the House certifies in writing that such Member believes the information is submitted in good faith and warrants the review and consideration of the Committee. However, most Committee investigations begin when the Committee, on its own initiative, undertakes an investigation.

In the 114th Congress, the House Committee on Ethics:

- Commenced or continued investigative fact-gathering regarding 78 separate investigative matters;
- Filed five reports with the House totaling nearly 2,100 pages regarding various investigative matters;
- Resolved 40 additional investigative matters confidentially;

The Senate Ethics Committee shall exercise its investigative authority whenever it receives a complaint, allegation of, information about, or becomes aware of any information alleging that any Senator, officer, or employee of the Senate has violated a law, the Senate Code of Official Conduct, or any rule or regulation of the Senate relating to the conduct of any individual in the performance of his or her duty as a Member, officer, or employee of the Senate, or has engaged in any improper conduct which may reflect upon the Senate.

In the 114th Congress, the Senate Ethics Committee:

- Received 118 alleged violations of Senate rules;
- Conducted 12 preliminary inquiries;
- Dismissed eight alleged violations, after conducting a preliminary inquiry into the matters, for lack of substantial merit or because it was inadvertent, technical, or otherwise of a de minimis nature;
- Dismissed 79 alleged violations for lack of subject matter jurisdiction or in which, even if the allegation in the complaint were true, no violation of Senate rules would exist; and
- Dismissed 27 violations because they failed to provide sufficient facts to any material violation of the Senate rules beyond mere allegation or assertion.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

Over FY 2016-17, OSC obtained favorable results in 451 whistleblower retaliation actions, which is also triple the rate of an average two-year span. Further, OSC achieved a record 47 systemic corrective actions in FY 2017, which will result in significant policy changes or larger training efforts aimed at proactively preventing future violations at all of the agencies involved.

OSC also achieved great success in correcting government wrongdoing, with agencies substantiating more than 75 percent of whistleblower disclosures referred by OSC in FY 2017. This resulted in improved public safety, the prevention of fraud and abuse, and recoupment of significant funds to the U.S. Treasury. In particular, OSC's work with whistleblowers to identify quality of care issues and improper scheduling practices at VA health facilities is helping the government fulfill its solemn commitment to veterans.

OSC also represents service members and reservists securing reemployment upon return to civilian life, achieving significant favorable results under USERRA. Equally important, OSC dramatically increased its training of the federal community to prevent problems from occurring in the first place. OSC conducted 148 outreach events at federal agencies during FY 2017, and also certified 43 agencies under its Section 2302(c) Certification Program, which requires agencies to take specific steps to inform their managers and employees about whistleblower protections and PPPs.

OSC's current training and outreach programmes also emphasize the important role that federal employees can play in reporting government waste, fraud, and abuse. If there are developments in the federal employee whistleblower laws, OSC will consider appropriate changes to its 2302(c) Certification Program. Finally, while OSC's training and outreach programmes offer in-depth and interactive exercises to agencies, OSC looks forward to receiving ongoing feedback from stakeholders to evaluate and improve these efforts. (OSC Performance and Accountability Report FY 2017)

OSC also has started to publish reports of its investigatory findings (in redacted format) when doing so may serve an educational purpose. For example, in FY 2017, OSC published its investigative reports in two cases, finding that prohibited personnel practices had been committed and that corrective and/or disciplinary action was warranted. Equally important, OSC has improved communication with all of its federal stakeholders through its revamped website and enhanced use of social media. (See: https://osc.gov/Services/Pages/Outreach.aspx)

Each of the OIGs publish a semiannual report to Congress, and in these reports the OIGs include the results of their activities for the prior six month period. This is a prominent reporting mechanism for an IG, and these reports can be found on each of the OIG's websites and at oversight.gov. These reports summarize the activities of the OIG, specifically describing significant problems, abuses, and deficiencies relating to the administration of programmes and operations of the agency disclosed by the OIGs activities during the reporting period. Further, the reports include the recommendations for corrective action made by the OIG, and a discussion of significant activities and results during the period. This includes reporting investigative activities, such as the number of cases opened; number of cases closed; number of indictments; number of convictions; monetary recoveries; number of audit, inspection and evaluation reports; and total dollar value of questioned costs and funds to be put to better use [IG Act § 5(a)]. Many semiannual reports also contain summaries or tables of the outcomes of investigations conducted.

As mentioned previously, OIGs also maintain websites, and some use various social media, to provide the public with information on their activities. The information shared highlights their responsibilities and their work, which potentially may deter individuals from committing fraudulent or criminal activities. It also provides members of the public with information on how to report alleged criminal activities.

(b) Observations on the implementation of the article

Pursuant to the principles of ethical conduct issued in Executive Order 12674, as modified by Executive Order 12731, and subsequently issued in the Standards of Conduct, executive branch employees "shall disclose waste, fraud, abuse, and corruption to appropriate authorities".

The Whistleblower Protection Act of 1989, as amended, provides for protection against retaliation and procedures for redress. The Office of Special Counsel (OSC) deals with the claims of wrongdoing within the executive branch of the federal government. The Disclosure Unit within OSC reviews five types of disclosures, namely violation of a law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; and/or a substantial and specific danger to public health or safety; and censorship related to scientific research, analysis, or technical information where such censorship could lead to the above-listed types of wrongdoing (violation of law, gross mismanagement, gross waste, substantial and specific threat to public health or safety, etc.).

Disclosures of wrongdoing are referred to the agency concerned which shall report to OSC on the outcome of any investigation into the disclosure. Complaints of retaliation against whistleblowers can be submitted to OSC, including online, and are investigated by OSC. After an investigation and finding of retaliation, OSC may work with the concerned agency to seek a corrective action and if the employing agency does not agree, OSC may pursue corrective action through MSPB. Similarly, OSC's decisions not to investigate the complaints of retaliation may be appealed to MSPB. To make more effective the Office of Special Counsel (OSC) needs to have independent investigative authority.

However, the Whistleblower Protection Act does not cover non-employees (interns, contractors, special government employees, etc.) and congressional staff. Even though there are avenues to report wrongdoing in Congress, there seems to be a lack of uniformity in the way reports are received and handled by each Member of Congress. Similarly, the reviewers are concerned that reporting persons may not be afforded the same level of confidentiality of their identity and of protection against retaliation as the executive branch employees if they report wrongdoing through a Member of Congress.

In addition, as of the date of the country visit, the Merit Systems Protection Board had no Members which impacted its adjudicatory functions. Moreover, the Board had had no quorum since January 2017.

In light of the above, it is recommended that the United States:

- **consider taking appropriate measures to limit any adverse effect of vacancies in the Merit Systems Protection Board on whistle-blowers**
- **Consider extending the protections of the Whistleblower Protection Act 1989 or adopting equivalent measures in relation to non-employees in the executive branch and congressional staff.**

Paragraph 5 of article 8

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to

make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The United States has established a comprehensive system of public financial disclosure laws for all three branches of the Federal government through enactment of the Ethics in Government Act of 1978 (EIGA), as amended.[76] As permitted by EIGA, the U.S. Office of Government Ethics (OGE) has also established a confidential financial disclosure system for lower-level executive branch officials who occupy positions with a higher risk for conflicts of interest. The objective of both financial disclosure systems is increased transparency and the identification and prevention of conflicts of interest.

Executive Branch:

There are two financial disclosure systems that are used in the federal executive branch: a public financial disclosure system for high-level officials and a confidential financial disclosure system for officials who are not required to file a public financial disclosure, but who occupy positions that pose a heightened risk for conflicts of interest. The primary purpose of the financial disclosure system in the executive branch is to proactively identify and prevent conflicts of interest. Public and confidential reports are therefore structured to facilitate a conflict of interest review. These reports are not net worth statements and they are not audited. Every financial disclosure report is subject to both a technical review to ensure that the report is in compliance with the disclosure laws and a conflict of interest review for compliance with the ethics laws and to identify potential conflicts of interest and establish a mitigation strategy.

There are approximately 28,000 public financial disclosure reports (filed using the OGE Form 278e) and 380,000 confidential financial disclosure reports (filed using the OGE Form 450) that are submitted annually by executive branch officials.

Executive Branch Public Financial Disclosure

Individuals in positions that require public financial disclosure must file their disclosures upon entry into the position, annually, and upon leaving the position. This includes all senior executive branch employees, including the President, Vice President, heads of agencies, and others. Certain individuals, such as candidates for nomination or election to the office of the President or Vice President, and certain Presidential nominees requiring Senate confirmation must file their disclosure within a period of time, but no later than 30 days before an election or within five days after nomination to a position. New employees who are covered by the public financial disclosure requirements must file a report within 30 days of assuming office, if not earlier. Individuals must thereafter file an annual report every year by May 15, and again within 30 days of terminating their position. For filers in the executive branch, these reports are available to the public upon request from the agency where the individual is employed. If the individual's financial disclosure report is required to be reviewed by OGE, the public may also request the report from OGE. The financial disclosure reports of the President, Vice President, and the most senior appointed officials are posted directly on OGE's website, and

[76] The public financial disclosure requirements established by the Ethics in Government Act of 1978 were upheld as constitutional in 1979. *See* *Duplantier v. United States*, 606 F.2d 654 (5th Cir. 1979), *cert. denied*, 449 U.S. 1076 (1981).

are available to the public without the need for a request.

In general, an individual who is required to file a new entrant, nominee, annual, or termination public financial disclosure is required to report the following information (once threshold value or income amounts are met): each position held by the filer outside of government (officer, director, trustee, partner, employee, etc.) and dates held; employment-related assets and income and retirement accounts for the filer and his or her spouse; assets held by the filer, filer's spouse, and filer's dependent children for the production of income and an indication of its value by category of amount; source of investment income received by the filer, filer's spouse, and filer's dependent children and the type and amount of income by category of amount; sources of earned income for the filer and filer's spouse and the exact amount; each liability (by creditor) and the amount owed by category of amount; gifts and reimbursements for travel by source, including value or amount (only for annual and termination reports); purchases, sales, and exchanges of certain assets (such as securities and investment real estate) by date of transaction and category of amount (only for annual and termination reports); any continuing arrangement with a former or current employer or agreement for future employment, and the terms of that agreement or arrangement; the source of compensation for whom the individual has provided personal services exceeding $5,000 in a year (only for nominee or new employee reports).

Each of the requirements has some minor exceptions. Individuals must report the value of their financial interests by selecting an appropriate category or range of values. For example, valuation of asset categories begin with "none (or less than $1,001)," "$1,001 to $15,000," "$15,001-$50,000," "$50,001 to $100,000," and so on up to the last category of "over $50,000,000." , Employees select similar categories for investment income (such as dividends, capital gains, interest, and royalties). The actual amount of earned and non-investment income must be reported.

Additionally, employees in positions requiring public financial disclosures must file periodic transaction reports of certain personal financial transactions in stocks, bonds, and other securities. These transaction reports are due within 45 days of the transaction or within 30 days of notification of the transaction. They are reviewed using similar criteria as other public financial disclosure reports and are made available to the public in the same way as other public financial disclosure reports. In 2017, over 13,750 transaction reports were filed.

OGE has created an executive branch-wide electronic filing system for the filing of public reports. This filing system, known as *Integrity,* is a web-based system developed and administered through OGE. *Integrity* was designed to help produce quality reports, enhance oversight, and promote transparency. As a result, *Integrity* incorporates a combination of data entry grids and context-dependent questions to help filers identify all of their reportable interests and to report those interests correctly. For example, first-time filers are routed through a series of questions that vary based on their entries in prior grids as well as their answers to prior questions. Thus, they help filers identify related financial investments that they may have overlooked. Other key features include a pre-population tool that allows a filer to "pre-populate" a financial disclosure report with data from a prior new entrant or annual report and an "auto-complete" feature which suggests possible matches for over 13,000 preprogrammed financial assets. As a result, *Integrity* produces quality reports by helping filers more quickly, easily, and completely report required information. In addition, *Integrity* includes key features for reviewers, including the ability to automatically compare previous reports against a current report and run management and administrative status reports (such as the number of filed reports, number of reports requiring action, and the number of reports due to the agency).

Integrity also enhances oversight of the executive branch ethics programme by allowing OGE to monitor agencies' progress in administering their individual financial disclosure

programmes. Further, *Integrity* enables agency ethics officials to assign, review, track, and manage reports electronically. Certified reports are maintained in *Integrity* for the statutorily required time-period, at which time they are deleted in accordance with EIGA.

The use of *Integrity* is mandatory for all public financial disclosure forms that are required to be submitted to OGE except for the President and Vice President and candidates for President and Vice President, who may file on paper. This includes public financial disclosure reports submitted by all nominees to positions requiring Presidential appointment and Senate confirmation (PAS). This also includes approximately 1,100 high-level executive branch officials including Cabinet and agency heads, all incumbents to such PAS positions, high-level officials within the White House Office and the Office of the Vice President, and the Designated Agency Ethics Official of each agency. Use of *Integrity* is the default for the collection of all other public financial disclosure reports and the system has been widely adopted throughout the executive branch. As a result of OGE's multi-year effort, at the end of fiscal year 2017, 136 agencies were processing financial disclosure reports in *Integrity*, with a total of 14,301 individual filers registered in the system. Between January 1 and September 30, 2017, those filers submitted more than 23,601 public financial disclosure reports. Agencies that have legacy electronic filing systems or who collect public reports in paper or PDF form can be authorized by the Director of OGE to use those alternative methods of collection. That authorization can be rescinded at any time that it is determined by the Director of OGE that it would promote the efficient or effectiveness of the executive branch ethics programme. In 2017, 56 agencies noted that they used other electronic filing systems for the collection of confidential financial disclosure forms. *Integrity* does not support the collection of confidential financial disclosure reports.

To assist those who file or review public financial disclosure reports, OGE has also created an interactive online Public Financial Disclosure Guide.[77] This tool provides public filers and reviewers with helpful information, illustrations of sample language, definitions, and answers to frequently asked questions in plain language. The guide provides step-by-step instructions on how to fill out the public financial disclosure form and how to report specific types of financial holdings. Because it is an online tool, the guide is an evolving document and easily updated.

The compliance rate for filing public financial disclosure reports was 99%: 28,616 new entrant, annual, and termination public financial disclosure reports were required to be filed, and 28,352 reports were filed.[78] An individual who files a public financial disclosure report late can be subject to a $200 late fee. In addition, the Department of Justice may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report.[79] Likewise, the Department of Justice may bring a criminal action against any individual who knowingly and willfully falsifies information required to be reported or knowingly and willfully fails to file or report any information that such individual is required to report.[80] Finally, an agency may take any appropriate action against employees who have not filed or who have filed a false, incomplete, or late report, in accordance with applicable personnel laws and regulations.

77 https://www.oge.gov/Web/278eGuide.nsf
78 5 U.S.C. app. § 104.
79 5 U.S.C. app. § 104. For violations occurring prior to November 2, 2015, the maximum civil monetary penalty is $50,000 USD. As per the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701, of Public Law 114-74), violations occurring after November 2, 2015, can be assessed a maximum civil monetary penalty of $59,028 USD.
80 5 U.S.C. app.§ 104; 18 U.S.C. § 1001; *see also* 18 U.S.C. § 1018.

Executive Branch Confidential Financial Disclosure

The basic purpose of the confidential financial disclosure system is to assist employees and their agencies in avoiding conflicts between official duties and private financial interests or affiliations. As a result, employees who are not required to file public financial disclosure reports but whose positions pose a risk for conflicts of interest file new entrant and annual confidential financial disclosure reports. Confidential filers include those employees whose duties and responsibilities require them to participate personally and substantially through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a government action regarding:

a. contracting or procurement;
b. administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;
c. regulating or auditing any non-federal entity; or
d. other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-federal entity.

In addition, most special Government employees (SGEs) must file a confidential financial disclosure report if they are not required to file a public financial disclosure report.

A confidential filer must submit a new entrant report within 30 days of assuming the duties of a covered position, unless an extension is granted. If an agency decides that a current employee has undertaken duties that require the filing of a confidential report, the individual will have 30 days to file his or her first report from the date the agency makes that designation. An agency may require that a prospective entrant to a covered position file his or her report before serving in the position if needed to ensure that there are no insurmountable ethics concerns. In addition to the initial report, individuals who serve in a covered position for more than 60 days during a calendar year must file an annual report by February 15 of the following year.

Confidential financial disclosure reports require similar information as the public financial disclosure reports, including information on spousal and dependent child assets. However, these reports do not require certain information that is required on the public financial disclosure form, such as the value of assets and sources of income.[81] In general, the following information must be reported for incoming officials: investment assets of the filer, the filer's spouse, or the filer's dependent children; the filer's sources of earned income, honoraria, and other non-investment income; sources from which the filer's spouse received earned income and honoraria; liabilities owed to any one creditor by the filer, the filer's spouse, or the filer's dependent children that exceeded $10,000; any outside position held by the individual in the past 12 months; and certain agreements and arrangements with current and former employers. Annual filers must report the following: investment asset of the filer, the filer's spouse, or the filer's dependent children that had a value greater than $1,000 at the end of the preceding calendar year; sources of investment income for the filer, filer's spouse, and dependent children; sources from which the filer's spouse received earned income and honoraria; liabilities owed to any one creditor by the filer, the filer's spouse, or the filer's dependent children that exceeded $10,000; any outside position held by the individual; certain agreements and arrangements with current and former employers; annual filers also must report gifts and travel reimbursements received by the filer, filer's spouse, and dependent children from a single

[81] OGE recently revised the regulations establishing the information required to be reported by confidential disclosure filers. *See* 83 Fed. Reg. 33980. These revisions become effective on January 1, 2019. *Id.* Information reported in this questionnaire is reflective of the requirements that will be in effect as January 1, 2019.

source aggregating more than $390 during the preceding calendar year (excluding gifts worth $156 or less).

Confidential reports are not available to the public, but are reviewed and certified by agency ethics officials in the same way that public financial disclosure reports are. Although not publicly available, these reports can be obtained by an appropriate investigative or prosecutorial authority if needed, such as an agency's Office of Inspector General or the Department of Justice. Confidential filing is done either through individual agencies' electronic filing systems or by using OGE Form 450, which is available on OGE's website. Confidential financial disclosure forms must be retained for six years from the date of receipt.

With the prior written approval of OGE, agencies may require employees to file additional confidential financial disclosure forms which supplement the standard public or confidential forms. Agencies, with the prior written approval of OGE, may also choose to use an alternative confidential financial disclosure form and procedure tailored to agency or position specific risks.

OGE provides tools for helping agencies identify who should file confidential financial disclosure reports as well as a comprehensive Confidential Financial Disclosure Guide.[82]

In 2017, the compliance rate for filing confidential financial disclosures was 99%: 386,301 confidential disclosure reports were required to be filed, and 382,874 were filed. An agency may take any appropriate action, including adverse action, against employees who have not filed or who have filed a false, incomplete, or late report, in accordance with applicable personnel laws and regulations. The Department of Justice may bring a criminal action against any individual who knowingly and willfully falsifies information required to be reported or knowingly and willfully fails to file or report any information that such individual is required to report.

Review of Public and Confidential Reports Generally

The review of financial disclosure reports is primarily conducted by the agency ethics officials in the agency where the employee is located. The review is to be conducted within 60 days of the date of filing. For high-level officials, such as the President, Vice President, agency heads, certain White House Officials, and DAEOs, reports are secondarily reviewed by OGE. Once OGE receives the report from the agency, OGE has 60 days to review it. Importantly, the financial disclosure reports of individuals who are nominated to PAS positions are typically reviewed by the agency, OGE, and the White House prior to the announcement of the individual's nomination.

During the technical review, the agency (and if applicable, OGE) works with the individual filer, asking the individual a variety of questions to clarify the entries on the report and helping the individual to ensure that all required information is properly disclosed. This process is often iterative and can take multiple rounds. The agency will also consult publicly available resources such as finance websites, search engines, and government websites. Because different assets have different disclosure requirements, the goal in conducting such research is to understand the nature of the individual's financial holdings. This information also informs the conflicts review. Likewise, publicly available background information about the individual might trigger the reviewer to ask additional questions. If inaccuracies are found, the agency and OGE are authorized to require the filer to provide additional information, which becomes part of the report.

The agency (and if applicable, OGE) will then carry out a conflict-of-interest review. The

82 https://www.oge.gov/Web/oge.nsf/Resources/Helpful+Resources+for+Confidential+Financial+Disclosure.

conflicts review focuses on reviewing the financial disclosures and the duties of the filer's position to identify the potential for conflicts of interest under the ethics statutes and regulations. This review does not rely upon the subjective view of the reviewer as to what might constitute a conflict of interest. Rather, the review focuses on whether an employee may have holdings or outside positions and relationships that might trigger one of the ethics laws, and to establish remedial measures that would prevent those conflicts of interest from arising.

If a reviewing official identifies a potential conflict of interest between a filer's official duties and the filer's personal financial interests and affiliations, the agency (and if applicable, OGE) work with the individual to determine what steps that individual must take in order to avoid conflicts with the financial interests, outside positions, relationships, and activities listed on the report. The steps required may include one of, or a combination of, the following actions: divestiture of conflicting assets; resignation from positions; a limitation on certain outside activities; agreement by the individual to recuse from taking actions on certain specific matters that may come before the individual; and/or a waiver of the conflict of interest provision in certain limited circumstances. The creation of a blind trust might be an available action, but it is never required.

Review of the Reports of Nominees to Positions Requiring Presidential Appointment and Senate Confirmation

OGE has instituted a stringent financial disclosure and conflict-of-interest review for the highest level political appointees in the executive branch. In many ways this review process is similar to that used for other filers; however, there are several additional safeguards introduced. This review process applies to all individuals who are considered for nomination to PAS positions. Individuals who are under consideration for PAS positions are also required to reduce to writing all commitments that they will take to avoid potential conflicts of interest in an "ethics agreement." Once the individual is appointed, OGE, along with the agency in which the person has been appointed, monitors this agreement to ensure that the steps agreed upon have been taken by the individual and they have documented their compliance with those commitments. Usually those steps are required to be completed within 90 days of appointment.

In general, the following review process is used for all PAS nominees:

a. Prospective Nominee Submits a Financial Disclosure Report

As a practice, each individual whom the President is considering appointing to a position in the executive branch requiring Senate confirmation submits a financial disclosure report before the final selection of that individual for nomination.

b. A Technical Review of the Report is Conducted (as described above)

The technical review sets the stage for the conflicts review. The technical review helps ensure that the individual has correctly reported all relevant information so that a full conflicts review can take place.

c. A Conflict-of-Interest Review of the Report is Conducted (as described above)

The agency and OGE will then carry out a conflict-of-interest review. As part of the conflict-of-interest review, OGE and the agency focus on whether an employee may have holdings or outside positions and relationships that might trigger one of the ethics laws, and to establish remedial measures that would prevent those conflicts of interest from arising. As result, this analysis focuses on all potentially applicable ethics laws, including the statutory conflict of interest laws at 18 U.S.C. §§ 203, 205, 208, and 209, as well as the Standards of Conduct and the Ethics Pledge requirements that are applicable to full-time, non-career officials under Executive Order 13770.

d. An Ethics Agreement is Prepared and Signed by the Nominee

Once potential conflicts of interest are identified, the agency and OGE work with the individual to determine what steps that individual must take, should he or she be appointed, in order to avoid conflicts with the financial interests, outside positions, relationships, and activities listed on the report.

The steps required may include one of or a combination of the following actions: divestiture of conflicting assets; resignation from positions; a limitation on certain outside activities; agreement by the individual to recuse from taking actions on certain specific matters that may come before the individual; and/or a waiver of the conflict of interest provision in certain limited circumstances. The creation of a blind trust might be an available action, but it is never required. These actions are reduced to writing in an “ethics agreement” that is signed by the individual. This ethics agreement may be requested by the public through OGE’s website.

e. The Financial Disclosure Report and Ethics Agreement are Sent to the Senate

Historically, a President rarely nominates an individual before the OGE Director is satisfied that there has been disclosure of the financial and other interests required by law and that the individual has agreed to take the necessary steps to avoid potential conflicts of interest. Once the President has formally nominated an individual for a position, OGE will transmit a certified financial disclosure report and signed ethics agreement to the Senate committee considering the individual’s nomination. The report and ethics agreement are then publicly available.

f. OGE Follows-up to Ensure Ethics Agreement Compliance

Once the individual is appointed, OGE, along with the agency in which the person now serves, monitors this agreement to ensure that the steps agreed upon have been taken by the individual. Usually those steps are required to be completed within 90 days of appointment. OGE ensures compliance with the commitments made in an individual’s ethics agreement by requiring the individual to provide a written certification of their compliance to their agency and to OGE. These written certifications of ethics agreement compliance are posted on OGE’s website. If an individual fails to timely file a certificate of compliance, OGE will note that the individual has not filed his or her certificate on OGE’s website. An employee who has made a material misrepresentation or omission on the certification form may be subject to disciplinary action or criminal prosecution for making a false certification or writing.

Review of disclosures

OGE and agencies are required to review financial disclosure reports in accordance with the review standards set forth by Congress in the Ethics in Government Act of 1978. With regard the highest-level employees in the executive branch, the review of an individual financial disclosure report is a two-stage process. Each report is reviewed by the agency where the filer is employed as well as by a staff-level OGE reviewer and then by an OGE supervisor. In analysing the disclosure reports, OGE and the agency review the disclosure on the basis of the information “contained in such report.” As such, reviewing officials do not need to audit the report; rather, disclosures are taken at “face value” as correction unless there is a patent omission, ambiguity, or the official has independent knowledge of matters outside the report. Nonetheless, reviews of financial disclosure reports often involve multiple exchanges between filers and reviewers to clarify information, or to retrieve more information that might be necessary for a conflict of interest analysis. This process, particularly for the highest level officials, is iterative and can occur over an extended period of time.

That said, falsification or willful omission of information required to be reported on a financial disclosure form are criminal offenses. When an ethics official reviews an annual form, he or

she will consult with the filer and compare the form with the previous year's form, asking for clarification and additional information if needed. Making the forms publicly available can also lead to inquiries about such things as missing assets or positions, primarily by the press but also by good governance groups, and others such as former political rivals or former spouses.

OGE does not cross-check information in the filings against other sources. The U.S. federal financial disclosure system is not designed to detect illicit enrichment, but is aimed at preventing conflicts of interest. As a result, it is generally the existence of a financial interest and not its value or the amount of income received from it that creates the need for remedial or preventative action. In regards to tax records, U.S. tax forms are designed to determine an individual's tax liability. They do not contain the information necessary to conduct a conflict of interest analysis. For instance, a tax return in the United States does not require the reporting of individual investment instruments (stocks, bonds, etc.) if they don't generate interest or dividends during that tax year. The tax form doesn't require the reporting of many types of gifts, agreements for future employment, unpaid positions held, liabilities, etc. This type of information is important to determining potential conflicts of interest. Individual taxpayer information is closely protected by the government in order to help encourage the voluntary filing and full reporting of income. OGE is restricted from receiving tax records or detailed tax return information under U.S. law and it is not available to ethics officials. It can be made available to investigators under specific circumstances. OGE also does not cross-check against other public and private databases, such as bank records or land registries. In general, reviewers don't need that level of detail, since actual amounts aren't necessary for a conflict of interest analysis. In addition to not being necessary for most conflict of interest reviews, this information may be protected other laws dealing with confidentiality. That said, enforcement authorities can get access to those accounts if necessary for a specific investigation.

Adequacy of the reporting periods for new entrants in both confidential and public disclosure systems

The disclosure periods for new entrants of both confidential and public disclosure reports require the disclosure of relevant and current information regarding an employee's personal and imputed financial interests. In general, past information is less relevant for a conflict of interest perspective. This is particularly true for financial conflicts of interest, given that such conflicts do not arise if an employee no longer has a financial interest that could be affected by the performance of the employee's duties. Moreover, the information required for new entrant reports of public financial disclosure filers requires the identification of prior positions and major clients going back two years from the date of filing the form. In most cases this covers all applicable conflict of interest provisions that arise from former employer or former client relationships.

Reasons for excluding positions held by spouses from reportable information

The public and confidential financial disclosure reporting systems carefully balance the need to disclosure information relevant for conflict of interest prevention with the privacy interests of filers. Congress has required the reporting of information on the public report if there is utility in its disclosure for preventing conflicts of interest. OGE has similarly required the reporting of information on the confidential report if disclosure would have utility in preventing conflicts of interest.

In this regard, Congress has required a filer to disclosure outside positions, including uncompensated positions and those that have terminated prior to the filing of the report. Requiring the reporting of a spouse's uncompensated or terminated positions would not

generally further conflict of interest rules. As a result, Congress did not require the reporting of a spouse's outside positions on the public financial disclosure, unless he or she received compensation from that employer. If a spouse has received income from, or has an equity interest in, a current or former employer, he or she must report that employer as a source of income or the interest in that employer. OGE has similarly restricted reporting of a spouse's outside positions on the confidential financial disclosure report.

Congress:

The Ethics in Government Act of 1978 requires that Members, officers, and certain employees of the Senate and House of Representatives file public financial disclosure statements. All financial disclosure reports filed for Members, officers, and employees are public filings; Congress does not permit confidential financial disclosure reports. Public financial disclosure reports are due annually on May 15. New Members, officers, and employees who will be financial disclosure filers must also file a financial disclosure report within 30 days of commencing employment. Members, officers, and employees who are financial disclosure filers must also file a financial disclosure report within 30 days of terminating House or Senate employment. Generally, financial disclosure filers must also file public periodic transaction reports within 45 days of certain financial transactions.

The House Committee on Ethics and the Clerk of the House maintain an online system for filing financial disclosure and periodic transaction reports. That system is available at https://fd.house.gov, although entrance is protected by a unique user name and password and limited to those who are required to file these reports. As discussed above in response to Article 7, paragraph 4, Members' financial disclosure and periodic transaction reports are made available on the Clerk's website. Financial disclosure and periodic transaction reported filed by officers and employees are made available to the public in the Clerk's Legislative Resource Center.

The Senate Ethics Committee and Secretary of the Senate, Office of Public Records maintain an online system for filing financial disclosure and periodic transaction reports. That system is available at https://efd.senate.gov/security/login/, although entrance is protected by a unique user name and password and limited to those who are required to file these reports. As discussed above in response to Article 7, paragraph 4, Members' financial disclosure and periodic transaction reports are made available on the Secretary of the Senate's website. Financial disclosure and periodic transaction reports filed by officers and employees are made available to the public by the Secretary of the Senate.

To assist filers, the House and Senate Committees publish an instruction manual annually. Additionally, Members, officers, and employees may always contact Committee staff to discuss particular questions.

The primary purpose of financial disclosure and periodic transaction reporting in Congress is to promote transparency. The Committees review and certify financial disclosure and periodic transaction reports. Committee staff reviews these reports to ensure completeness of the disclosures. Committee staff works with the individual filers to ensure that everything required to be disclosed by the Ethics in Government Act of 1978 and the Stop Trading on Congressional Knowledge Act of 2012 is fully disclosed, and in the proper format. Like in the executive branch, this process can require multiple rounds before the Committees will certify any particular report. Both original filings and any amendments are made public. The Committees do not review these filings for the purpose of resolving conflicts, although occasionally a review may uncover activities that need to be resolved to ensure compliance with other laws or rules.

Members, officers, and employees that file late financial disclosure and periodic transaction reports must pay a $200 late fee, although the House and Senate Ethics Committees can waive that late fee in extraordinary circumstances. For late periodic transaction reports, the House Ethics Committee applies a graduated late fee structure, ranging from $200 per late report for first offenses to $200 per late transaction for fifth offenses and beyond. The Senate Ethics Committee assess a $200 penalty for late financial disclosure and periodic transaction reports. Failure to file financial disclosure or periodic transaction reports, falsification of information on the reports, and making false statements or omissions on the reports are punishable by fines or jail time. The Department of Justice prosecutes federal criminal cases, including those dealing with financial disclosure reporting.

(b) Observations on the implementation of the article

The financial disclosure programme established by the Ethics in Government Act is designed to identify and prevent conflicts of interest in all three branches of government. Disclosures may be public (for elected, presidentially appointed Senate-confirmed (PAS) and other senior officials) or confidential (for individuals in risk-sensitive positions as determined pursuant to 5 CFR § 2634.904(a)(1)).

Financial interests that must be disclosed include a wide range of interests such as outside positions, assets, income, transactions and liabilities of public officials and their spouses and children. However, if they own a trade or business, loans given to such trade or business are not required to be reported if the public official and the official's spouse and children are not personally liable for such loans. If a potential conflict of interest is identified, 5 CFR § 2640 outlines possible remedies, including divestiture of assets, resignation from outside positions, recusal, waiver and blind trusts. Certificates of divestiture and blind trusts must be approved by OGE. Nominees to PAS positions set forth in ethics agreements the steps they will take to alleviate actual or apparent conflicts of interest. Likewise, Members of Congress and candidates, officers and certain employees of Congress must file financial disclosure and periodic transaction reports (5 USC § 101 et seq.), which are published online (sect. 8, Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act)). Failure to file or the filing of a false financial disclosure report is subject to sanctions.

It is recommended that the United States strengthen efforts to require appropriate public officials to disclose all liabilities of a non-public trade or business in which they or their spouses or children have an interest.

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Enforcement

- The courts through actions brought by the U.S. Department of Justice (DOJ) impose criminal sanctions and civil sanctions.

- The President may reprimand or remove any of his appointees.
- The Congress may impeach, try, and remove a judge, the Vice President or President.
- Each House of Congress may, pursuant to its own rules, sanction or remove a fellow Member.
- Each department, agency, and court may impose disciplinary sanctions against an officer or employee of the agency following standard administrative procedures.
- The federal courts system, following a procedure set forth in statute, can sanction (but not remove) a federal judge.
- An employee of the Congress may be disciplined by his or her appointed authority.

Offices of Inspectors General regularly conduct investigations into a wide array of alleged administrative violations, including ethics-related misconduct. OIGs may become aware or identify a potential ethics violation through reporting mechanisms to internal OIG hotline units or as part of an ongoing audit, investigation, inspection, or review.

If the OIG determines that there is a reasonable basis to believe that an official violated a criminal statute, such as the prohibition on financial conflicts of interest (18 U.S. Code § 208), OIG must refer the matter to the Department of Justice and concurrently inform OGE of such referrals. An OIG's investigation can continue to conclusion even if the official in question has resigned or otherwise departed the agency. Once the official is no longer employed by the agency, however, the OIG may be limited in its ability to compel an interview with the former official in the context of an ethics or administrative (i.e., non-criminal) investigation.

Violations of the statutory conflict of interest statutes, 18 U.S.C. §§ 203, 205, 208, 207, and 209, are criminally punishable. As set forth in 18 U.S.C. § 216, the Department of Justice can seek imprisonment of up to a year for a violation of the conflict of interest statutes, and up to five years imprisonment when the action was done wilfully. The Department of Justice may also seek criminal fines up to $250,000 in some cases. In addition, the Department of Justice may bring a civil action against a person who has violated the conflict of interest statutes, and upon a preponderance of the evidence, such person will be subject to a "civil penalty of not more than $50,000[83] for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater."[84] Furthermore, if the Department of Justice has reason to believe that an individual is engaging in conduct that would constitute a violation of the conflict of interest statutes, the Department may petition an appropriate U.S. court to enjoin the individual from engaging in that conduct. An employee who violates one of the civil statutes found in 5 U.S.C. app. §§ 501-505 of the Ethics in Government Act (and implemented at 5 C.F.R. part 2636), dealing with the receipt of outside compensation by certain noncareer officials, may be required to pay a maximum civil monetary penalty of $19,639.[85] Violation of any of these statutes may also be the basis of disciplinary action such as reprimand, suspension, demotion, and removal.

Violation of the Standards of Conduct may be the basis of disciplinary action including but not limited to reprimand, suspension, demotion, and removal. Violations of the Standards of Conduct may also be the basis of corrective action necessary to remedy a past violation or prevent a continuing violation of the Standards of Conduct, including but not limited to restitution, change of assignment, disqualification, divestiture, termination of an activity,

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83 As per the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701, of Public Law 114-74), violations occurring after November 2, 2015, can be assessed a maximum civil monetary penalty of $98,194 USD. *See* 28 C.F.R. § 85.5.

84 18 U.S.C. § 216.

85 For violations occurring prior to November 2, 2015, the maximum civil monetary penalty is $11,000 USD.

waiver, the creation of a qualified diversified or blind trust, or counseling.[86]

Noncareer employees who violate the Ethics Pledge signed under Executive Order 13770 may be subject to a number of penalties under that Executive Order. As set out in section 5 of the Executive Order, the Department of Justice can investigate any possible breach of the executive order and seek a civil action to enjoin further violations, can seek to establish a constructive trust over any money or things of value arising out of the breach of the Ethics Pledge, or can seek any other relief authorized in law. In addition, violations of the Ethics Pledge may be the basis of basis of disciplinary action including but not limited to reprimand, suspension, demotion, and removal as well as corrective action. Agencies may also debar former noncareer employees from engaging in lobbying activities with respect to the agency for up to five years under procedures established by that agency.

As described in the response to Article 8, paragraph 2, criminal, civil, and disciplinary measures may be taken for employees who fail to file, or falsify information on financial disclosure reports.

Enforcement action against SGE and non-employees

Nearly all of the conflict of interest statutes referenced above apply to an SGE, at least in some capacity. Non-employees can be prosecuted under the conspiracy statute, 18 U.S.C. § 371, and the aiding and abetting statute, 18 U.S.C. § 2, for conspiring with, or causing, aiding, or inducing a government employee to violate a conflict of interest statute.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

OGE collects information regarding the prosecution of criminal and civil ethics statutes from the Department of Justice (DOJ) through an annual survey. This survey is sent to each United States Attorney's Office and to select offices in the Department of Justice, such as the Public Integrity Section. Based on information received from DOJ, OGE prepares summaries of reported cases that are published by OGE in a yearly *Conflict of Interest Prosecution Survey* Legal Advisory. OGE receives information on 10 to 15 cases on average per year. Prosecution surveys from 1990 through 2017 can be found on OGE's website:

https://www.oge.gov/web/oge.nsf/Resources/Conflict+of+Interest+Prosecution+Surveys+Index+(by+Statute).

In 2017, the Department of Justice identified 11 cases involving conflict of interest prosecutions.

OGE also seeks information on the number of disciplinary actions taken based wholly or in part upon violations of the regulatory Standards of Conduct provisions. The number of reported disciplinary actions since 2008 are found in the below table.

Number of disciplinary actions taken based wholly or in part upon violations of the Standards of Conduct provisions (5 C.F.R. part 2635), (2008-2017).

Year	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
# of Enforcement Actions	3149	3695	2711	2896	2673	2637	2440	1584	1421	1235

[86] 5 C.F.R. §§ 2635.105, 2635.106.

OGE also collects information on the number of disciplinary actions that agencies have taken, wholly or in part, upon violations of the conflict of interest statutes, 18 U.S.C. §§ 203-209. The number of reported disciplinary actions from 2008 to 2017 is found in the table below.

Number of disciplinary actions taken based wholly or in part upon violations of the criminal conflict of interest statutes, 18 U.S.C. §§ 203, 205, 208, 207, and 209 (2008-2017)

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
# of Enforcement Actions	38	79	95	48	40	45	20	22	16	19

In the 114th Congress, the House Committee on Ethics commenced or continued investigative fact-gathering regarding 78 separate investigative matters, most of which were begun at the Committee's initiative.

In the 114th Congress, the Senate Ethics Committee received and reviewed 120 alleged violations of Senate Rules.

(b) Observations on the implementation of the article

Violations of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) may be investigated by OIGs and may lead to corrective or disciplinary action. During investigations, OIGs may seek technical support from OGE, including expertise on ethics laws. Violations of the bribery and conflict of interest statutes are referred to the Department of Justice and may lead to criminal prosecution and/or civil enforcement.

There are a number of disciplinary and other measures applicable to federal public officials in the United States for violations of the ethics laws described above.

In the executive branch, disciplinary measures are applied by agency heads following investigation and recommendation of OIGs (in agencies with such an office) or advice from OGE. In regard to ethics agreements concluded between presidential nominees, the employing agency and OGE, the enforcement of any breaches of the agreements are applied by the head of the agency upon advice of OGE.

Currently, OIGs, or offices or functions with oversight responsibilities in agencies without an OIG, may - but are not required to - seek technical support of OGE in their investigations into ethics violations. Similarly, OGE's input is not required in criminal and civil enforcement actions by the Department of Justice.

In view of the reviewers, the above arrangements do not fully take advantage of the expertise of OGE in ethics laws. Since OIGs are tasked with the identification, prevention and investigation of a wide range of issues in addition to breaches of ethics laws and only in relation to the specific agency they are part of, the understanding of ethics laws and recommendations of corrective actions in case of breaches may vary across different OIGs. While it is acknowledged that CIGIE provides an important platform to discuss and coordinate action to respond to such issues, OGE remains unique in terms of its overall mandate and position in leading and overseeing the executive branch ethics programme.

Therefore, it was recommended that the United States consider enhancing the effectiveness of OGE, for example, by requiring oversight bodies and officials such as Inspectors General to seek appropriate assistance of OGE in their investigations of ethics

violations and in formulating recommendations for corrective action, or by vesting OGE with similar investigative powers.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Numerous laws and regulations have evolved over many years to assure the citizens of the United States that the government is objective, fair, and completely transparent in awarding public contracts. There is no succinct way to fully describe the comprehensive body of regulations, statutes, and case precedent that protect the integrity of the federal procurement process, assuring a fair process open process to all parties.

The history of public procurement in the United States demonstrates a concern for three policy goals: (1) equity (in the sense of fair access of bidders to the procurement); (2) integrity (e.g., rules that prevent procurement officials and competing contractors from intentionally or inadvertently subverting a fair competition); and (3) maintaining public confidence (e.g., the public is assured of the fundamental fairness of the procurement process by the availability of various mechanisms for impartial review of procurement decisions).

The overall purpose of procurement legislation is to give all persons equal right to compete for Government contracts and to prevent unjust favoritism, collusion, and fraud in awarding Government contracts. Legislation specifically designed to ensure transparency and equality in the tendering of public contracts is briefly discussed below.

The Federal Acquisition Regulations provide an introduction and effective roadmap to the process. The Federal Acquisition Regulations were established in order to codify and publish uniform policies and procedures for acquisition by all executive branch agencies. This body of regulations, which is codified at Title 48 Code of Federal Regulations, ensures that executive branch agencies receive the best value product or service in a timely basis while maintaining the public's trust and fulfilling public policy objectives. This document may be searched or downloaded from the Internet at <https://www.acquisition.gov/browsefar>. Procurement responsibilities for the overall procurement policies and practices of the executive branch reside with the Office of Federal Procurement Policy, Office of Management and Budget. In particular Agencies and Departments, specialized offices and staffs provide procurement policy and oversight functions. There are well-established appeal procedures, discussed below, both administrative and through legal proceedings in the courts that afford fair and impartial review of the federal contracting process. Subpart 33 of the Federal Acquisition Regulations describes many of these procedures. A brief overview of the procurement process may be gleaned from the following highlights:

The Competition in Contracting Act of 1984, Pub. L. 98-369, Div. B, Title VII, 2701, ensures transparency and equality by requiring the use of competitive procedures in selecting products and services. Under this authority, Government agencies normally award contracts on a competitive basis using two procedures. The first process, termed "sealed bidding," involves an "invitation for bids" whereby the Government issues a written solicitation and private contractors submit bids by a uniform deadline. In the second procedure, termed "competitive negotiation," the Government issues a detailed "request for proposals" and then engages in "competitive negotiation" with selected responding companies, eventually requesting revised "best and final offers." In either case, the Government must publicly advertise the solicitation and award the contract to the source whose proposal is most advantageous to the United States based solely upon the factors specified in the solicitation. Only in extraordinary circumstances may the Government purchase goods and services without opening the contract to competition, such as when only one source will satisfy agency requirements, where disclosure of solicitation information could compromise national security, or where there is an urgent need for expeditious procurement, 10 U.S.C. §§ 2304-2305; 41 U.S.C. § 253.

The Office of Federal Procurement Policy Act Amendments of 1988. Another major legislative effort to ensure transparency and equality in the contracting process is the Office of Federal Procurement Policy Act Amendments of 1988, Pub. L. No. 100-679. These rules apply to all government procurement regardless of dollar value. The "procurement integrity" provisions of this law provide substantial civil and criminal penalties against competing contractors, intermediaries, and government personnel for specified prohibited practices. For example, the law prohibits discussions of possible employment between a competing contractor or his agent and government procurement official during the conduct of procurement. A competing contractor or its agent is also prohibited from directly or indirectly offering or giving money, a gratuity, or anything of value to a procurement official. The Act further prohibits the solicitation or disclosure of any proprietary or source selection information regarding the procurement. In addition to providing rules governing certification and disclosure for contractors and government procurement officials, the Act also prohibits, for two years, a former government employee from working for a private contractor on a contract where the employee "personally and substantially" was involved while a government employee. See generally 41 U.S.C. § 423.

Appeal Procedures:

Given the detailed rules covering the tendering of public contracts, and the strict compliance

required, there are many occasions for disagreement during the contracting process. Unsuccessful competitors commonly challenge contract awards. Prospective bidders or other interested parties who believe they have been treated improperly in the procurement process may "protest" the Government's conduct pursuant to three main procedures: (1) informally with the agency; (2) in an appeal to the United States General Accounting Office (an independent legislative agency); and/or (3) by way of judicial process in the United States Court of Federal Claims, a court of nationwide jurisdiction located in Washington, D.C. Judicial decisions of Court of Federal Claims may be appealed to the United States Court of Appeals for the Federal Circuit, and thereafter to the United States Supreme Court. The principal remedy sought in protests is usually to delay the award of a contract pending determination as to the rights of the disputing parties, directions to re-compete the contract, or monetary relief.

In addition, Supreme Court precedent and statutes permit the Government to void certain government transactions that have been tainted by corruption. In U.S. v. Mississippi Valley Generating Co., 364 U.S. 520 (1961), the Supreme Court upheld the non-enforcement of a contract that was "infected by an illegal conflict of interest." Specifically, the government employee at issue had a participated in the contract at a time when he was seen as having an indirect interest in the contract through his outside employer. This principle has been adopted and expanded upon by the U.S. Congress through passage of 18 U.S.C. § 218, which states that the Government may "declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any" violation of the bribery or conflict of interest statutes in chapter 11 of title 18, United States Code.

It should also be noted that the United States Congress has broad authority to inquire about procurement practices, both at a policy level and in connection with specific contracts. The transparency of the system also facilitates monitoring by the business community, the news media, non-government organizations, and the academic community. Ordinarily, the Inspectors General for the pertinent agency, the Federal Bureau of Investigation, or both investigates allegations of possible corrupt influences affecting a particular contract. Generally, individuals who have a basis to believe that contracting irregularities or other improper conduct has occurred may anonymously contact the pertinent Office of Inspector General on a telephone "hot line" or choose to expose allegations through a wide variety of channels, including contacting other law enforcement authorities, Members of Congress, and the press.

In regards to Article 9(1)(e), all employees who are involved in public procurement are governed by the conflict of interest statutes as well as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), issued by the U.S. Office of Government Ethics (OGE). Amongst the various provisions that are of utmost relevance for procurement officials are the criminal prohibition on employees participation, personally and substantially, in any particular matter (including any contract) in which that employee has a personal or imputed financial interest. 18 U.S.C. § 208. In addition, all employees including procurement officials are required to act impartially and may not give favorable treatment to any private organization or individual. 5 C.F.R. § 2635.101(b)(8). OGE's Standards of Conduct amplify this principle, and therefore require all employees to consider the appearance of a conflict of interest as well as the potential for a conflict of interest in the instances where they are called on to participate in a particular matter involving specific parties, such as a contract, in which one of the parties has a "covered relationship" with the employee, or where the matter

could affect the financial interests of a member of the employees household.[87] Procurement officials are generally required to recuse themselves from contracts that would involve such persons if it is determined that a reasonable person would question the employee's participation.[88] Likewise, an employee must generally be recused from any contract if he or she is seeking employment with one of the parties to that contract. 5 C.F.R. § 2635.604.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

For additional information and statistics regarding federal procurement, detailed standard reports on a variety of metrics (total spending, spending by category, competition, small business participation, etc.) are available in the System for Award Management at https://www.sam.gov. Additionally, ad hoc reports based on the attributes recorded for each contract in SAMS.gov are possible, including the solicitation procedures used. Accessing standard reports and the ad hoc reporting tool requires registering (registration is available to the public and free of charge).

See answer above regarding *U.S. v. Mississippi Valley Generating Co.*, 364 U.S. 520 (1961).

(b) Observations on the implementation of the article

Public procurement in the United States is decentralized. Title 41 of USC, the Federal Acquisitions Regulations and other laws and regulations establish detailed procurement rules and procedures. The Office of Federal Procurement Policy in the Office of management and Budget provides overall direction for government-wide procurement policies, regulations and procedures.

.Part 6 of the Federal Acquisitions Regulations requires, with certain limited exceptions, the use of competitive procedures and sets thresholds and conditions forthe use of micro-purchases and simplified acquisitions (part 13), sealed bidding (part 14), contracting by negotiation (part 15) and other procurement methods. Public advertisement of procurement notices and selection criteria are mandatory in most cases (41 USC § 1708). An online portal (https://sam.gov/) contains all federal procurement opportunities and awards valued at more than $25,000.

Interested parties, such as actual and prospective bidders, may challenge procurement processes informally with the agency concerned, in a protest to GAO and/or by way of judicial process (Federal Acquisitions Regulations, part 33). Part 9 of the Federal Acquisitions Regulations specify qualifications as well as requirements and procedures for debarment, suspension (e.g. on the grounds of commission of fraud, bribery or other offences in connection with public procurement) and ineligibility of contractors. Suspensions and debarment of contractors are also regulated under the Procurement Integrity Act.

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[87] An employee has a "covered relationship" with, amongst other people, any person the employee has, within one year from the date of participation, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee. An employee also has a "covered relationship" with his or her family members with whom he or she has a close personal relationship and with any organization where the employee's spouse, parents, or dependent children are employed. 5 C.F.R. § 2635.502(b).

[88] Where an employee or an agency ethics official has determined that a reasonable person would question the employee's participation, he or she may be authorized to participate by an independent agency designee if there is a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programmes and operations. 5 C.F.R. § 2635.502(d).

Procurement officials are subject to the ethics programme for the executive branch, as well as additional requirements of the Procurement Integrity Act, such as the prohibition on discussing possible employment with bidders during the conduct of procurement (see generally 41 USC § 423).

Pre- and post-award audits of federal contracts may be conducted by OIGs, internal audit offices, the Defense Contract Audit Agency or non-federal government/private auditors in certain cases. Contract audits may include examinations of internalcontrols and accounting and financial management systems of the contractor.

The reviewers note that the decentralized approach of the United States to regulating public procurement results in a similarly fragmented approach to auditing of federal procurements. Unlike the systems with one or very few dedicated auditing agencies or functions, fragmented systems of audit may have challenges in regard to effective and efficient information sharing and coordination among different auditors as well as have varying degrees of human and other resources, knowledge and skills of auditors among others. This may lead to differences in quality and consistency of audits and decreased ability of auditors to detect corruption effectively.

Therefore, it is recommended that the United States consider establishing a new agency or entrusting an existing agency with a mandate to perform all federal contract audits.

(c) Successes and good practices

Extensive and innovative use of online platforms to increase transparency and improve efficiency of various corruption prevention measures.

Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

As part of the overall system of checks and balances, the U.S. Constitution (article 1, section 9, clause 7) contains two clauses giving Congress the role of setting the budget: the Appropriations Clause and the Statement and Accounts Clause. The Budget and Accounting Act of 1921 moved many of the preliminary budget-setting functions to the President and the executive branch. The act established the Bureau of the Budget (now the Office of Management

and Budget) as an executive branch agency that works with the President on drafting a budget; it also established the General Accounting Office (now the Government Accounting Office) as an auditor reporting to Congress.

The framework of the budget process can be divided up into five stages each of which is governed by its own procedures outlined in the Budget Act, the rules of the House and Senate, and other relevant statutes. These stages are, in this order: President's budget submission, adoption of the budget resolution, passage of appropriations bills, consideration of reconciliation legislation, and consideration of authorization legislation. The last three stages often occur simultaneously. While the President is responsible for submitting a budget proposal, budget responsibility is given the Congress in the U.S. constitution as part the checks and balances system.

The President generally submits a comprehensive budget request to Congress in early February. This budget request is public and posted on the website of the Office of Management and Budget. Once the President's budget is submitted, the U.S. House of Representatives and Senate Committees hold public hearings on the budget and the Congressional Budget Committees report a concurrent resolution on the budget that sets each committee's allocation of spending authority for the next fiscal year and aggregate spending and revenue levels for at least 5 years. In May, the House begins consideration of the 12 annual appropriation bills for the next fiscal year based on the discretionary spending allocation in the budget resolution. Starting in May, these bills move through hearings, markups, Floor consideration, and conference and are constrained by the levels and allocations in the budget resolution and the enforcement of the Budget Act and through House and Senate rules. If the spending and revenue levels in the budget resolution require changes in existing law, the resolution would contain instructions to committees to report legislation containing such statutory changes.

An overview of the U.S. budget process can be found on the House of Representative's Budget Committee website: https://budget.house.gov/about/budget-framework/

The Council of the Inspectors General on Integrity and Efficiency (CIGIE) was statutorily established as an independent entity within the executive branch by the "The Inspector General Reform Act of 2008," P.L. 110-409 to:

- Address integrity, economy, and effectiveness issues that transcend individual Government agencies; and
- 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 the Inspectors General.

  To accomplish its mission, the CIGIE shall:

- Continually identify, review, and discuss areas of weakness and vulnerability in Federal prograes and operations with respect to fraud, waste, and abuse;
- Develop plans for coordinated, government-wide activities that address these problems and promote economy and efficiency in Federal programmes and operations, including interagency and interentity audit, investigation, inspection, and evaluation programmes and projects to deal efficiently and effectively with those problems concerning fraud and waste that exceed the capability or jurisdiction of an individual agency or entity;
- Develop policies that will aid in the maintenance of a corps of well-trained and highly skilled Office of Inspector General personnel;
- Maintain an Internet website and other electronic systems for the benefit of all

Inspectors General;

- Maintain one or more academies as the Council considers desirable for the professional training of auditors, investigators, inspectors, evaluators, and other personnel of the various offices of Inspector General;

- Submit recommendations of individuals to the appropriate appointing authority for any appointment to an office of Inspector General described under subsection (b)(1)(A) or (B);

- Make such reports to Congress as the Chairperson determines are necessary or appropriate; and

- Perform other duties within the authority and jurisdiction of the Council, as appropriate.

  Office of the Inspector General (OIG) audits are conducted in accordance with Government Auditing Standards (http://www.gao.gov/yellowbook) established by the Comptroller General of the United States [IG Act, § 4(b)(1)(A)]. In addition, OIGs coordinate with the Comptroller General to avoid duplication in Federal audits [IG Act, § 4(c)]. OIGs also establish criteria for using non-Federal auditors (typically, Certified Public Accountant firms) and ensure that such auditors comply with Government Auditing Standards.

OIGs are charged with not only investigating or auditing fraud, waste, and abuse after they have occurred, but also identifying vulnerabilities and recommending programmatic changes that would, when enacted or implemented, strengthen controls or mitigate risk. Additionally, OIGs may investigate allegations of mismanagement. To this end, some OIGs, but not all, have separate offices devoted to conducting programme inspections and evaluations. Others fulfill this responsibility through their audit and investigative offices. Where an OIG does conduct programme evaluations and inspections, the IG is charged with tracking and reporting these recommendations in its semiannual report to the Congress, just as an OIG reports its audit findings and recommendations. CIGIE's Quality Standards for Inspection and Evaluation (https://www.ignet.gov/sites/default/files/files/iestds12.pdf) provides a solid framework for the work of OIG inspectors and evaluators.

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.

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 and supports 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 programmes 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.

GAO's work leads to laws and acts that improve government operations, saving the government and taxpayers billions of dollars.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

Public information on the spending and revenue collection of the federal government can be found in a variety of locations. The Office of Management and Budget offers historical tables summarizing receipts, outlays, and surpluses of the federal government dating back to the country's founding in 1789. Among the data included on OMB's website is information on the source of receipts, composition of outlays, and total government expenditure. All historical tables are available for download.

Additionally, every day the Department of the Treasury publishes a Daily Treasury Statement (DTS). The DTS summarizes data on the cash and debt operations of the Treasury based on reporting of the Treasury account balances of the Federal Reserve banks. These statements, which are available for download, include information on, inter alia, totals on operating cash for the federal government, deposits and withdrawals of operating cash, and federal tax deposits.

The Department of the Treasury also publishes the Monthly Treasury Statement (MTS) and the Combined Statement of Receipts, Outlays, and Balances of the Federal Government (Combined Statement). The MTS summarizes the financial activities of the Federal Government and off-budget federal entities and conforms to the Federal Government's budget. Specifically, the MTS includes summaries of receipts and outlays of the Federal Government, as reported by Federal agencies. The Combined Statement is an annual publication which provides more detail on receipts and outlays of the Federal Government.

For more granular data on government spending, individuals can visit USAspending.gov. USAspending.gov is the official source for spending data for the U.S. Government. This website shows the public what the federal government spends every year and how it spends the money. It allows the public to follow the money from the Congressional appropriations to the federal agencies and down to local communities and businesses. This website was created after the adoption of the Federal Funding Accountability and Transparency Act of 2006 (FFATA), which was signed into law on September 26, 2006. The legislation required that federal contract, grant, loan, and other financial assistance awards of more than $25,000 be displayed on a publicly accessible and searchable website to give the American public access to information on how their tax dollars are being spent. In 2008, FFATA was amended by the Government Funding Transparency Act, which required prime recipients to report details on their first-tier sub-recipients for awards made as of October 1, 2010.

The transparency efforts of FFATA were expanded with the enactment of the Digital Accountability and Transparency Act (DATA Act) Pub. L. 113-101 on May 9, 2014. The purpose of the DATA Act, as directed by Congress, is to: expand FFATA by disclosing direct agency expenditures and linking federal contract, loan, and grant spending information to federal agency programmes; establish government-wide data standards for financial data and provide consistent, reliable, and searchable data that is displayed accurately; simplify reporting, streamline reporting requirements, and reduce compliance costs, while improving transparency, and improve the quality of data submitted to USAspending.gov by holding agencies accountable.

(b) Observations on the implementation of the article

The framework of the federal budget process is provided principally by the Constitution and the Budget and Accounting Act of 1921. This Act and the relevant rules of each chamber of Congress ensure transparency at every stage of the budget process.

The Chief Financial Officers Act of 1990, as amended by the Government Management Reform Act of 1994, and the Accountability of Tax Dollars Act of 2002 require executive branch agencies to submit audited financial reports to OMB for consolidation and for preparation of the Financial Report of the United States Government. Under the Government Management Reform Act, GAO is responsible for the audit of the Financial Report using the generally accepted government auditing standards, performing that audit in cooperation and coordination with OIGs and independent public accountants. The Financial Report of the United States Government and the GAO auditor's report are then submitted to Congress and the President as public documents.

The Department of the Treasury also publishes daily, monthly and annual Treasury statements which summarize the revenues and expenditure of the federal Government for a given period. Additionally, the Federal Funding Accountability and Transparency Act of 2006 and the Digital Accountability and Transparency Act of 2014 outline specific financial data that must be published through the www.usaspending.gov website.

The Chief Financial Officers Act, as amended, mandates relevant government agencies to have financial management systems that comply with, inter alia, appropriate accounting principles and standards and internal control standards. Furthermore, OIGs in key agencies conduct audits, programme inspections and evaluations and recommend changes to strengthen control and mitigate risks through semi-annual reports to Congress.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Audit

Pursuant to 31 U.S.C. § 331(e)(1), the Department of the Treasury, in cooperation with the Office of Management and Budget (OMB), must submit an audited (by the Government Accountability Office or GAO) financial statement for the preceding fiscal year, covering all accounts and associated activities of the executive branch of the United States Government to the President and Congress no later than six months after the September 30 fiscal year-end. The Financial Report is prepared from the audited financial statements of specifically designated federal agencies. GAO's responsibility is to express opinions on the consolidated financial statements based on conducting an audit in accordance with U.S. generally accepted government auditing standards (GAAP).

The Chief Financial Officers Act of 1990 (CFO Act), as expanded by the Government Management Reform Act of 1994 (GMRA), requires the inspectors general of the 24 CFO Act

agencies to be responsible for annual audits of agency-wide financial statements prepared by those agencies. (31 U.S.C. § 3521(e). GMRA authorized the Office of Management and Budget to designate agency components that also would receive financial statement audits. (See 31 U.S.C. § 3515(c)). GMRA requires GAO to be responsible for the audit of the U.S. government's consolidated financial statements, (GMRA, Pub. L. No. 103-356, § 405(c), 108 Stat. 3410, 3416-17 (Oct. 13, 1994), codified at 31 U.S.C. § 331(e)(2)) and the Accountability of Tax Dollars Act of 2002 (ATDA) requires most other executive branch entities to annually prepare financial statements and have them audited. (ATDA, Pub. L. No. 107-289, 116 Stat. 2049 (Nov. 7, 2002), codified at 31 U.S.C. § 3515.) The Office of Management and Budget and the Department of the Treasury identified 39 federal entities (for fiscal year 2017) that are significant to the U.S. government's consolidated financial statements, including the 24 CFO Act agencies. (See Treasury Financial Manual, vol. I, pt. 2, ch. 4700, for a listing of the 39 entities.) These 39 entities were considered to be significant component entities for purposes of the audit of the consolidated financial statements. GAO's work is performed in coordination and cooperation with the inspectors general and independent public accountants for these significant component entities to achieve its respective audit objectives. GAO also separately audits the financial statements of certain component entities, and parts of significant component entities.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

The Financial Report of the United States Government can be found on the U.S. Department of the Treasury's website (https://www.fiscal.treasury.gov/fsreports/rpt/finrep/fr/fr_index.htm), along with the U.S. Government Accountability Office Auditor's Report.

(b) Observations on the implementation of the article

The Federal Records Act, as amended, relevant parts of the Code of Federal Regulations and other guidelines issued by the National Archives and Records Administration (NARA) establish the framework for retention, disposal and transfer of public records, including records related to public procurement and finances. Destruction, concealment and falsification of such records are criminal offences (18 USC §§ 2071, 2073).

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its

public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

A vigorous free press and an array of non-government organizations that comprehensively monitor government activities to promote transparency and accountability reinforce detection and anticorruption efforts.

The transparency of most federal governmental processes provides the press and the public a window through which to scrutinize the government, and the visibility of punishment plays a significant role in prevention because of its deterrent effect.

Federal agencies make extensive use of Internet web sites they have established to provide substantive information, inform the public about official activities, and explain how to obtain additional documents. The Electronic Government Act of 2002 (44 U.S.C. chapter 36) requires federal agencies to improve public access to agency information that is available through these portal web sites. The portal web sites are also linked to a federal Internet portal, FirstGov.gov, which serves as a comprehensive reference point for citizen access to U.S. Government information and services. FirstGov allows users to access federal government information by subject matter rather than by agency. It also provides links to state, local and tribal government web sites.

The primary mechanism for accessing documentary administrative information that is not systematically posted on a website is the Freedom of Information Act (5 U.S.C. 552 ("FOIA")), which provides that any person has a right, enforceable in court, to obtain access to federal agency records. Each federal agency is responsible for maintaining and producing its own records under FOIA. Requests for records can be submitted by sending a letter or email to the relevant agency, or by using an online portal, such as FOIA.gov, which allows the public to make a request to any agency from a single website. Although there are some exemptions from disclosure which agencies may choose to apply to specific documents the FOIA requires that agencies segregate such information and release any non-exempt portions of requested records. A requestor may seek court review of the propriety of agency withholdings and the agency bears the burden of proof to show that its action was justified. (These nine exemptions from disclosure include measures to protect the personal privacy of individuals to whom the requested records may pertain, and also generally cover topics such as proprietary business information and information that is classified to protect national security.) Depending on the status of the requestor, and the time taken to respond to the request, the agency may charge fees for search time, document review and duplication. However, only those who are requesting information for a commercial use are charged for all of these services. Others, including representatives of the news media, and educational or scientific institutions, receive some or all of the materials requested for free.

The FOIA provides that an "agency" that is subject to the requirements of the Act includes a "Government corporation" or a "Government controlled corporation." The statute does not further define those terms. Amtrak, although not a federal agency, has been made subject to the FOIA by separate statute. In addition, the receipt of federal funds does not alone make an entity an "agency" subject to the FOIA. Rather, courts have looked to see whether the entity is subject to day-to-day supervision by the government.

There are some additional statutes that permit public access to specific kinds of documents. For example, the Ethics in Government Act (5 U.S.C. App. §105) specifies the manner in which the financial disclosure reports of all senior federal officials are made available to the public.

The United States also has extensive document retention requirements to make sure that records are available when requested. The Federal Records Act, at 44 U.S.C. 3101, requires the head of each federal agency to "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency…" The law treats as "records" a broad array of materials, regardless of type or format, that are made or received in connection with the transaction of public business, and also provides criminal penalties for any unlawful concealment, mutilation or destruction of federal records.

Another mechanism for accessing administrative information expressed in Government meetings is provided by the Government in the Sunshine Act (5 U.S.C. 552b), which requires that agencies headed by a collegial body (commissions and boards) hold public meetings and provide the public with advance notice and an opportunity to attend. In addition, agencies must prepare minutes of these meetings and make them publicly available for review.

Congressional and judicial deliberations are also generally conducted in public and records of those proceedings are readily available. Floor debate in the House of Representatives and the Senate is televised, and transcripts are published daily in the Congressional Record. Congressional committee hearings normally are conducted in open sessions that the public can attend. Court decisions are published and most court documents are publicly available.

In addition to the federal laws, all fifty states have their own open access laws. The University of Missouri maintains a web site that links to relevant state statutes: http://foi.missouri.edu/citelist.html

As discussed above, the Ethics in Government Act of 1978 (EIGA) requires that the financial disclosure reports of high-level officials in the Executive, Legislative, and Judicial branches of the Federal government be made available to the public on request for a period of six years from the date of filing. These reports are generally required to be made public within 30 days of the agency receiving the report, whether it has been certified or not. Any person or entity that wishes to inspect or obtain a copy of a public financial disclosure report must submit a written request to the relevant agency stating the requestor's name, occupation, and address; the name and address of any other person or organization on whose behalf the inspection or copy is requested; and that the requestor is aware of the prohibitions on obtaining or using the report. This is done using an OGE Form 201. Only financial disclosure reports that are filed with OGE are available from OGE. Those can be accessed here: https://extapps2.oge.gov/201/Presiden.nsf/201+Request?OpenForm. All other reports must be received from the agency where they are filed.

The reports filed by the President, Vice President, and any officer occupying a position listed in section 5312 or section 5313 of title 5, United States Code, having been nominated by the President and confirmed by the Senate to that position, are made public without need for a request; rather, they are published directly on OGE's website. https://www.oge.gov/web/oge.nsf/Presidential+Appointee+&+Nominee+Records. Reports filed by certain persons engaged in intelligence activities are exempt from release. Also, in certain unusual circumstances, the Director of OGE may exempt a special Government employee's (SGE) public financial disclosure report from release.

Individuals who request a financial disclosure report are prohibited from using that form for:

- any unlawful purpose;
- any commercial purpose, except by news and communications media for dissemination to the general public;
- determining or establishing a credit rating; or

- direct or indirect use in the solicitation of money for any purpose, including political and charitable purposes.

Agencies must require those who wish to examine or obtain a copy of a report to sign a statement that the agency has informed the requestor of these restrictions. The Attorney General may bring a civil action against anyone who uses or obtains a report for these prohibited purposes.

In addition to financial disclosure reports, members of the public may request certain other documents by means of the OGE Form 201 or other written application. These records are: (1) certificates of divestiture; (2) Ethics Act qualified blind trust and qualified diversified trust instruments (other than those provisions which relate to the testamentary disposition of the trust assets), the list of assets transferred to such trusts (and of assets sold in the case of a qualified blind trust), as well as, in the case of trust dissolution, the report thereon and the list of trust assets at that time, and the certificates of independence and compliance with respect to qualified trusts; (3) 18 U.S.C. § 208(b)(1) & (b)(3) waivers granted by the recipient agency (after deletion of any material withholdable pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (see 18 U.S.C. § 208(d)(1)); (4) other OGE Form 201s; (5) cover letters for approved gifts reporting waiver requests; and (6) cover letters for approved public reporting waiver requests for certain less than 130-day special Government employees. The purpose of making these documents available is to ensure public confidence in the decision-making process of the Government.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

Department of Agriculture (USDA): Processing requests at a high level, reducing backlogs, and providing the public with access to food survey data

- In Fiscal Year (FY) 2017, USDA processed approximately 94% of the 25,461 FOIA requests it received. Of these received requests, about 84% were processed in less than twenty working days. Additionally, many of USDA's components made substantial progress on reducing their request backlog. For example, the Agricultural Marketing Service (20% reduction), the Forest Service (32% reduction), Food Safety & Inspection Service (53.9% reduction), the Natural Resource Conservation Service (8% reduction), the Office of the Inspector General (12% reduction), Rural Development (41.4% reduction), the Research, Education and Economics (25% reduction), and the Risk Management Agency (12.5% reduction), all achieved significant reductions in backlog.

- USDA's Economic Research Service developed a unique database from a nationally representative survey on food purchases and acquisitions by U.S. households – USDA's National Household Food Acquisition and Purchase Survey (FoodAPS). Originally, to protect individual survey respondents' privacy, access to the data had been restricted to researchers from academic institutions and government agencies. Now, a public version of FoodAPS enables access by all interested parties to the valuable data for research and planning. The data are being used to address a range of questions such as where households acquire food in a typical week, which foods they acquire, how much they pay for the food and how the acquired foods match recommendations for a healthy diet.

Department of Commerce (DOC): Continuing to engage in quality outreach and co-hosting successful FOIA events

- The National Oceanic and Atmospheric Administration (NOAA) hosted its first FOIA Roundtable in a public outreach meeting, where an open dialogue between NOAA's information experts and the requester community was created to foster improved

transparency and increased public outreach in NOAA disclosures. NOAA intends to host additional FOIA Roundtable events with other members of the requester community during the year to continue to gain feedback on how to improve transparency and FOIA compliance.

- The Sunshine Week event co-hosted by DOC and the Census Bureau in June 2017 brought together individuals from DOC FOIA Offices, the Federal government, and the requester community to discuss the FOIA, transparency, open data, and records management. The event received high accolades from both government personnel and the public.
- DOC established a formal FOIA Council to ensure that it has an effective system in place for responding to requests and that it remains in compliance with applicable laws, regulations, and policies. The FOIA Council develops and implements FOIA policy and guidance, FOIA training, best business practices, better collaboration across the DOC, and increased outreach and dialogue with the requester community.

Department of Defense (DoD): Reducing its backlog, focusing on quality customer service, and providing excellent FOIA training

- The 32 DoD Components continue showcasing their commitment to the principles of openness as over 53,000 FOIA requests were processed during FY17. Despite the often complex nature of requests directed to DoD and the extraordinary mission of protecting American assets at home and abroad, DOD processed over 90% of all received requests in less than 100 days.
- Many DoD components made substantial progress on reducing their request backlogs, such as the National Reconnaissance Office (25% reduction) and the U.S. Southern Command (25% reduction).
- DoD remains steadfast in its commitment to sustainable training and outstanding customer service. The Chief Management Officer continues leading the way by offering online training modules and low cost compliance workshops in areas with significant DoD active-duty and civilian personnel concentrations.
- DoD components such as the U.S. Strategic Command and the U.S. Northern Command (NORTHCOM) have worked to streamline their programmes, resulting in a quicker turn-around time and quality customer service. NORTHCOM, in particular, received compliments for its service and proactive release program.
- The National Geospatial-Intelligence Agency (NGA) established a "Road Show" programme to educate its non-FOIA professionals on the FOIA. This effort has resulted in NGA staff better understanding FOIA obligations and turning requests around in a timelier manner.

(b) Observations on the implementation of the article

The primary mechanism for accessing documentary administrative information is the Freedom of Information Act (5 USC § 552), under which every person has the right, enforceable in court, to obtain federal agency records.

Congress and legislative branch agencies are exempt from the Freedom of Information Act. The Office of Information Policy of the Department of Justice issues guidance on the Freedom of Information Act to encourage compliance. Requests under the Freedom of Information Act may be submitted by post or email to the relevant agency, or by using online portals, such as www.foia.gov. Agencies may withhold information if there is a foreseeable harm to an interest protected by the nine exemptions from disclosure (5 USC § 552(b)).

However, the Freedom of Information Act requires that agencies segregate such information and release any non-exempt portions of requested records.

A requester may seek court review of the propriety of agency withholdings, and the agency bears the burden of proof to show that its action was justified. As an alternativeto litigation, the Office of Government Information Services (OGIS) within NARA may be requested to mediate disputes between requesters under the Freedom of Information Act and requested agencies. The Office of Government Information Services also reviews the compliance of agencies and their related policies and procedures with the Act.

The reviewers note that Congress and legislative branch agencies are not FOIA agencies. It is furthermore unclear if there is any effective and comprehensive mechanism to obtain records held by these entities.

It was therefore recommended that the United States ensure that Congress and legislative branch agencies are subject to similar freedom of information requirements as provided for executive branch agencies under the Freedom of Information Act

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The Administrative Procedure Act (APA) (5 USC § 551 *et seq.*) generally governs the process by which federal agencies develop and issue regulations. The APA includes requirements for publishing notices of proposed and final rulemaking in the *Federal Register*, and requires opportunities for the public to comment on notices of proposed rulemaking. Section 553 of the APA requires any notice of proposed rulemaking to include a statement of the time, place, and nature of public rule making proceedings; reference to the legal authority under which the rule is proposed; and either the terms or substance of the proposed rule or a description of the subjects and issues involved. The law requires the agency to give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency must incorporate in the rules adopted a concise general statement of the rules' basis and purpose.

The APA requires most rules to have a 30-day delayed effective date. This requirement has exceptions: (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. Further, the law requires agencies to

give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

Section 552 of the APA, also known as the Freedom of Information Act, also helps facilitate public access to the competent decision-making authorities. Specifically, subsection (a)(1) of the FOIA, 5 U.S.C. § 552(a)(1) (2012 & Supp. V 2017), requires each agency to publish in the Federal Register a description of its organization, rules of procedures, and statements of general policy, as well as details about how to obtain information, make requests, or obtain decisions. Subsection (a)(2) of the FOIA requires agencies to make available electronically (i.e., by posting on its website), additional categories of information, including statements of policy, administrative staff manuals and instructions to staff that affect a member of the public. Any record not made available under subsections (a)(1) and (2), can be requested by a member of the public under subsection (a)(3). Subsection (g) of the FOIA requires each agency to make publicly available in an electronic format a guide for requesting records or information from the agency, including an index of all major information systems, and a handbook for obtaining various types and categories of public information.

The Department of Justice recently launched the National FOIA Portal, which resides on FOIA.gov as part of the Department of Justice's government-wide FOIA website. The public can learn about the FOIA from this website, access material that is already publicly available, review FOIA data, and obtain details about each agency. The public can readily access each agency's FOIA Reference Guide, which describes how to make requests to that agency, as well as access each agency's FOIA regulations. The National FOIA Portal allows a member of the public to make a request to any agency from a single website, greatly simplifying the request-making process.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

The Department of Justice recently launched the National FOIA Portal, which resides on FOIA.gov as part of the Department of Justice's government-wide FOIA website. The public can learn about the FOIA from this website, access material that is already publicly available, review FOIA data, and obtain details about each agency. The public can readily access each agency's FOIA Reference Guide, which describes how to make requests to that agency, as well as access each agency's FOIA regulations. The National FOIA Portal allows a member of the public to make a request to any agency from a single website, greatly simplifying the request-making process.

(b) Observations on the implementation of the article

Comprehensive information on the Government of the United States and its services is systematically and proactively posted on a single online portal (www.usa.gov). As part of the Open Government Partnership, the United States is committed to improving in areas such as e-government, open data, public participation and civic space.

(c) Successes and good practices

Extensive and innovative use of online platforms to increase transparency and improve efficiency of various corruption prevention measures.

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The IG Act requires that CIGIE maintain a website for the benefit of the IGs [IG Act, §11(c)(1)(D)]. This public website offers information to the general public regarding the objectives and functions of the Council and its member OIGs (http://www.ignet.gov). The CIGIE website houses information relating to the established procedures and various reports of the Council, and provides links to each of the individual OIG websites (https://www.ignet.gov/content/inspectors-general-directory).

The general public is given guidance about how to report fraud, waste, and abuse in Federal programmes to the OIGs, via the individual OIGs' websites, including the use of a hotline discussed more in depth in the answer to question D) ii. Additionally, each Federal agency's website homepage must contain a direct link to the website of the agency's OIG [IG Act, § 8M] to assist in the facilitation of reporting fraud, waste, and abuse. It is also important to note that the IG Act requires OIGs to post public reports (or portions) and final audit reports on the OIG website. Under this requirement, reports must be posted not later than three days after being made publicly available [IG Act, § 8M(b)(1)].

Additionally, some OIGs are using social media (i.e., XX, Facebook, LinkedIn) to convey to the public information relating to their organizations and their work. Other avenues used periodically by OIGs in conveying information to the public include testifying at Congressional hearings, issuing press releases, participating in press conferences, and speaking at professional conferences. The OIG community engages in outreach with stakeholders and agency officials to strengthen understanding and insights to proactively prevent fraud, waste, and abuse and opportunities to improve internal controls to ensure economy and efficiency in agency programmes.

In the past year CIGIE added another publicly available website, www.oversight.gov, to publicize the work of the CIGIE community by creating a single website where all OIG reports are available in one place. The site currently has nearly 12,000 publicly available audit, inspection, and investigative reports uploaded.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

The U.S. Office of Government Ethics' (OGE) prevention mission involves engaging the public to inform them about the systems in place to detect and resolve conflicts of interest for their Government leaders. This, in turn, allows the public to engage in overseeing the integrity of its Government. To achieve its goal of engaging the public in overseeing Government integrity, OGE has developed two strategic objectives: (1) inform the public about OGE and

the executive branch ethics programme and (2) make ethics information publicly available.

In this regard, OGE continuously makes ethics information publicly available through its webpage (www.oge.gov) to increase public confidence in Government decision-making. Ethics information includes reports and data on agency ethics programme compliance, the public financial disclosures and ethics agreements of senior leaders, annual performance reports, OGE's budget requests, correspondence with members of Congress, letters of interest to the public, and written policy guidance. OGE is in the continual process of increasing efforts toward improving existing datasets, identifying potential new datasets, streamlining the collection process of ethics information, posting documents timely, and making resources and information easy to locate and access. Major categories of information that are made available on OGE's website include:

- Copies of all relevant ethics statutes, Executive Orders, regulations, and important legal interpretation from the Department of Justice and U.S. courts. OGE also provides plain-text discussions of important ethics topics including gifts, outside activities, use of government positions and resources, financial conflicts of interest, post-government employment restrictions, and information for selected employee categories;
- Descriptions of OGE's mission and organization, as well as an organizational chart. OGE also provides contact information for public and press inquiries;
- Legal Advisories, written formal and informal advisory opinions, Education Advisories, and Program Advisories issued by OGE between 1979 and the present;
- Education tools (including customizable booklets on fundamental concepts, such as the Ethical Service Handbook), and a free online ethics education library of hundreds of on-demand videos, job aids, training materials, and hand-outs;
- All reports that are generated from the review of agency ethics programmes, including all recommendations made to agencies when a deficiency is found in their programme and all follow-up reports that are required until the recommendation is closed out. All reports from 2011 to present have been posted online and select reports dating back to 1982 are online.

(b) Observations on the implementation of the article

OGE publishes reports and data on agency ethics programme compliance, financial disclosures and ethics agreements of presidentially appointed officials, and policy guidance. Similarly, CIGIE publicizes its work and reports of audits, inspections and investigations.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Ethics Education and Advice for Federal Judges and the Role of the Judicial Conference Committee on Codes of Conduct

Ethics education and advice is available to all federal judges through the Judicial Conference Committee on Codes of Conduct. The Committee's jurisdiction is set by the Judicial Conference of the United States and broadly encompasses ethics policy for the judiciary. The Committee serves as an advisory body for judges on a broad array of judicial ethics issues including disqualification and conflicts of interest. The Committee develops ethics codes and regulations, advises judges and employees on ethics matters, and develops ethics education programmes. The Committee also oversees the mandatory conflicts screening system and the approval process for "certificates of divestiture," which authorize judges to divest and reinvest certain financial assets for tax purposes in order to avoid a conflict of interest. The Committee's goal is to ensure that the ethics guidelines for judges effectively protect the fairness and impartiality of the judiciary, while also preserving judicial independence.

The Committee has 15 members, including a representative from each judicial circuit, a bankruptcy judge, and a magistrate judge. All Committee members participate in providing ethics advice for judges and judicial employees. Because the Committee serves as an ethics advisory body, it does not monitor judicial conduct. The Committee does not have the authority to investigate, adjudicate or resolve factual matters, and is not involved in judicial disciplinary policy or activities. A separate committee on Judicial Conduct and Disability handles those matters. This separation of functions encourages judges to request confidential ethics advice from the Committee.

Judges can obtain ethics guidance in several ways. As a starting point, judges can, of course, do their own research. The statutes and the related case law, the Code of Conduct for United States Judges, the associated Commentary, and the ethics regulations adopted by the Judicial Conference are the basic resource documents.

Beyond the Codes and regulations, the Committee has issued about eighty Advisory Opinions addressing judicial ethics topics that frequently arise. These published Advisory Opinions provide guidance that goes well beyond the bare terms of the recusal statutes and Code of Conduct, in order to assist judges in complying with their ethical obligations.

The published advisory opinions are available to judges and the public through the Judiciary's website: http://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct/published-advisory-opinions.

A judge can also request ethics advice directly from the Codes of Conduct Committee. The Committee provides informal ethics guidance on a broad range of issues. Judges can contact any committee member for an informal ethics opinion. Judges may also obtain informal ethics advice from experienced attorneys at the Administrative Office who serve as counsel to the Committee.

In cases where an informal opinion is not sufficient or the judge raises a novel issue, the judge may also seek "formal" ethics guidance. In that situation, the Committee issues a confidential letter of advice to the judge, usually within three weeks or less. If a judge needs an expedited letter, the Committee is on call to respond. The advice letters are confidential, as is all of the Committee's advice to individual judges.

Another key Committee function is developing and delivering ethics education for judges. Committee members and staff participate in ethics education and training at judicial meetings,

particularly through programmes sponsored by the Federal Judicial Center. In training the Committee typically covers ethics scenarios drawn from the confidential inquiries the Committee receives, as well as hypothetical ethics problems, to encourage discussion of ethics issues among the judges. At national and regional meetings of appellate, district judges, magistrate judges, and bankruptcy judges, Committee members and staff routinely offer interactive ethics presentations. The Committee also provides Internet-based training, such as ethics quizzes, on a variety of topics including recusal, and sends periodic written ethics updates to all judges by email. Education and training concerning financial disclosure filing requirements is provided by the Judicial Conference Committee on Financial Disclosure. In addition, the Committee on Judicial Conduct and Disability provides advice and prepares resources to assist chief circuit judges and judicial councils in implementing 28 U.S.C. §§ 351-364, and serves as a liaison for the circuits on their experiences regarding judicial conduct and disability complaints.

Through programmes sponsored by the Federal Judicial Center, the Committee provides ethics education for new judges and provides ethics training for law clerks, staff attorneys, clerks and judicial assistants. The Committee offers an introductory video on ethics, coupled with explanatory booklets for judges, law clerks, and employees. Although judges' participation in ethics education is not compulsory, ethics education is featured in most continuing education programmes for both new and experienced judges. The Committee's extensive training effort underscores the value and the importance the federal judiciary places on ethical conduct.

The Code of Conduct and Recusal Standards for Federal Judges

The standards of conduct that apply to federal judges are contained in the "Code of Conduct for United States Judges." That Code was developed by the Judicial Conference of the United States and was adopted in 1973. The original Code of Conduct for United States Judges was based on the American Bar Association's Code of Judicial Conduct. The Judicial Conference has continued to review and revise the Code of Conduct for United States Judges, as noted in the Introduction to the Code of Conduct. The complete text of the Code of Conduct is made available to the public on the federal judiciary public website http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges.

The five Canons of the Code of Conduct are:

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

Canon 4: A Judge May Engage in Extrajudicial Activities That are Consistent With the Obligations of Judicial Office

Canon 5: A Judge Should Refrain From Political Activity

The Code of Conduct—and the advisory opinions interpreting it—provide guidance for judges on issues of judicial integrity and independence, judicial diligence and impartiality, permissible extra-judicial activities, and the avoidance of impropriety or even its appearance.

Judicial recusal (often also referred to as "disqualification") is formally governed by two statutes: 28 U.S.C. § 144 and 28 U.S.C. § 455(a). Section 144 permits a party to file an affidavit to attempt to establish personal bias or prejudice of a district court judge. Section 455(a) is broader, addressing both the appearance of impartiality and other categories for

disqualification, and it functions as the primary statute governing judicial conflicts of interest and disqualification in cases.

The language of Section 455 is mirrored in Canon 3C of the Code of Conduct for United States Judges. Section 455 and Canon 3C specify five specific situations in which a judge's recusal is mandatory. In those situations the judge must disqualify himself or herself from the case and the parties may not waive recusal in any of those situations.

The five mandatory recusal situations, which are paraphrased here, are:

1) the judge has a personal bias about a party or has personal knowledge of disputed facts in the case;

2) the judge, or a lawyer with whom the judge previously practiced law, served as a lawyer in the matter in controversy, or the judge or lawyer has been a material witness in the matter;

3) the judge, judge's spouse, or minor child has any financial interest in the subject matter in controversy or in a party, or any other interest that could be affected substantially by the outcome of the proceeding;

4) the judge, judge's spouse, or a close relative is a party, a lawyer, a witness, or has some interest that could be substantially affected by the outcome of the proceeding; or

5) the judge served in previous governmental employment and participated as a judge, counsel, advisor, or material witness concerning the proceeding, or expressed an opinion concerning the merits of the particular case in controversy.

There is no "de minimis" exception for recusal based on a financial interest. Even owning a single share of stock in a party requires recusal. This bright line rule avoids any ambiguity about recusal as a result of equity holdings of a judge. In addition, a judge cannot avoid recusal by placing assets in a blind trust, or by avoiding knowledge of the judge's financial holdings. The Code and the recusal statute require a judge to be informed about the judge's and the judge's family members' financial interests. With respect to disqualification due to a financial interest, recusal is not required if the judge (or spouse or minor child) divests the financial interest. However, divestiture is not permitted if the judge has an interest that could be substantially affected by the outcome of the proceeding.

In addition to the five specific mandatory recusal situations, Section 455 and Canon 3C also include a mandatory general disqualification requirement whenever the judge's impartiality might reasonably be questioned. The standard for determining disqualification under this principle is based on an objective determination. The question is not whether the judge believes there is an issue of impartiality, but rather whether an objective observer, or "reasonable person," might reasonably question the judge's impartiality.

A judge who is disqualified under this impartiality standard has the option to use the "remittal" procedure and obtain waivers from the parties to remain on the case. The remittal process is transparent and is designed to avoid placing any pressure on parties to waive a judge's decision to disqualify. The judge is required to disclose on the record the basis for disqualification; then the parties and their lawyers must be given the opportunity to confer outside the presence of the judge, and if all parties and counsel agree in writing or on the record that disqualification is not necessary, then the judge may proceed with the case. This procedure is not available for recusal based on the five specific mandatory grounds for disqualification.

<u>Transparency and the Recusal Framework</u>

The recusal statutes and the Code of Conduct lie at the heart of a broader framework that the judiciary has developed to identify and resolve judicial conflicts of interest before they arise.

The judiciary has implemented efforts to promote transparency and provide multiple checkpoints in the recusal process itself, and has adopted a number of mechanisms that supplement the recusal requirements of the Code and the statutes.

Several institutional safeguards operate together to ensure that judges have the tools they need to comply with the recusal statutes and the Code of Conduct, and that judges who have real conflicts do not hear those cases. These safeguards begin with systems that randomly assign cases to the judges within a particular court.

At the beginning of a case, the judge has an obligation to assess whether disqualification is required. As an overlay to the random assignment of cases to judges, the Judicial Conference requires all judges to use an electronic conflicts screening system to ensure that judges do not inadvertently fail to recuse based on financial interests in a party. Under this mandatory policy, each judge must develop a list of financial interests that would require recusal. Special conflicts screening software is used to compare a judge's recusal list with information filed in each case. The system flags potential conflicts, which enables the judge to decline an assignment or, if the case has been assigned, to recuse if necessary.

Once a case is assigned, a judge has a further continuing obligation to evaluate and monitor the case for potential recusal triggers. If any such issue arises, the judge must re-evaluate recusal. For example, if a judge acquires a financial interest in a party after a case has been assigned to the judge, the judge must either recuse or divest the asset that causes the financial conflict of interest. If the judge chooses to divest the asset, the judge may continue to preside over the case, provided that the judge has determined that his or her interests would not be substantially affected by the outcome of the case. This situation is more fully explained in a published advisory opinion, No. 69 ("Removal of Disqualification by Disposal of Interest"), which is published on uscourts.gov at http://www.uscourts.gov/file/1903/download.

In addition, all judges must file detailed annual financial disclosure reports under the Ethics in Government Act. These reports include extensive detail concerning all financial holdings, dates of acquisition and disposition, even of partial interests, board memberships, gifts and reimbursements. In addition, judges are required to disclose their attendance at privately-funded educational seminars and the seminar providers must disclose their sources of funding. These reports are publicly available so that litigants may check on financial and other interests that might require a judge to recuse from a case.

The institutional safeguards are designed to minimize conflicts before the possible need for a recusal motion arises. Beyond these systemic safeguards, the litigation process itself is designed to provide the opportunity for any party to request a judge's disqualification from the case. If a party believes that a judge should be disqualified, a recusal motion may be filed under either Section 144 or Section 455. Judges typically explain their recusal decisions in orders that grant or deny a recusal motion. Appellate review provides a further avenue of recourse to the objecting party.

Buttressing this framework is the ability of judges at any point in the process to obtain recusal or other ethics advice from the Codes of Conduct Committee of the Judicial Conference, as discussed in greater detail above.

Finally, the statutory judicial discipline process, under the Judicial Conduct and Disability Act, may be available to provide a check on flagrant violations of the recusal rules. Under the Judicial Conduct and Disability Act, **28 U.S.C. §§ 351-364**, any person who believes that a judge has engaged in "conduct prejudicial to the effective and expeditious administration of the business of the courts," or that a judge cannot discharge all the duties of the office because of physical or mental disability, may file a complaint with the clerk of the court of appeals for the circuit where the judge sits. For example, a judge who openly decides to hear a case in

which he or she holds a financial interest could be the subject of a judicial conduct complaint initiated by a litigant, a member of the public, or the chief judge of the circuit.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

The judicial branch collects and publishes statistical information concerning complaints filed under the Judicial Conduct and Disability Act, including information regarding the number of complaints filed, investigations conducted, and outcome. During the 12-Month period ending September 30, 2017, a total of number of 1,270 complaints were filed related to codes of conduct and ethics, including 115 due to conflicts of interest, 1 for failure to meet financial disclosure, 12 for partisan political activity or statement, and 21 for acceptance of bribe. 987 were dismissed in whole or in part, 18 were referred to the Special Committee. These statistics can be found on the U.S. Court website (http://www.uscourts.gov/statistics/table/s-22/judicial-business/2017/09/30).

(b) Observations on the implementation of the article

The United States has taken a number of measures to prevent corruption and ensure transparency in the judicial branch. Appointments to and removals from federal judicial positions are regulated in section 2 of article II of the Constitution.

The Judicial Conference of the United States is the main policymaking body of the federal judiciary and operates through a network of committees that advise the Conference on issues including integrity, conflicts of interest and discipline. The Ethics in Government Act applies to members of the federal judiciary and requires the filing of financial disclosure reports. The recusal framework is formally governed by 28 USC §§ 144, 455(a). The Code of Conduct for United States Judges applies to all members of the federal judiciary except members of the Supreme Court.

It is therefore recommended that the United States continue efforts to adopt code of conduct for members of the United States Supreme Court.[89]

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The hiring of career federal prosecutors is conducted by the Department of Justice’s Office of Attorney Recruitment and Management (OARM) in strict compliance with applicable federal hiring regulations. OARM has been delegated authority to take final action in matters

[89] The Code of Conduct for Justices of the Supreme Court of the United States was published in November, 2023 and applies to members of the Supreme Court of the United States. The code can be found here: https://www.supremecourt.gov/about/code-of-conduct-for-justices.aspx

pertaining to employment, separation and general administration of Department attorneys including recruitment, appointment and determination of suitability for employment. 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 full field FBI background investigation and tax and attorney bar check. In making a determination regarding suitability for employment, OARM considers a number of factors, including a candidate's tax filing and payment history, credit history, candor, and any history of usage of controlled substances.

The Constitution of the United States provides that defendants in criminal cases are entitled to a speedy trial. The Speedy Trial Act has further codified this right at 18 U.S.C. §§ 3161-3174. The Act establishes time limits for completing the various stages of a federal criminal prosecution. The information or indictment must be filed within 30 days from the date of arrest or service of the summons. 18 U.S.C. § 3161(b). Trial must commence within 70 days from the date the information or indictment was filed, or from the date the defendant appears before an officer of the court in which the charge is pending, whichever is later. 18 U.S.C. § 3161(c)(1).

Moreover, in order to ensure that defendants are not rushed to trial without an adequate opportunity to prepare, Congress amended the Act in 1979 to provide a minimum time period during which trial may not commence.

Most criminal statutes are also subject to limitations that bar prosecution if a case is not brought within the applicable time frame. Prosecutors are required to meet periodically with their supervisors to review caseloads and to ensure that they are resolving matters within the appropriate time frames.

The Federal Rules of Criminal Procedure govern discovery and trial scheduling to ensure that cases proceed without undue delay.

All Department of Justice employees are bound by Standards of Ethical Conduct for Employees in the Executive Branch, promulgated by the Office of Government Ethics (OGE) at 5 C.F.R. Chapter XVI, Part 2635, as well as the Principals of Ethical Conduct set forth in Executive Order 12674, as modified; and Department of Justice Order 1200.1. See Annex 4. In addition, there are supplemental regulations for the Department of Justice which address, among other things, outside employment. See 5 C.F.R. § 3801.101-106, USJM (Organizational and Functions Manual Sections 29 and 30). Also, all employees are subject to the provisions of 18 U.S.C. § 201 et seq., making criminal certain bribery, graft, and conflict of interest activities by employees or former employees. And senior politically appointed officials are subject to civil outside activity and employment restrictions found in civil statutes at 5 U.S.C. app §§ 501-505 and implemented, in part, in 5 C.F.R. § 2636.

All full-time non-career appointees (including United States Attorneys) are also subject to the Ethics Pledge as set forth in Executive Order 13490, which includes additional recusal obligations than imposed by statute or regulation, additional post-employment restrictions than those imposed by statute, and a ban on accepting gifts from lobbyists or lobbying organizations.

The standards of conduct for prosecutors are compiled in USAM 1-4.000 et seq., which contains the following sections, and is published at https://www.justice.gov/jm/jm-1-4000-standards-conduct.

In addition, all Department of Justice employees are subject to the Hatch Act, 5 U.S.C. §§ 7323(a) and 7324(a), which generally prohibits Department employees from engaging in partisan political activity while on duty, in a federal facility or using federal property. The statute bars employees from using official authority or influence for the purpose of interfering with or affecting the result of an election, from using official authority to coerce any person to

participate in political activity, and from soliciting, accepting or receiving political contributions. Political activity is activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. The statute carries serious penalties including removal from federal employment.

Under the Hatch Act, members of the Career Senior Executive Service, employees of the Criminal Division, and all Department political appointees are subject to stricter rules whereby they are prohibited from participating actively in political management or political campaigns even when off-duty.

The Department has designated an Agency Ethics Official, who is the Assistant Attorney General for Administration ("Designated Agency Ethics Official", or "DAEO"). The Departmental Ethics Office is responsible for the overall direction of the ethics programme in the Department. Furthermore, each Bureau, Office, Board, and Division has a deputy designated ethics official "(Deputy DAEO") who serves as the primary point of contact for prosecutors in that component. In addition, each district United States Attorney's Office has one or more Ethics Advisors among the career prosecutors who advise on ethics matters, and one or more Professional Responsibility Officers ("PRO") who advise on the requirements under the applicable Rules of Professional Responsibility. OGE provides education and training opportunities for executive branch ethics officials, including those at the Department of Justice, so that ethics officials have the knowledge and skills necessary to apply the ethics laws and regulations.

Guidance to all Department employees on these rules is provided through mandatory annual training, periodic issuance of advisory memoranda, and through materials available on the Departmental Ethics Office website. Training is described below in response to Question 27.

The Department of Justice has stringent rules in place to avoid conflicts of interest. The various laws and regulations governing the conduct of the Department of Justice employees include the criminal conflict of interest statutes codified at 18 U.S.C. §§ 201 to 209, the civil outside activity restrictions for senior political appointees in 5 U.S.C. app 501-505, Executive Order 12674 on Principles of Ethical Conduct as amended by EO 12731, the uniform Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. Part 2635, the Ethics Pledge as set forth in Executive Order 13490, Department of Justice regulations at 5 C.F.R. Part 3801 that supplement the uniform standards and additional Department regulations at 28 C.F.R. Part 45.

The Designated Agency Ethics Official (DAEO) for the Department is the Assistant Attorney General for Administration. The Departmental Ethics Office is responsible for the overall direction of the ethics programme in the Department. Furthermore, each Bureau, Office, Board and Division has a Deputy DAEO who advises employees in the component. In addition, each United States Attorney's Office has one or more Ethics Advisors among the career prosecutors who advise on ethics matters, and one or more Professional Responsibility Officers ("PRO") who advise on the requirements under the applicable Rules of Professional Responsibility.

During the nomination and confirmation process for senior prosecutors who are confirmed by the Senate and appointed by the President, a thorough review of potential conflicts is performed, recusals and screening arrangements are identified, and these arrangements are put in place upon the prosecutor's entry on duty.

Within 90 days of entering on duty, each new prosecutor is provided with an orientation to the ethics statutes and rules, and the expectations for their conduct as Department of Justice Employees. Individuals in positions requiring Presidential appointment with Senate confirmation have first gone through a rigorous vetting process that includes a discussion of ethics statutes and rules particularly in relationship to information they have provided on the

financial disclosure reports they have submitted for the purpose of nomination.

In general, attorneys are prohibited by criminal law from participating personally and substantially in any matter in which they, their spouse, minor child, or general partner (or other individuals or organizations that are specified by the law or rule) has a financial interest. 18 U.S.C. § 208. Under this prohibition, an attorney may not participate in a particular matter affecting the financial interests of an organization with which they are employed, or with which they are negotiating for, or have an arrangement for future employment. A non-criminal regulation passed by the Office of Government Ethics also requires employees to recuse themselves from particular matters that could have a direct and predictable effect on the finances of an organization with which the attorney is seeking employment. See 5 C.F.R. § 2635.604. Additionally, Department prosecutors may not participate without authorization in a particular matter having specific parties that could affect the financial interests of members of their household or where one of the following is a party or represents a party: someone with whom the prosecutor has a business, contractual or other financial relationship; a member of the prosecutor's household or a relative with whom they have a close relationship; a present or prospective employer of a spouse, parent or child; a former client or employer of the prosecutor with the last year or, for most full-time non-career appointees, a longer period of time; or an organization which the prosecutor serves as an active participant. See 5 C.F.R. § 2635.502 and EO 13490.

Most non-career appointees, including the Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorneys General and United States Attorneys, as well as senior career prosecutors, file publicly-available financial disclosure reports. Less senior career prosecutors file confidential financial disclosure reports, or Certification of No Conflicts of Interest Forms.

All prosecutors in U.S. Attorney's offices and many in the Divisions sign a Certificate of No-Conflict with respect to every case assigned to them. That certification must be signed when the case is opened and assigned to a prosecutor, and when it is closed or reassigned. The Certification of No Conflict of Interest Form is an alternate method of financial disclosure selected by the Department of Justice and approved for use by OGE under its procedures at 5 C.F.R. § 2634.905(a). Moreover, there is an anonymized list of assets held by management circulated annually to all prosecutors in an office asking if any of the listed entities are involved in any investigation in the office. That allows management to recognize the need for recusal whenever a conflict that was not apparent at the beginning of an investigation has since developed during the course of the investigation without the knowledge of the affected manager. Where conflicts are identified, the manager is recused. If all management in an office is recused, the Department has procedures to assign managers from other offices to exercise management functions over specific cases that present the conflict of interest. Through these reporting requirements, prosecutors and their supervisors monitor both the individual prosecutor's and the supervisors' interests and current assignments in order to avoid conflicts of interest. (See the answer to question 25 for more detail on financial disclosure.)

Attorneys who have previously represented certain parties may also be recused from participation in cases involving those parties for certain periods of time.

If a prosecutor has a financial conflict of interest or believes their impartiality might be questioned, they are required to first disqualify themselves from taking action that could affect that interest and then may consult with their Deputy DAEO about the following alternatives:

In the case of a financial interest, a prosecutor might qualify for a regulatory exemption issued by OGE (see 5 C.F.R. 2640, Subpart B), an individual waiver of the prohibition under 18 U.S.C. § 208(b), or may be required to divest the interest. Similarly resignation from the position that creates the conflict or appearance of a conflict may be sufficient action.

If the prosecutor has no financial interest in the matter but there is a question as to whether the prosecutor can be impartial, the prosecutor cannot participate unless the prosecutor first receives authorization to do so.

In general, prosecutors recuse from matters that could present even the perception of a conflict of interest, regardless of whether the conflict actually exists or rises to the level of conflicts specified in 18 USC Section 208. Thus, in practice, a waiver is rarely sought except at the highest levels of DOJ where appointees have authority over a tremendous volume of cases. In those instances, the waiver would generally be made public "pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978." 18 U.S.C. § 208(d)(1).

Any prosecution for a criminal violation of the ethics and conflict of interest statutes would be public. Administrative findings of non-criminal violations of the ethics and conflict of interest rules are generally made public in reports of the offices of inspectors general.

OGE annually publishes a conflict of interest prosecution survey that contains information collected from the Department of Justice on ongoing and completed prosecutions of the criminal conflict of interest statutes and related statutes. OGE publishes the names of defendants in those prosecution surveys. In the event that a case involved a DOJ official as a defendant, OGE would publish the name of the official. OGE does not otherwise publish the names of any employee who has been found to have violated, or is under investigation for violating, any conflict of interest law or standard of conduct.

(b) Observations on the implementation of the article

All federal prosecutors are employees of the executive branch and are subject, with additional appropriate restrictions, to the executive branch ethics programme described above.

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

(Relevant to para. 1 and subpara. 2(f)):

Since 1977, the Foreign Corrupt Practices Act (FCPA) and regulations issued by the U.S. Securities and Exchange Commission (SEC) have required all public companies to, among other things, maintain books and records that, in reasonable detail, accurately and fairly reflect the companies' transactions and dispositions of company assets. Further, public companies must maintain a system of internal accounting controls sufficient to provide reasonable assurance that all transactions take place in accordance with management's authorization and are recorded in a manner that permits the preparation of financial statements in conformity with generally accepted accounting principles (GAAP), and access to assets is permitted only in accordance with management's general or specific authorization.

The U.S. Government is dedicated to enforcement of its anticorruption laws, and considerable resources are expended to enforcement of criminal penalties by the Department of Justice (DOJ) and other law enforcement agencies. Specifically, DOJ has increased the number of prosecutors to over 30 full-time prosecutors and additional support staff whose full time obligation is enforcement of the FCPA. DOJ prosecutors in Washington, D.C. frequently join forces with prosecutors located at U.S. Attorney's Offices located in any of the 93 offices around the United States to investigate and prosecute corruption cases. The Federal Bureau of Investigation also has three full-time International Corruption Unit squads staffed with agents and analysts located across the country who are also dedicated to investigating corruption and FCPA cases. Multiple other law enforcement agencies, including Homeland Security Investigations, the Internal Revenue Service-Criminal Investigations, and the United States Postal Investigation Service also have agents dedicated to anticorruption cases and enforcement of the FCPA. The emphasis on enforcement has yielded dividends. In 2016, DOJ brought the largest ever amount of criminal fines against corporate offenders of the FCPA, yielding over $7 billion in global penalties, including over $2.5 billion to the United States. In 2017, DOJ brought the most ever individual prosecutions, with over 24 people indicted or arrested, and three other convictions at trial.

The SEC brings numerous enforcement actions against companies for violating the anti-bribery, books and records, and internal controls provisions of the FCPA. SEC actions are available publicly, and all FCPA actions are separately highlighted on its public website through a dedicated "spotlight" page to increase awareness of its diligent pursuit of anti-bribery and accounting violations (http://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml). In Fiscal Years 2018 and 2017, the SEC imposed financial sanctions of $1.3 billion and $1.4 billion,

respectively, in connection with FCPA enforcement actions..[90]

The U.S. Government seeks to increase awareness in the private sector about FCPA anti-bribery and accounting violations through conferences and other public events. These events include business roundtables hosted by the Commerce Department, Department of Justice (DOJ), and the SEC where companies discuss their views and experiences with the FCPA and conferences where SEC staff identify trends and good practices for avoiding possible violations.

Government agencies such as the SEC, DOJ, and Federal Bureau of Investigation also cooperate to provide government attorneys, prosecutors, federal agents, internal revenue agencies and accountants of U.S. regulators and criminal authorities on FCPA enforcement and other relevant information.

DOJ and the SEC have also published substantial guidance on the FCPA, including *A Resource Guide to the Foreign Corrupt Practices Act* (the "FCPA Guide"), which was released in November 2012 and updated in July 2020. The FCPA Guide is a detailed compilation of information about the FCPA, its provisions, and enforcement and is the product of extensive efforts by experts at DOJ and SEC, and has benefited from valuable input from the Departments of Commerce and State. It endeavors to provide helpful information to enterprises of all shapes and sizes – from small businesses doing their first transactions abroad to multi-national corporations with subsidiaries around the world. The FCPA Guide addresses a wide variety of topics, including who and what is covered by the FCPA's anti-bribery and accounting provisions; the definition of a "foreign official"; what constitute proper and improper gifts, travel and entertainment expenses; the nature of facilitating payments; how successor liability applies in the mergers and acquisitions context; the hallmarks of an effective corporate compliance program; and the different types of civil and criminal resolutions available in the FCPA context. On these and other topics, the FCPA Guide takes a multi-faceted approach, setting forth in detail the statutory requirements while also providing insight into DOJ and SEC enforcement practices through hypotheticals, examples of enforcement actions and anonymized declinations, and summaries of applicable case law and DOJ opinion releases.

Moreover, U.S. law and DOJ policy encourage and incentivize cooperation between the private sector and law enforcement. Specifically, Chapter 8 of the United States Sentencing Guidelines and DOJ policy on prosecuting corporations, provides for specific reductions in criminal fines for companies that voluntarily self-report wrongdoing and/or cooperation with law enforcement. In 2018, DOJ also finalized the FCPA Corporate Enforcement Policy, which incentivizes self-reporting and cooperation by empowering DOJ to decline certain prosecutions (with disgorgement of profits) for companies that appropriately self-disclose wrongdoing and cooperate with DOJ, absent extenuating circumstances. The FCPA Corporate Enforcement Policy also provides additional incentives for corporations to cooperate with DOJ even if they did not initially self-report the conduct to DOJ, as well.

Similarly, the SEC's framework for evaluating cooperation by companies is set forth in its 2001 *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions,* which is commonly known as the *Seaboard Report*. The report, which explained the Commission's decision not to take enforcement action against a public company for certain accounting violations caused by its subsidiary, details the many factors the SEC considers in determining whether, and to what extent, it grants leniency to companies for cooperating in its investigations and for related good corporate citizenship. Specifically, the report identifies four broad measures of a company's cooperation: self-policing; self-reporting; remediation; and

[90] In Fiscal Years 2020 and 2021, the SEC imposed financial sanctions of 841 million and $1.14 billion, respectively, in connection with FCPA enforcement actions.

cooperation.

In 2010, SEC also announced a new cooperation programme for individuals. *See Policy Statement Concerning Cooperation by Individuals in its Investigations and Related Enforcement Actions*, Rels. No. 34-61340 (Jan. 19, 2010), *available at:* https://www.sec.gov/rules/policy/2010/34-61340.pdf. SEC staff has a wide range of tools to facilitate and reward cooperation by individuals—from taking no enforcement action to pursuing reduced sanctions in connection with enforcement actions.

For more information about the SEC's cooperation program, please see *Spotlight on Enforcement Cooperation Program*, *available at: https://www.sec.gov/enforcement/enforcement-cooperation-program*.

(Relevant to subpara. 2(b)):

Several Federal agencies outline criteria for industry-specific compliance programmes that are tailored to industry-specific regulations and good practices and include recommendations regarding codes of conduct and systems to identify and prevent conflicts of interest.

(Regarding para 2(c), see response for article 14, paragraph 1a on beneficial ownership.)

(Relevant to para. 2(e)):

Executive Branch-Wide Post-Employment Laws (18 U.S.C. § 207)

Employees of the executive branch are covered the government-wide post-employment law, 18 U.S.C. § 207. This post-employment law establishes various restrictions that apply to former employees based on their participation in certain government matters, their seniority, and the type of post-employment activity they propose to undertake. These laws 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. The core function of section 207 is to prevent former Government employees from leveraging relationships forged during their Government service to assist others in their dealings with the Government. Thus these provisions generally focus on representational activity, but do not normally prevent an employee from providing "behind the scenes" assistance to an outside party. These restrictions apply whether or not the employee is compensated for his or her post-employment action.

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[91] 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

91 The term former "senior" employee refers to the following individuals: (a) Anyone who occupied a position paid at a rate of basic pay that was equal to or above 86.5% of the pay level for level II of the Executive Schedule. In calendar year 2018, that threshold is $164,004; (b) A former active duty commissioned officer of the uniformed services who served in a position for which the pay grade was O-7 or above.; (c) Anyone who occupied a position for which the rate of pay is specified in or fixed according to the Executive Schedule; (d) Anyone appointed by the President to a position under 3 U.S.C. § 105(a)(2)(B) or the Vice President to a position under 3 U.S.C. § 106(a)(1)(B) (These appointees hold high-level positions in the Executive Office of the President.).

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

A brief description of these post-employment provisions is set forth below:

18 U.S.C. § 207(a)(1): No former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the U.S. on behalf of any other person (except the U.S.) in connection with a particular matter involving a specific party or parties, in which he or she participated personally and substantially as an employee, and in which the U.S. is a party or has a direct and substantial interest.

18 U.S.C. § 207(a)(2): No former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the U.S. on behalf of any other person (except the U.S.) in connection with a particular matter involving a specific party or parties, in which the U.S. is a party or has a direct and substantial interest, and which such person knows or reasonably should know was actually pending under his or her official responsibility within the one-year period prior to the termination of his or her employment with the U.S.

18 U.S.C. § 207(b): No former employee may knowingly represent, aid, or advise on the basis of covered information, any other person (except the U.S.) concerning any ongoing trade or treaty negotiation in which, during his or her last year of Government service, he or she participated personally and substantially as an employee.

18 U.S.C. § 207(c): No former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he or she served in any capacity during the one-year period prior to termination from "senior" service, if that communication or appearance is made on behalf of any other person (except the U.S.), in connection with any matter concerning which he or she seeks official action by that employee.

18 U.S.C. § 207(d): No former "very senior" employee may knowingly make, with the intent to influence, any communication to or appearance before any individual appointed to an Executive Schedule position or before any employee of a department or agency in which he or she served as a "very senior" employee during the two-year period prior to termination from Government service, if that communication or appearance is made on behalf of any other person (except the U.S.), in connection with any matter concerning which he or she seeks official action by that individual or employee.

18 U.S.C. § 207(f): No former "senior" employee or former "very senior" employee may knowingly, with the intent to influence a decision of an employee of a department or agency of the U.S. in carrying out his or her official duties, represent a foreign entity before any department or agency of the U.S. or aid or advise a foreign entity.

[92] The term former "very senior" employee refers to the following individuals (a) Anyone who occupied a position in the Executive branch at the rate payable for level I of the Executive Schedule ($210,700 in calendar year 2018) (*e.g.,* Cabinet Members), and employees of the Executive Office of the President who occupied a position paid at the rate payable for level II of the Executive Schedule ($189,600 in calendar year 2018); (b) The Vice President and any former employee in the Executive Office of the President (EOP) who was appointed by the President to a position under 3 U.S.C. § 105(a)(2)(A) or by the Vice President to a position under 3 U.S.C. § 106(a)(1)(A).

These restrictions are subject to a limited number of exceptions that permit, e.g., testimony under oath; certain representations made on behalf of U.S. States, certain institutes of higher education, political parties, and international organizations; and the provision of certain types of technological and scientific information.[93] Use of these exceptions is generally subject to specific criteria and may require a former employee to follow a specific procedure aimed at limiting his or her influence over current employees. The U.S. Office of Government Ethics (OGE) has published guidance at 5 C.F.R. part 2641 concerning all of the executive branch prohibitions in 18 U.S.C § 207 as well as all of the exceptions in the statute (https://www.ecfr.gov/cgi-bin/text-idx?SID=b13709364366dc89bb3d80f148555cb3&mc=true&node=pt5.3.2641&rgn=div5).

OGE also publishes a variety of resources to educate executive branch employees about the post-government restrictions. These resources include pamphlets, brochures, and web-based training (https://www.oge.gov/). OGE's guidance also addresses the ethical requirements that apply to employees even before they leave Government, i.e., while they are still seeking future employment (https://www.oge.gov/web/oge.nsf/0/86D5B4F72AF0FBCB852585B6005A1A22/$FILE/Standards%20of%20Ethical%20Conduct%20508.pdf and https://www.oge.gov/web/OGE.nsf/Resources/The+Revolving+Door+and+Regulatory+Clause).

Because the post-employment laws often require a fact-specific analysis, each executive branch agency is required to be available to provide advice to current and former employees about their post-employment obligations.[94] In addition, employees are statutorily required to be notified at the time that a personnel action takes place that raises their pay to a level that they will become a "senior employee" and again at the time they terminate a covered position.[95]

Additional Restrictions Applicable to Non-career Appointees Required to Sign the Ethics Pledge under Executive Order 13770

Full-time noncareer appointees who are required to sign the Ethics Pledge under Executive Order 13770 are further prohibited from engaging in the following post-employment activities:

- within 5 years after termination of employment as an appointee in any executive agency in which the appointee is appointed to serve, a noncareer employee not to engage in lobbying activities with respect to that agency;
- if covered by the post-employment restrictions set forth in 18 U.S.C. § 207(c), a noncareer employee recommits to abide by those restrictions;
- a noncareer employee may not engage in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration; and
- a noncareer employee may not engage in any activity on behalf of any foreign government or foreign political party which would require the appointee to register under the Foreign Agents Registration Act of 1938, as amended.

Agency Specific Post-Employment Laws

Agency-specific post-employment laws also exist and augment the government-wide post-

93 18 U.S.C. § 207(j)-(k).
94 5 C.F.R. § 2641.105.
95 5 U.S.C. § 7302.

employment laws. For example, former retired military members are not permitted to take a civilian position within 6-months of leaving the military.[96] In addition, section 847 of the National Defense Authorization Act for FY 2008, Public Law 110-181, requires a selected category of senior Department of Defense (DoD) acquisition officials to seek a post-employment DoD ethics opinion letter before accepting compensation from a DoD contractor. The ethics officials are required to issue the written opinion letter within 30 days after receiving the request. DoD is required to maintain copies of these opinion letters in a centralized database/repository. The Inspector General is required to perform periodic reviews to ensure that written opinions are being provided and retained in accordance with the requirements of this section. Also, defense contractors are required, prior to compensating a former DoD official, to determine that the former DoD official has sought and received (or has not received after 30 days of seeking) a written opinion from the appropriate ethics counselor.

(Relevant to para. 2(f)):

As directed by Section 404 of the Sarbanes-Oxley Act, the SEC adopted rules in 2003 to require issuers and their independent auditors generally to report to the public on the effectiveness of the company‘s internal control over financial reporting. Internal control over financial reporting includes controls related to preventing and detecting illegal acts and fraud, including acts of bribery that result in a material misstatement of the financial statements.

The SEC issued interpretive guidance for management in 2007 regarding its evaluation and assessment of internal control over financial reporting. *See Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934*, Rels. No. 34-55929 (June 20, 2007), *available at* https://www.sec.gov/rules/interp/2007/33-8810.pdf. The guidance sets forth an approach by which management can conduct a top-down risk-based evaluation of internal controls. This guidance includes direction for management in identifying financial reporting risks and controls and evaluating evidence of the operating effectiveness of internal control over financial reporting. Further, the guidance contains information to assist management in developing disclosures about their internal control over financial reporting including disclosures about material weaknesses that may be identified.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

The Department of Justice publishes all criminal resolutions and relevant court filings with respect to final criminal actions and declinatations that are brought in FCPA cases. A detailed and transparent listing of the cases are located here. United States Attorneys Offices located in 94 districts across the United States also publicize relevant corruption and money laundering cases.

Enforcement of the FCPA continues to be a high priority area for the SEC. In 2010, the SEC's Division of Enforcement created a specialized unit to further enhance its enforcement of the FCPA, which prohibits an issuer from giving anything of value to any person, directly or indirectly, to influence the actions or decisions of a foreign government official to assist the issuer in obtaining or retaining business.[97]

[96] 5 U.S.C. § 3326.

[97] As of June 2024, the FCPA Unit has approximately two dozen attorneys and forensic accountants in various SEC offices around the country. The FCPA Unit has developed substantial expertise, built long-lasting relationships with its domestic and international law enforcement colleagues in the foreign bribery space, and brought a multitude of cases exposing widespread corruption across many industries.

A list of the SEC's FCPA enforcement actions listed by calendar year can be found here.

(b) Observations on the implementation of the article

The United States has taken a number of legislative and policy measures to prevent corruption and conflicts of interest involving the private sector at the federal level.

The formation of companies, transparency of company ownership and management, internal control and risk management measures and other corporate governance issues are regulated by state legislation. At the federal level, corporate governance is primarily regulated by disclosure requirements of the Securities Act, as amended, the Securities Exchange Act, as amended (the Securities Exchange Act, including provisions on prohibited foreign trade practices introduced through the Foreign Corrupt Practices Act), the Sarbanes-Oxley Act and relevant rules promulgated by the SEC.

18 USC § 207 provides for either an absolute ban or specified "cooling off" periods for former public officials, depending on the type of activities concerned. Public officials shall disclose entering into any negotiations or arrangements for outside employment. Agency-specific post-employment laws also exist, supplementing the above-mentioned Government-wide post-employment laws.

The Department of Justice and SEC regularly raise awareness among private sector representatives about the anti-bribery and accounting provisions of the Foreign Corrupt Practices Act by publishing guidance and organizing conferences and other public events. The Foreign Corrupt Practices Act Corporate Enforcement Policy of the Department of Justice incentivizes corporations to self-report wrongdoing and cooperate with the Department.

(c) Successes and good practices

The regular awareness-raising activities conducted by the Department of Justice and SEC for private sector representatives in relation to the anti-bribery and accounting provisions of the Foreign Corrupt Practices Act and policy measures to incentivize corporations to self-report, and remediate wrongdoing, as well as cooperate with the Department of Justice and SEC.

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents;

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The U.S. federal securities laws require reporting companies to:

- make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect their transactions and disposition of assets (Section 13(b)(2)(A) of the Securities Exchange Act of 1934 ("Exchange Act")); and
- devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded to maintain accountability for assets (Section 13(b)(2)(B) of the Exchange Act).

The U.S. federal securities laws also prohibit, among other things,

- any person from knowingly circumventing a system of internal accounting controls, knowingly falsifying any book, record, or account, or making or causing to be made, materially false or misleading statements or omissions to an accountant in connection with an audit (Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder);
- materially false and misleading statements in the annual or quarterly reports and require that the information reported in those reports be true, correct, and complete (Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder).

In addition, Section 10A of the Exchange Act generally requires that the auditor of a company whose stock is registered include in its annual audit, among other things, procedures regarding the detection of illegal acts that have a direct and material effect on the determination of the financial statement amounts.

U.S. issuers are also subject to audits by accounting firms registered with the Public Company Accounting Oversight Board ("PCAOB"). The SEC has oversight authority over the PCAOB, including the approval of the Board's rules, standards, and budget. Here are selected links to the SEC and PCAOB websites that describe the PCAOB's role:

For general information about the PCAOB, please follow this link: https://www.sec.gov/fast-answers/answerspcaobhtm.html.

For more information about the PCAOB's auditing standards, please follow this link: https://pcaobus.org/Standards/Auditing/Pages/default.aspx.

For further reference, please see the Bylaws and Rules of the PCAOB: https://pcaobus.org/Rules/Pages/default.aspx.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

A list of relevant SEC enforcement actions can be found at: https://www.sec.gov/enforce/sec-enforcement-actions-fcpa-cases

(b) Observations on the implementation of the article

The Foreign Corrupt Practices Act and relevant SEC rules require all public companies to, inter alia, maintain books and records that, in reasonable detail, accurately and fairly reflect

the companies' transactions and dispositions of company assets and maintain a system of appropriate internal accounting controls.

It is prohibited for a person to knowingly circumvent a system of internal accounting controls, knowingly falsify any book, record or account, or make or cause to be made materially false or misleading statements or omissions to an accountant in connection with an audit or materially false and misleading statements in annual or quarterly reports (sect. 13(a)(b)(5) of the Securities Exchange Act and rules 12b-20, 13a-1 and 13a-13, 13b2-1, 13b2-2 thereunder).

Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

U.S. law explicitly disallows the tax deductibility of illegal bribes or kickbacks or other illegal payments for tax purposes. Under Title 26 U.S.C. Section 162(c)(1), Illegal Bribes, Kickbacks, and Other Payments, Illegal Payments to Government Officials or Employees:

No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977.

Moreover, under Title 26 U.S.C. Section 162 (c)(2), Other Illegal Payments:

No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business.

Furthermore, the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. ("FCPA"), was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business.

Specifically, the anti-bribery provisions of the FCPA prohibit the willful use of the mails or any means of instrumentality of interstate commerce corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person.

https://www.gpo.gov/fdsys/pkg/USCODE-2011-title26/html/USCODE-2011-title26-subtitleA-chap1-subchapB-partVI-sec162.htm

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

IRS expends significant resources to develop and make available for free, in print and electronically, publications that are informational booklets that provide taxpayers detailed guidance on various tax issues. These publications are updated annually or as needed. The publications are available in person at an IRS office or can be received via mail or electronically via irs.gov. In addition, the public can contact the IRS for free tax assistance to ask questions, obtain answers/clarification, guidance, return preparation assistance regarding these and other tax issues.

Specifically, numerous IRS Publications address the issue of illegal bribes and that bribes are not allowable deductions. IRS Publication 535, Business Expenses discusses the tax deductibility of illegal bribes as follows: Bribes and Kickbacks. Engaging in the payment of bribes or kickbacks is a serious criminal matter. Such activity could result in criminal prosecution. Any payments that appear to have been made, either directly or indirectly, to an official or employee of any government or an agency or instrumentality of any government aren't deductible for tax purposes and are in violation of the law.

Payments paid directly or indirectly to a person in violation of any federal or state law (but only if that state law is generally enforced) that provides for a criminal penalty or for the loss of a license or privilege to engage in a trade or business aren't allowed as a deduction for tax purposes.

https://www.irs.gov/pub/irs-pdf/p535.pdf

Several other IRS Publications list illegal bribes as non-deductible expenses:

IRS Publication 529, Miscellaneous Deductions: https://www.irs.gov/pub/irs-pdf/p529.pdf

Publication 17, Your Federal Income Tax For Individuals: https://www.irs.gov/pub/irs-pdf/p17.pdf

IRS Publication 334, Tax Guide for Small Business: https://www.irs.gov/pub/irs-pdf/p334.pdf

(b) Observations on the implementation of the article

The Internal Revenue Code (26 USC § 162(c)(1) and (2)) disallows the tax deductibility of illegal bribes or kickbacks or other illegal payments. "Facilitating payments" to foreign public officials that are lawful under the Foreign Corrupt Practices Act are tax deductible.

In regard to facilitating payments, the reviewers note that article 12(4) is related to articles 15 and 16 in so far as it concerns the definition of bribes but still remains an independent obligation under the Convention. In other words, if a State party chooses to define certain payments as lawful in its criminal legislation, nothing should prevent that State from making such payments non-deductible in its tax laws.

In addition, it should be noted that the implementation of article 12(4) should not be limited to expressly listing bribes as non-deductible expenses under tax laws but should also include adopting other administrative and/or legislative measures to ensure that "bribe payments cannot be concealed under legitimate categories of expenses, such as "social and entertainment costs"

or “commissions” in addition to equipping the tax authorities with necessary tools to detect corruption and report it to the law enforcement authorities (Technical Guide to the UN Convention against Corruption, pages 60-61). Although the United States has provided information on such additional measures, the reviewers are still concerned that expressly allowing facilitating payments to be tax deductible creates an additional risk that bribe payments could be concealed under the facilitating payments category and subsequently deducted from one’s taxable income.

It was therefore recommended that the United States prohibit the tax deductibility of “facilitating payments.”

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

(Relevant to subpara. 1, 1(a), and 1(b)):

One of the principal mechanisms for seeking consultation in the executive branch is the Administrative Procedure Act (5 U.S.C. § 551). The Act requires (with limited exceptions) that all rules and regulations proposed by federal agencies must be announced in the Federal Register with opportunity for public comment. The agency must also issue its responses to the comments.

In 2003, the eRulemaking programme launched the Regulations.gov website (www.regulations.gov) to enable citizens to search, view and comment on regulations issued by the U.S. Government.

On average, Federal agencies and departments issue nearly 8,000 regulations per year. In the past, if members of the public were interested in commenting on a regulation, they would have to know the sponsoring agency, when it would be published, review it in a reading room, then struggle through a comment process specific to each agency. Today using Regulations.gov, the public can shape rules and regulations that impact their lives conveniently, from anywhere.

The Federal Advisory Committee Act (FACA) was enacted in 1972 to ensure that advice by the various advisory committees is objective and accessible to the public. The Act formalized a process for establishing, operating, overseeing, and terminating these advisory bodies; it also created the Committee Management Secretariat to monitor compliance with the Act. All public advisory committees, some of which are created by law and others by agency decision, must: hold their meetings in public; provide an opportunity for the public to attend; and, under certain circumstances, provide an opportunity for the public to be heard. These public meetings provide civil society and non-governmental organizations an important mechanism to consult with both the agency personnel and the members of the public advisory committees on matters within their sphere of competence, including, of course, matters dealing with corruption prevention.

The Federal Advisory Committee Act Training course is intended for federal Committee Management Officers and their staff, Designated Federal Officers, FACA and ethics legal staff, FACA support staff, and managers and decision makers involved in advisory committee management and/or operations. Agency contractor staff directly involved in FACA management or operations may also be nominated by their host agency. The course is taught by an interagency team of FACA subject matter experts. The course is administered by the General Services Administration Committee Management Secretariat with five classes each fiscal year.

The FACA database (http://www.facadatabase.gov/) is used by Federal agencies to continuously manage an average of 1,000 advisory committees government-wide. This database is also used by the Congress to perform oversight of related executive branch programmes and by the public, the media, and others, to stay abreast of important developments resulting from advisory committee activities.

The Freedom of Information Act (5 U.S.C. § 552) ("FOIA") generally provides that any person has a right, enforceable in court, to obtain access to federal agency records. FOIA is administered through a decentralized system so that each federal agency is responsible for implementing the Act's requirements. The Federal government processed over 800,000 FOIA requests in Fiscal Year 2017 alone. Agencies also make a wide variety of information available to the public proactively, including frequently requested records which are required to be posted online so that they are readily available to all.

Agency FOIA websites provide extensive information about the FOIA and how to make requests. They also include FOIA Libraries, where frequently requested documents are posted, as well as operational documents that describe agency policies and procedures. FOIA websites also contain agency Annual FOIA Reports and Chief FOIA Officer Reports, which provide descriptions about each agency's administration of the FOIA, from detailed statistics regarding the numbers of FOIA requests received and processed, to narrative descriptions of, for example, the steps taken to improve efficiencies and utlize technology. All agency FOIA websites and FOIA Libraries can easily be accessed from a single location by going to FOIA.gov, (www.foia.gov) the government-wide FOIA website.

Each federal agency that handles FOIA requests is required to establish a FOIA Requester Service Center where requesters can call to ask questions about the FOIA and any pending FOIA requests. The FOIA statute also requires that each agency designate one high-level official to serve as the Chief FOIA Officer responsible for the agency's overall compliance with

the Act and one or more FOIA Public Liaisons that report to the Chief FOIA Officer. These FOIA contacts provide requesters with multiple avenues to discuss the FOIA and their requests with the agency.

FOIA.gov is a government-wide, comprehensive FOIA website that was developed as the Flagship Initiative under the Department of Justice's First Open Government Plan. FOIA.Gov shines a light on FOIA compliance by graphically displaying all the detailed FOIA statistics that are reported to DOJ each year and by allowing users to sort this data in any way they want, so that comparisons can be made between agencies and over time. The site also has an educational component, with embedded videos that explain the FOIA process, definitions of FOIA terms, and answers to frequently asked questions. In addition to serving as an educational resource on how the FOIA works, FOIA.gov provides a wealth of FOIA contact information for the more than hundred agencies subject to the FOIA, including their FOIA Requester Service Centers and FOIA Public Liasons. The website also contains online FOIA request forms customized to each agency, making it easier than ever for the public to make a request. Further, the site has a search function that allows the public to search across all agency websites to access records on any topic posted anywhere on an agency's website. The search feature provides an easy way for potential FOIA requesters to first see what information is already available on a topic. This might preclude the need to even make a request in the first instance, or might allow for a more targeted request to be made.

The Department of Justice's Office of Information Policy (OIP) (http://www.justice.gov) is responsible for encouraging agency compliance with the FOIA. OIP develops and issues policy guidance to all agencies on the proper implementation of the FOIA. OIP also publishes the United States Department of Justice Guide to the Freedom of Information Act, which is a comprehensive legal treatise addressing all aspects of the FOIA. OIP provides individualized guidance to agencies on questions relating to the application of the FOIA, regularly conducts training programmes for FOIA personnel across the government, including specialized agency programmes, and provides general advice to the public on use of the FOIA. In addition to its policy functions, OIP oversees agency compliance with the FOIA. All agencies are required by law to report to the Department of Justice on their FOIA compliance through submission of Annual FOIA Reports and Chief FOIA Officer Reports. OIP develops guidelines for those reports, issues guidance and provides training to agencies to help them complete the reports, and reviews and compiles summaries of both agency Annual FOIA Reports and Chief FOIA Officer Reports.

OIP also co-chairs the Chief FOIA Officers Council, which is composed of the Chief FOIA Officers for each agency as well as the Deputy Director for Management of the Office of Management and Budget. The Chief FOIA Officers Council meetings are open to the public and provide a forum to discuss ideas, best practices, and innovations in FOIA administration. OIP has also engaged with the public and the open government community through its FOIA Best Practices Workshop series.

The Office of Government Information Services (OGIS) (https://ogis.archives.gov/) is a FOIA resource for the public and the government. OGIS is a place where anyone can ask for FOIA assistance. In other words OGIS, also serves as the FOIA ombudsman -- answering questions, tracking suggestions and providing information. OGIS co-chairs the Chief FOIA Officers Council and chairs the FOIA Advisory Committee, which is composed of representatives from both agencies and interested members of the public.

As described in response to Article 10(c), the U.S. Office of Government Ethics (OGE) is responsible under the Ethics in Government Act of 1978 (EIGA) for "providing information on and promoting understanding of ethical standards in [E]xecutive agencies." OGE's prevention mission involves engaging the public to inform them about the systems in place to

and resolve conflicts interest of their government leaders. This in turn, allows the public to engage in overseeing the integrity of its government.

To achieve its strategic goal of engaging the public in overseeing Government integrity, OGE has developed two strategic objectives. These objectives are to inform the public about OGE and the executive branch ethics programme; and to increase the ethics information publicly available.

In regard to the first objective, OGE informs the public and other key stakeholders about OGE and the executive branch ethics programme to raise awareness of and increase confidence in the systems in place to detect and resolve conflicts of interest. In support of this effort, OGE has refined its communications strategies, particularly through the use of social media, to provide relevant, understandable information to enable citizens to hold their Government accountable.

In regard to the second objective, OGE makes ethics information publicly available to increase public confidence in Government decision making. Ethics information includes reports and data on agency ethics programme compliance, the public financial disclosures and ethics agreements of senior leaders, and written policy guidance. In advancement of this objective, OGE has taken steps to improve existing publicly available datasets and expand data that is available on OGE's website and social media page, and ensure that resources and information are easy to locate and access.

OGE primarily uses its website and social media to inform and provide access to key documents. In doing so OGE is continuously involved in the publication of ethics documentation, tools, and information related to the executive branch ethics programme on its website. OGE's website includes plain English descriptions of the ethics laws and regulations, access to key ethics documents such as financial disclosures, and guidance documents. OGE also recognizes that information without context may lead to confusion, and as a result OGE has continued to take actions aimed at improving stakeholders' understanding of the ethics resources and information available to them, as well as how to use these resource and information. For example, OGE's Director and senior leadership routinely also publish "Director's Notes" which allow OGE's Director and leadership team to speak directly with the public about the executive branch ethics programme.

In addition, OGE routinely uses its X account to not only provide updates when new ethics documents are available (such as the issuance of a new OGE Legal Advisory or a new programme review report), to provide context as to what these documents mean and how the public can use them to hold their government officials accountable. A good example of this is a recent social media campaign aimed at explaining the roles and responsibilities of relevant individuals to the ethics programme, such as the Designated Agency Ethics Official (DAEO), agency heads, and OGE. Similarly, OGE recently ran a social media campaign aimed at explaining how to access and review the financial disclosure reports of high-level officials. In 2017, there were over 10,500,000 views of OGE's social media posts on X and over 25,000 visitors to OGE's X page were led back to OGE's website from X. In fiscal year 2017, OGE responded to nearly 1,400 requests for assistance from the press, a 778 percent increase over the prior fiscal year. These interactions resulted in more accurate reporting about the ethics laws and regulations and OGE's work. These interactions also multiplied OGE's ability to reach the public to promote further understanding of the executive branch ethics programme and its role in ensuring government integrity. OGE also responded to requests for assistance from other stakeholders, including 47,000 requests from private citizens. This engagement promoted understanding of the executive branch ethics programme and related ethics laws and regulations.

OGE also undertakes other activities aimed at increasing knowledge and understanding of the

public and others in its work. For example, OGE often engages with professional, good government, and interagency groups to discuss emerging ethics issues and trends, share model practices, develop sound ethics policies, and combine resources to more effectively ensure that government decisions are made for the benefit of the public and not for private gain. In fiscal year 2017, OGE continued to participate as a member of the Ethics and Compliance Initiative (EC&I), the Council on Governmental Ethics Laws (COGEL), and the Council of the Inspectors General on Integrity and Efficiency (CIGIE). As a member of COGEL, OGE shared its legal analysis, programmatic experience, and model practices with the private sector and state and local government agencies. In addition, OGE participated in interagency groups, such as the General Counsel Exchange, to share information about OGE and the executive branch ethics programme, as well as to discuss general administrative legal and performance issues faced by all executive branch agencies. OGE's involvement with these organizations not only fostered valuable communication, it also led to innovations in OGE's practices related to training, programme and performance management, and general law.

OGE also engaged in other efforts to build relationships with external stakeholders and promote understanding of the executive branch ethics programme and OGE's mission. OGE accepts speaking invitations to address its external audiences, including professional associations, international anticorruption groups, university students, the American Bar Association and the D.C. Bar association and the human capital community, on topics including conflicts of interest, ethical leadership, and programme management.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

Government-wide guidance on the FOIA is available on the OIP Guidance webpage. https://www.justice.gov/oip/oip-guidance

Summaries of agency Annual FOIA Reports, along with the individual Annual FOIA Reports of the more than 100 agencies subject to the FOIA, detailing the numbers of FOIA requests received and processed by agencies, the disposition of such requests, and time taken to respond, are available on OIP's Reports webpage: https://www.justice.gov/oip/reports-1

Summaries of agency Chief FOIA Officer Reports, as well as the individual Chief FOIA Officer Reports of all agencies, which describe steps agencies have taken to improve transparency, including use of technology, proactive posting of records, and improvements in timeliness, are also available on OIP's Reports webpage: https://www.justice.gov/oip/reports-1

Descriptions of the Chief FOIA Officers Council meetings, along with related materials, such as agendas, slides, and minutes, are available on OIP's webpage: https://www.justice.gov/oip/chief-foia-officers-council

Summaries of FOIA Best Practices Workshops, along with related OIP guidance is available on OIP's webpage: https://www.justice.gov/oip/best-practices-workshop-series

(b) Observations on the implementation of the article

In addition to previously described measures to improve transparency in government operations, the Administrative Procedure Act (5 USC §§ 551 et seq.) requires the publishing of proposed rules and regulations in the Federal Register, and opportunities for the public to comment. Other legislation, such as the Government in the Sunshine Act and Federal Advisory Committee Act, provides mechanisms for public participation in the work of agencies headed by a collegial body (commissions and boards) and of advisory bodies.

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The "hot line" procedure established by the Inspectors General under the Inspector General Act of 1978 allows anyone to confidentially report allegations of fraud, abuse, waste or mismanagement by Federal employees, contractors or grantees.

Most agencies have dedicated web pages for the agency's office of Inspector General. A list of agency IG website links and contacts is located at: https://www.ignet.gov/content/inspectors-general-directory.

The Office of Special Counsel (OSC) provides extensive information on its website, www.osc.gov, regarding its mission and how it may serve certain federal employees, applicants, and former employees. It also provides clear and succinct guidance for potential complainants interested in making a protected disclosure of wrongdoing, filing a complaint of prohibited personnel practices, filing a Hatch Act complaint, or seeking an advisory opinion under the Hatch Act. OSC provides a convenient system for complainants to file online, provides a phone hotline for federal employees, applicants, and former employees to request additional information or clarification regarding its mission and processes, and in 2017 established a hotline email address for these inquiries.

OGE has taken a number of steps to ensure that members of the public can access appropriate sources for provisional ethics advice as well as for identifying and reporting corruption to the appropriate authorities. For example, OGE maintains a list of all Designated Agency Ethics Officials (DAEOs), along with their contact information, on its website so that employees of specific agencies and members of the public can contact the correct agency ethics official for matters involving a specific agency. OGE also maintains an email dedicated to responding to public requests and inquiries. Through this email address OGE received around 5,000 public inquiries in 2017. OGE also maintains on its webpage links to agencies that are responsible for investigating and prosecuting misconduct in the executive branch, the Legislative branch, and the Judiciary.

Members of the public can anonymously report potential violations of the U.S. federal securities laws, including corruption, by filing tips and complaints through the SEC's website (https://www.sec.gov/). This website also serves as a centralized location for members of the public to ask questions or report problems concerning their investments, investment accounts, and financial professionals; submit a matter to the Ombudsman of the SEC's Office of Investor Advocate for concerns about the SEC or a self-regulatory organization (SRO) overseen by the SEC; or learn about the SEC's whistleblower program.The SEC's whistleblower programme was established by Congress in connection with the Dodd-Frank Act in 2010. The SEC is authorized to pay an award of 10% to 30% of amounts collected in connection with a case where an eligible whistleblower voluntarily provides original information that leads to a successful SEC enforcement action where monetary sanctions exceeding $1 million are ordered. The main goal of the whistleblower programme is to incentivize the reporting of specific, timely, and credible information to the SEC, which the agency can then leverage to better protect investors and the marketplace.

Throughout the history of the whistleblower program, the SEC's receipt of whistleblower tips has reflected an upward trajectory. Since August 2011, the SEC has received over 28,000 whistleblower tips, and in FY 2018 alone, received more than 5,200 tips. This represents the highest increase in tips since the beginning of the program—a nearly seventy-six percent increase since FY 2012.[98]

Individuals who submit whistleblower tips to the SEC receive heightened confidentiality protection. This generally means that the SEC will not disclose information that could directly or indirectly reveal the identity of a whistleblower, except in certain limited situations. Furthermore, whistleblowers may report anonymously to the SEC if they are represented by counsel. When submitting a whistleblower tip, individuals are required to declare under penalty of perjury that their information is true and correct to the best of their knowledge. For anonymous whistleblowers, attorneys provide a certification as to the truthfulness of the information.

The SEC's whistleblower programme has continued to grow and make substantial contributions to the agency's enforcement and investor protection efforts. Since the program's inception, the SEC has ordered wrongdoers in enforcement matters brought with information from meritorious whistleblowers to pay over $1.7 billion in total monetary sanctions, including more than $901 million in disgorgement of ill-gotten gains and interest, of which approximately $452 million has been, or is scheduled to be, returned to harmed investors.[99]

To date, the SEC has awarded over $381 million to 62 individuals since the beginning of the whistleblower program. In FY 2018 alone, the SEC awarded more than $168 million in whistleblower awards to 13 individuals whose information and cooperation assisted the agency in bringing successful enforcement actions.[100] The Dodd-Frank Act also expanded protections for whistleblowers and broadened prohibitions against retaliation. Employers may not discharge, demote, suspend, harass, or in any way discriminate against an employee in the terms and conditions of employment because the employee reported conduct to the SEC that the employee reasonably believed violated the federal securities laws. The anti-retaliation and strengthened confidentiality protections are designed to encourage individuals to report to the SEC without fear of reprisal. In addition, SEC rules implementing Dodd-Frank provide that "[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation[.]"

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

As described above, the U.S. Office of Government Ethics (OGE) maintains a highly visited website and social media presence. In addition to the over 10 million visits to OGE's X page, in 2017, OGE's homepage was viewed over 230,000 times and the landing page for OGE's Legal Advisories was viewed over 26,000 times.

The U.S. Office of Special Counsel received nearly 3,500 whistleblower disclosures in FY

[98] As of June 2024, since FY2012, the SEC has received over 82,000 whistleblower tips, and in FY 2023 alone, received a record of more than 18,000 tips – almost 50 percent more than the previous record in FY 2022.

[99] As of June 2024, since the program's inception, the SEC has ordered wrongdoers in enforcement matters brought with information from meritorious whistleblowers to pay over $6.3 billion in total monetary sanctions, including more than $4 billion in disgorgement of ill-gotten gains and interest, of which approximately $1.5 billion has been, or is scheduled to be, returned to harmed investors as of the end of FY 2022.

[100] To date, the SEC has awarded over $1.9 billion to 97 individuals since the beginning of the whistleblower program. In FY 2023 alone, the SEC awarded nearly $600 million in whistleblower awards – the highest by dollar amount in the program's history - to 68 individuals whose information and cooperation assisted the agency in bringing successful enforcement actions.

2016 and FY 2017 combined. In FY 2017, specifically, OSC sent 66 whistleblower disclosure reports to the President and Congress. Over FY 2016-17, the OSC obtained favorable results in 451 whistleblower retaliation actions, which is also triple the rate of an average two-year span. Further, OSC achieved a record 47 systemic corrective actions in FY 2017, which will result in significant policy changes or larger training efforts aimed at proactively preventing future violations at all of the agencies involved. In 50 of those cases, agencies substantiated wrongdoing referred by OSC.

OSC also achieved great success in correcting government wrongdoing, with agencies substantiating more than 75 percent of whistleblower disclosures referred by OSC in FY 2017. This resulted in improved public safety, the prevention of fraud and abuse, and recouping significant funds to the U.S. Treasury. In particular, OSC's work with whistleblowers to identify quality of care issues and improper scheduling practices at VA health facilities is helping the government fulfill its solemn commitment to veterans. OSC also represents service members and reservists securing reemployment upon return to civilian life, achieving significant favorable results under the Uniformed Service Employment and Reemployment Rights Act (USERRA). Equally important, OSC dramatically increased its training of the federal community to prevent problems from occurring in the first place. OSC conducted 148 outreach events at federal agencies during FY 2017, and also certified 43 agencies under its Section 2302(c) Certification Program, which requires agencies to take specific steps to inform their managers and employees about whistleblower protections and Prohibited Personnel Practices (PPPs).

(b) Observations on the implementation of the article

Members of the public can report acts of corruption to local, state and federal law enforcement agencies and OIGs through those bodies' respective websites or hotlines, including anonymously.

Article 14. Measures to prevent money-laundering

Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Hundreds of thousands of financial institutions are currently subject to Bank Secrecy Act (BSA) reporting and recordkeeping requirements, including depository institutions (e.g., banks, credit unions and thrifts); brokers or dealers in securities; money services businesses

(e.g., money transmitters; issuers, redeemers and sellers of money orders and travelers' checks; check cashers and currency exchangers); and casinos and card clubs. In addition, as noted in that prior response, suspicious activity report filings are available to major federal law enforcement agencies, the supervisory agencies and state law enforcement and bank supervisory agencies through a nationwide database. Law enforcement access to such reports is further facilitated through the assignment of liaison officers from federal law enforcement agencies to FinCEN. As a result, United States law enforcement authorities have access to suspicious activity reporting information, including those that may involve suspicions of possible corruption.

The United States has a comprehensive system designed to prevent and detect money laundering. Among other things, this system includes reporting and record keeping requirements for financial institutions and other businesses; know-your-customer, compliance officer, and training obligations for financial institutions; and outreach and consultation programmes. The major anti-money laundering requirements for financial institutions are the record keeping and reporting requirements of the Bank Secrecy Act (BSA), Titles I and II of Pub. L. 91-503, as amended, codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5330. The BSA was enacted in 1970, but because of a series of legal challenges, was not implemented until 1974. These requirements can be enforced through the use of civil and criminal penalties, injunctions, examinations, and summons authority. In addition, as set forth more fully below in subparagraphs 7 and 8, in 2001 the United States Government also issued specific advisory guidance and enacted additional statutory requirements for financial institutions designed to improve their ability to detect and report money laundering related to foreign official corruption.

The BSA authorizes the Secretary of the Treasury, inter alia, to issue regulations requiring financial institutions to keep certain records and file certain reports, and to implement anti-money laundering programmes and compliance programmes. Depending on the specific statutory or regulatory requirement, the BSA and its implementing regulations apply generally to financial institutions, 31 U.S.C. § 5312(a)(2) and 31 C.F.R. § 1010.100(t). A "financial institution" is defined broadly to include, inter alia, a bank, a broker or dealer in securities, a currency dealer or exchanger, money transmitter, and a casino. The BSA also gives the Secretary of the Treasury wide discretion to designate non-bank financial institutions and other businesses as financial institutions subject to BSA reporting and record keeping requirements. The principal record keeping, reporting, and compliance programmes under the BSA and other United States statues and regulations include:

1. Requirement to report or record large cash transactions. The United States has cash transaction reporting requirements for financial institutions, casinos and businesses, as well as additional reporting requirements for the cross-border transportation of currency and monetary instruments.

a. Financial institutions generally. Each financial institution, other than a casino or the Postal Service, must file a Currency Transaction Report (CTR) for each deposit, withdrawal, exchange of currency or other payment or transfer by, through, or to a financial institution that involves more than $10,000 in currency. 31 U.S.C. § 5313(a) and 31 C.F.R. § 1010.311. For purposes of this CTR requirement, multiple currency transactions are treated as a single transaction if they total more than $10,000 during any one business day. Financial institutions are required to file CTRs within fifteen days following the day on which the reportable transaction occurred. A copy of the CTR must be retained for a period of five years from the date of the report.

b. Casinos. Each casino must file a report of each currency transaction, involving cash in or out, of more than $10,000. 31 C.F.R. § 1021.311. A currency transaction "involving cash"

includes purchases and redemptions of chips and tokens, front money deposits and withdrawals, bets of currency, and payment on bets. As it is for non-casino financial institutions, multiple currency transactions are treated as a single transaction if the casino has knowledge that the transactions are by or on behalf of any person and result in either cash in or out totaling more than $10,000 during any gaming day.

c. Trades and businesses. The Internal Revenue Code and the BSA require that any person who, in the course of engaging in a trade or business, receives more than $10,000 in cash in a single transaction or two or more related transactions file a Form 8300 describing the transaction or transactions. 26 U.S.C. § 6050I; 31 U.S.C. § 5331. The report must include the name, address, and taxpayer identification number of the person from whom the cash was received; the amount of cash received; the date and nature of the transaction, and such other information as the Secretary of the Treasury may prescribe.

d. Cross-border transportation of currency or monetary instruments. Each person must make a currency or money instrument report (CMIR) when he or she physically transports currency or other monetary instruments (including bearer negotiable instruments, securities and traveler's checks) in an aggregate exceeding $10,000 (or its foreign equivalency) at one time, into or out of the United States. 31 C.F.R. § 1010.340(a) and 31 U.S.C. §§ 5316(a) and 5317. In addition, subsection 1010.340(b) states that each person in the United States who receives currency or other monetary instruments in an aggregate amount exceeding $10,000 from a place outside the United States, must report the amount, the date of receipt, the form of monetary instruments, and the person from whom the currency or monetary instruments were received. Subsection 1010.340(c) further states that the CMIR requirement does not apply to certain entities, including the Federal Reserve or a bank or broker or dealer in securities with respect to currency or other monetary instruments mailed or shipped through the Postal Service or by common carrier.

2. Customer identification. Under a recently issued BSA rule effective as of May 11, 2018, contained at 31 C.F.R. §§ 1010, 1020, 1023, and 1024, covered financial institutions must establish and maintain written policies and procedures that are reasonably designed to:

a. identify and verify the identity of customers;
b. identify and verify the identity of the beneficial owners of companies opening accounts;
c. understand the nature and purpose of customer relationships to develop customer risk profiles; and
d. conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

The new Customer Due Diligence Rule (published in 2016 and in full effect as of 2018) clarifies and strengthens prior customer due diligence requirements for U.S. banks, mutual funds, brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities and adds a new requirement for these covered financial institutions to identify and verify the identity the natural persons (known as beneficial owners) of legal entity customers who own, control, and profit from companies when those companies open accounts.

3. Requirement to collect and verify beneficial ownership information.

In May 2018, the U.S. Department of the Treasury’s May 2016 Customer Due Diligence (CDD) Rule went into full effect; all covered financial institutions—banks, brokers or dealers

in securities, mutual funds, futures commission merchants, and introducing brokers in commodities—will now be examined for compliance with this Rule by their regulator, and subject to civil and criminal penalties for non-compliance. The CDD Rule amended Bank Secrecy Act (BSA) regulations to improve financial transparency and prevent criminals and terrorists from misusing companies to disguise their illicit activities and launder their ill-gotten gains. It clarifies and strengthens customer due diligence requirements for covered financial institutions and adds a new requirement for these institutions to identify and verify the identity the natural persons (known as beneficial owners) of legal entity customers who own, control, and profit from companies when those companies open accounts.

With respect to the new requirement to obtain beneficial ownership information, financial institutions will have to identify and verify the identity of any individual who owns 25 percent or more of a legal entity, and in all cases, an individual who controls the legal entity

4. Requirement to report any suspicious transaction.

U.S. laws require financial institutions to report any suspicious transaction related to a potential violation of law or regulation (electronically and in real-time); this requirement is established in the BSA at 31 U.S.C. § 5318(g). The statute also sets out sanctions (both criminal and civil penalties) for willful violations of the BSA or of regulations issued under the BSA. See 31 U.S.C. §§ 5321, 5322. The BSA also states that the Secretary of the Treasury shall designate to a single agency of the United States as the recipient of SARs. See 31 U.S.C. at § 5318(g)(4). Treasury Order 180-01 delegates the authority of the Secretary of the Treasury to administer the provisions of the BSA, 31 U.S.C. § 5311 et seq., including the promulgation of regulations and assessment of sanctions, to the Director of the Financial Crimes Enforcement Network (FinCEN).

FinCEN has issued regulations implementing 31 U.S.C. § 5318(g) that require a broad range of financial institutions to report suspicious transactions relating to possible violations of law or regulation, including but not limited to when funds may involve the proceeds of a criminal activity, the funds are involved in money laundering and terrorist financing, as well as transactions designed to evade any regulations promulgated under the BSA, including structuring to avoid reporting thresholds. See 31 C.F.R. § 1020.320 (for banks); 31 C.F.R. §1023.320 (for securities broker-dealers); 31 C.F.R. § 1024.320 (for mutual funds); 31 C.F.R. § 1025.320 (for insurance companies); 31 C.F.R. §1026.320 (for futures commission merchants and introducing brokers in commodities); 31 C.F.R. §1022.320 (for money services businesses, including sellers of prepaid access); 31 C.F.R. §§ 1029.210 and 1029.320 (for residential mortgage lenders and originators); 31 C.F.R. § 1030.320 (for housing government sponsored enterprises); and 31 C.F.R. §1021.320 (for casinos). These implementing regulations further define the reporting requirement. Subject to applicable monetary thresholds, a bank, securities broker-dealer, futures commission merchant, introducing broker in commodities, insurance company, MSB, mutual fund, prepaid access provider and seller, residential mortgage lender and originator, and government sponsored enterprise must file a SAR, relating to a transaction that is conducted or attempted by, at, or through the financial institution, if it knows, suspects, or has reason to suspect that the transaction:

a) involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law;

b) is designed to evade any regulations promulgated under the BSA, including

structuring to avoid reporting thresholds; or

c) has no business or apparent lawful purpose or is not the sort of transaction in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

d) with respect to securities broker-dealers, mutual funds, insurance companies and MSBs, involves the use of the financial institution to facilitate criminal activity generally. See, e.g., 31 C.F.R. § 1022.320(a)(2)(iv) for MSBs.

For covered financial institutions other than money services businesses, suspicious transactions must be reported only when they involve, singly or in aggregate, at least USD 5,000. MSBs must generally report suspicious transactions when they involve or aggregate at least USD 2,000, but the threshold is USD 5,000 for the issuers of money orders or travelers' checks when they identify suspicious activity from a review of the clearance records. See 31 C.F.R. § 1022.320 (a)(2) and (3).

FinCEN established a financial institution hotline, operational seven days a week, 24 hours a day, for expedited reporting of suspicious transactions that may relate to terrorist activity and significant money laundering. When a call is received via the hotline, FinCEN analyzes the information and transmits a summary of the information to appropriate law enforcement agencies. Use of the hotline is voluntary and is not a substitute for an institution's responsibility to file a SAR in accordance with applicable regulations. FinCEN also encourages financial institutions, DNFBPs, and casinos to contact their local FBI field office regarding terrorist-related transactions that require the immediate attention of law enforcement.

Federal law states that no financial institution, and no director, officer, employee, or agent of a financial institution that reports a suspicious transaction may notify any person involved in the transaction that the transaction has been reported. The same prohibition applies to government officials and employees, other than is necessary to fulfill their official duties. See 31 U.S.C. § 5318(g)(2). In 2010, FinCEN amended its SAR regulations to, among other things, make the confidentiality provision more comprehensive by clarifying that it not only prohibits disclosure to the person involved in the transaction, but states more broadly that "A SAR, and any information that would reveal the existence of a SAR, are confidential and may not be disclosed except as authorized" in the provision. See 75 Fed. Reg. 75,593, 75,593-75,607 (Dec. 3, 2010). For the regulatory text regarding confidentiality as amended, See 31 C.F.R. § 1020.320(e) (for banks); 31 C.F.R. §1023.320(e) (for broker-dealers in securities); 31 C.F.R. § 1024.320(d) (for mutual funds); 31 C.F.R. § 1025.320(e) (for insurance companies); 31 C.F.R. §1026.320(e) (for futures commission merchants and introducing brokers in commodities); 31 C.F.R. §1022.320(d) (for money services businesses, including sellers of prepaid access); 31 C.F.R. § 1029.320(d) (for residential mortgage lenders and originators); 31 C.F.R. § 1030.320(e) (for housing government sponsored enterprises); and 31 C.F.R. §1021.320(e) (for casinos).

SAR Confidentiality Final Rule, Issued December 3, 2010: FinCEN issued a final rule to amend its regulations regarding the confidentiality of SARs in order to clarify the scope of the statutory prohibition against the disclosure by a financial institution of a SAR, address the statutory prohibition against the disclosure by the government of a SAR, clarify that the exclusive standard applicable to the disclosure of a SAR by the government is to fulfill official duties consistent with the purposes of the BSA, modify the safe harbor provision to include changes made by the USA PATRIOT Act, and make minor technical revisions for consistency and harmonization among the different SAR rules. See 75 Fed. Reg. 75,593 (Dec. 3, 2010).

Federal law and its implementing regulations provide protection from civil liability for all SARs made to appropriate authorities, including supporting documentation, so long as the

reporting relates to a possible violation of U.S. law. See 31 U.S.C. § 5318(g)(3). This legal protection is referred to as the Suspicious Activity Report "safe harbor" provision.

The applicable regulations were amended in 2010 to broaden the protection slightly. Each regulation was amended to state that the safe harbor applies to "disclosures" rather than "reports," and that it applies to disclosures made jointly with another institution. See 75 Fed. Reg. 75,593, 75,560 (Dec. 3, 2010). For the current text of the applicable regulations, see 31 C.F.R. § 1020.320(f) (for banks); 31 C.F.R. §1023.320(f) (for broker-dealers in securities); 31 C.F.R. § 1024.320(e) (for mutual funds); 31 C.F.R. § 1025.320(f) (for insurance companies); 31 C.F.R. §1026.320(f) (for futures commission merchants and introducing brokers in commodities); 31 C.F.R. §1022.320(e) (for money services businesses, including sellers of prepaid access); 31 C.F.R. § 1029.320(e) (for residential mortgage lenders and originators); 31 C.F.R. § 1030.320(e) (for housing government sponsored enterprises); and 31 C.F.R. §1021.320(f) (for casinos).

FinCEN is responsible for referring any report of a suspicious transaction to "any appropriate law enforcement agency." In exercise of this responsibility, FinCEN adopted a uniform form for use by all filers of SARs, which permitted the establishment of an interagency database to capture all reports filed, regardless of the agency that is a particular bank's primary regulator. Through a nationwide database, SARs and other reports are available to FinCEN, major federal law enforcement agencies, the supervisory agencies, and state law enforcement and bank supervisory agencies. This system makes the reporting of suspicious transactions less burdensome and also makes the information electronically available, in real time, to all agencies that can make use of the reports.

Suspicious activity reports statistics are available online: https://www.fincen.gov/reports/sar-stats

5. Record keeping.

The BSA contains numerous statutory authorizations for recordkeeping requirements, including 12 U.S.C. § 1829b (for banks and money transmitters), 31 U.S.C. § 5311 (all financial institutions), 31 U.S.C. § 5318(l) (for customer identification programmes), 31 U.S.C. § 5325 (for purchases of monetary instruments), and 31 U.S.C. § 5326 (for currency transaction reports).

Sector Specific:

Financial institutions (including money transmitters) are required to comply with certain minimum recordkeeping requirements with respect to funds transfers in the amount of $3,000 or more (31 C.F.R. § 1010.410(e)). There is also a specific recordkeeping requirement for funds transfers that applies to banks and credit unions (31 C.F.R. § 1020.410(a)). Other records required to be kept by all financial institutions include extensions of credit in excess of $10,000 not secured by real property; and each advice, request or instruction (i) received or given resulting in a transfer of currency, funds or credit of more than $10,000 to or from a person, account, or place outside the U.S., and (ii) given to another financial institution or person inside or outside the U.S., intended to result in a transfer of funds or currency of more than $10,000 to a person, account or place outside the U.S. Additional records are required to be kept by dealers in foreign exchange (31 C.F.R. § 1022.410); providers and sellers of prepaid access (31 C.F.R. §§ 1022.210 and 1022.420); and securities brokers- dealers (31 C.F.R. § 1023.410).

All financial institutions required to report transactions in currency exceeding $10,000 are required to maintain a copy of the report for a period of five years from the date of the report.

They also must maintain a record of all designation of persons exempt from CTR reporting as filed with the Treasury for a period of five years from the designation date. For financial institutions including MSBs, records that are required to be kept pursuant to Section 1010.410 must be retained for five years and be made available upon request to FinCEN and any agency exercising delegated authority as set forth in 31 C.F.R. §§§ 1010.430 and 1010.810.

With regard to the maintenance of records of correspondent accounts for foreign banks by banks and securities broker-dealers [pursuant to Section 319(b) of the USA PATRIOT Act] originals or copies of documents provided by the foreign bank must be retained for at least five years after account closure. See 31 C.F.R. 1010.630(e).

Sellers or issuers of bank checks, cashier's checks, traveler's checks, or money orders: must verify and record purchaser identification if the purchase is between $3,000 and $10,000 and is paid for with currency. See 31 U.S.C. § 5325. The implementing regulation is 31 C.F.R. § 1010.415.

Banking sector: Deposit and share accounts: Each document granting signature authority; each statement , ledger card, or other record; and (subject to certain exceptions) each check, draft or money order drawn, on each deposit or share account; Demand deposit account records needed to reconstruct a transaction account and to trace a check in excess of $100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of $100; each deposit slip or credit ticket reflecting a transaction in excess of $100 for direct deposit or other wire transfer deposit transaction; Cross-border transactions: each item or other record of any transfer or remittance of more than $10,000 to a person or account outside the U.S.; each check, draft or item of more than $10,000 drawn on or issued by, or received directly from, a bank or other financial institution outside the U.S.; and each receipt of currency, other monetary instruments, or checks, and each transfer of funds or credit of more than $10,000, received from an broker or dealer in foreign exchange outside the U.S.; Certificates of Deposit Purchased or Presented: Name of customer (purchaser or presenter); address of customer; taxpayer identification number (TIN) of customer; description of the certificate of deposit; notation of the method of payment if purchased; and date of transaction.

Securities Sector: Securities broker-dealers are required to keep other records pursuant to 31 C.F.R. § 1023.410. These include each document granting signature or trading authority over a customer's account, a record of any remittance or transfer of funds, or of currency, checks, other monetary instruments, investment securities, or credit, of more than $10,000 to a person, account, or place, outside the United States, and a record of any receipt of currency, other monetary instruments, checks, or investment securities and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States. 31 C.F.R. § 1023.410 also incorporates by reference some of the recordkeeping requirements that securities broker-dealers are subject to pursuant to SEC regulations. Rule 17a-3 under the Securities Exchange Act of 1934 ("Exchange Act") requires securities broker-dealers to make and keep current books and records detailing, among other things, securities transactions, money balances and securities positions. Securities broker-dealers must keep these records for specified periods and furnish copies to the SEC or its representatives or designees on request pursuant to Exchange Act Rule 17a-4. Additionally, Exchange Act Rule 17a-8 requires broker-dealers to comply with the applicable reporting, recordkeeping and record retention requirements of the BSA. Mutual funds are required to keep records pursuant to Rule 38a-1 under the Investment Company Act of 1940, including copies of the fund's policies and procedures reasonably designed to prevent violation by the fund of the "Federal Securities Laws," defined to include the BSA, as well as other records related to those policies and

procedures.[101]

Derivatives: Futures commission merchants (FCMs) and introducing brokers in commodities (IBs) are required to keep in their original form for a period of five years from the date thereof all books and records that are required to be kept by the Commodity Exchange Act (7 U.S.C. § 1, et. seq.) or its implementing regulations. This includes a requirement to keep full, accurate and systematic records along with all relevant data and memoranda of all transactions relating to its business dealings in "commodity interests" and related cash or forward transactions. See 17 C.F.R. § 1.31-37. "Commodity interests" is defined to include futures, contracts, options, retail foreign currency and swaps. See 17 C.F.R. § 1.3(yy). Such records include all orders, trading cards, signature cards, street books, journals, ledgers, cancelled checks, copies of confirmations and of statements of purchase and sale and all other records, data and memoranda prepared in the course of their business dealings.

Housing GSEs: In addition to requiring an AML programme requirement, Housing GSEs must file SARs for suspicious activities, and must make reports relating to currency in excess of $10,000 received in a trade or business. Further, Housing GSEs has to maintain all copies of its SARs for a period of five years from the date of filing the SAR. See 31 C.F.R. § 1030.210, 31 C.F.R. § 1030.330, 31 C.F.R. § 1030.320.

Residential Mortgage Loan Originators (RMLOs): In addition to the AML programme requirement, RMLOs must report transactions if it involves or aggregates funds or other assets of at least $5,000 and the loan or finance companies knows, suspects or has reason to suspect that the transaction involves funds from illegal activities, or designed via structuring or other methods to evade the BSA. RMLOs must maintain these records for at least five years. See 31 C.F.R. § 1029.320.

Insurance companies; dealers in precious metals, precious stones, or jewels; operators of credit card systems; and loan or finance companies, and all non-financial trades and businesses: These businesses are required under 31 U.S.C. 5331 and 31 C.F.R. § 1010.330 to report transactions in currency and monetary instruments above $10,000 to FinCEN using the "Report of Cash Payments over $10,000 Received in a Trade or Business" (Form 8300). The filing obligation applies whenever a business receives more than $10,000 in cash in one or more related transactions. In this context cash means coin and currency, or a cashier's check, money order, bank draft, or traveler's check with a face below $10,000. Each Form 8300 requires full verified identifying information of the person conducting the transaction(s) and, where necessary, the person on whose behalf the transaction was conducted. A copy of each such report must be maintained for five years from the date of filing.

6. Compliance programmes for financial institutions.

In general, section 352 of the USA PATRIOT Act of 2001 (the "Act") requires financial institutions to establish AML programmes, including, at a minimum: (1) the development of internal policies, procedures and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent compliance function to test programmes. The BSA/AML compliance programme must be written, approved by the board of directors or senior management, and noted in the board minutes, if applicable. In addition to the reference to Section 352 above, see 31 C.F.R. §§ 1010.200 – 220.

Regulations implementing the BSA also allow for requirements of enhanced disclosure requirements to FINCEN by various private businesses, including for example by title

[101] Mutual funds are required, pursuant to 31 CFR § 1024.410, to keep the same types of records as are required of other financial institutions (and as described above). There is also a unique BSA-related rule imposed by the SEC on mutual funds. This rule imposes a record-keeping obligation on mutual funds with respect to their internal policies designed to prevent BSA violations.

insurance companies of beneficial owners involved in high end real estate purchases in certain markets because of the potential risk for corruption related and other money laundering.

Banking sector: In addition, 12 U.S.C. §§ 1818(s) and 1786(q) obligates each of the Federal banking agencies to prescribe regulations requiring each insured depository institution to establish and maintain procedures reasonably designed to assure and monitor the institution's compliance with the requirements of the BSA. In 1987, as required by these statutes, each of the Federal banking agencies issued regulations that require any institution it supervises or insures to establish and maintain a BSA compliance program. Specifically, under each agencies' regulations, a BSA Compliance Program must have, at a minimum, the following elements:

- A system of internal controls to assure ongoing compliance with the BSA;
- Independent testing for compliance;
- A designated individual or individuals responsible for coordinating and monitoring BSA/AML compliance; and
- Training for appropriate personnel.

See 12 C.F.R. §21.21 (OCC); 12 C.F.R. §208.63, 12 C.F.R. §211.5(m), and 12 C.F.R. §211.24(j) (FRB); 12 C.F.R. §326.8 (FDIC); 12 C.F.R. §748.2 (NCUA). The banking regulators' requirements are covered extensively in the FFIEC Manual, which requires that the level of sophistication of a bank's internal controls should be commensurate with the size, structure, risks and complexity of the bank. They also require that the bank's board of directors is responsible for ensuring that the compliance officer has sufficient authority and resources to administer an effective AML compliance programme compliance officer establishes the requirements for effective compliance programmes. Banks are required to provide training for all personnel whose duties require knowledge of the BSA. The training should be tailored to the person's specific responsibilities and should be relevant and appropriate for changes to regulatory requirements as well as the activities and overall AML risk profile of the bank.

Other supervisory guidelines established in the FFIEC Manual, require that banks and credit unions assess the ML/TF risks that are present in their institutions associated with the customer bases, products, services and geographic locations in which the institutions are doing business or from which they are opening customer accounts or facilitating transactions. Based on the risk assessment, management should structure the bank's AML compliance programme to adequately address its risk profile, as identified by the risk assessment. Management should understand the bank's AML risk exposure and develop the appropriate policies, procedures, and processes to monitor and control AML risks. For example, the bank's monitoring systems to identify, research, and report suspicious activity should be risk-based, with particular emphasis on higher-risk products, services, customers, entities and geographic locations as identified by the bank's AML risk assessment.

In addition, the OCC issued in January 2010, and updated in September 2012 for BSA/AML, the Comptroller's Handbook on Large Bank Supervision. The OCC included a section on internal controls, explaining that it is the systems, policies, procedures, and processes effected by the board of directors, management, and other personnel to safeguard bank assets, limit or control risks, and achieve a bank's objectives. The manual details the way in which an examiner should assess internal controls, and describes that a strong system of internal controls provides the reliable financial reporting, segregation of duties, safeguarding of assets and information, and compliance with applicable laws and regulations. A strong system also means that the organization has an effective process in place to ensure that controls as described in its policy and procedures manuals are operating effectively, and these controls are periodically reviewed through a self-assessment and an independent evaluation. Follow-up is required when internal and external auditors and regulatory agencies recommend improvements to the internal control

system, and that follow-up is timely and appropriate. See Comptroller's Handbook Large Bank Supervision, p. 83.

Independent testing (audit) should review the bank's risk assessment for reasonableness. Additionally, management should consider the staffing resources and the level of training necessary to promote adherence with these policies, procedures, and processes. For those banks that assume a higher-risk AML profile, management should provide a more robust AML compliance programme that specifically monitors and controls the higher risks that management and the board have accepted. See also Comptroller's Handbook Large Bank Supervision, p. 85.

Supervisory authorities have also brought enforcement cases to ensure financial institutions have appropriate internal controls. The OCC has entered into agreements with the Board of various financial institutions to revise, adopt, implement, and ensure banks adhere to a written programme of policies and procedures to ensure compliance with the BSA. In a consent order, the OCC highlighted that the programme must, among other things, enhance internal controls to include appropriate controls for risk rating accounts, effective customer due diligence and enhanced due diligence processes, effective suspicious activity alert and investigation processes and ensure that effective internal control and suspicious activity monitoring processes are in place with respect to remote deposit capture, automated clearing house accounts, online banking, wire transfers, and gift cards.

See, e.g., In the Matter of Millennium Bank, AA-EC-13-29 (April 15, 2013) (#221).

The U.S. also requires screening procedures to ensure high standards when hiring employees. Section 19 of the Federal Deposit Insurance Act (12 U.S.C. § 1829) prohibits, without the prior written consent of the FDIC, a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has agreed to enter into a pretrial diversion or similar programme in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, owning or controlling, directly or indirectly an insured depository institution (insured institution), or otherwise participating, directly or indirectly, in the conduct of the affairs of the insured institution. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 19. It imposes a ten-year ban against the FDIC's consent for persons convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the FDIC and court approval. Section 19 imposes a duty upon the insured institution to make a reasonable inquiry regarding an applicant's history, which consists of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or programme entry for a covered offense.

In 2005, the FDIC issued Guidance on Developing an Effective Pre-Employment Background Screening Process. See Pre-Employment Background Screening Guidance (June 1, 2005). The guidance highlights the following:

- Used effectively, a pre-employment background screening process may reduce turnover by verifying that the potential employee has the requisite skills, certification, license or degree for the position; deter theft and embezzlement; and prevent litigation over hiring practices.

- Institutions should verify that contractors are subject to screening procedures similar to those used by the financial institution. Consultants should be subject to the financial institution's screening process.

- Management should develop a risk-focused approach to determining when pre-employment background screening is considered appropriate or when the level of

screening should be increased, based upon the position and responsibilities associated with the position.

- Costs are associated with developing and implementing an effective screening process. However, absent an effective screening process, a bank may incur significant expenses from recruiting, hiring and training unqualified individuals based upon their skill sets or backgrounds. These individuals may have to be replaced due to an inability to perform assigned duties or for other inappropriate actions.

Securities and Derivatives Sectors: The legal provisions that are applicable to the securities and derivatives sectors in relation to internal controls are similar to those described above for the banking sector, with the following elaboration and/or differences.

31 C.F.R. § 1024.210 requires mutual funds to develop and implement a written AML programme reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with applicable BSA requirements. The programme must include, at a minimum, the four elements outlined in Section 352 of the USA PATRIOT Act (described above).

31 C.F.R. §§ 1023.210 and 1026.210 allow broker-dealers, futures commission merchants (FCMs) and introducing brokers in commodities (IBs) to satisfy the USA PATRIOT Act requirement to establish an AML programme by complying with the rules of the broker-dealers', FCMs' or IBs' self-regulatory organization (SRO), subject to the relevant SRO's rules being approved by the SEC or CFTC, respectively. 31 C.F.R. §§ 1023.210 and 1026.210. Applicable SRO rules generally require broker-dealers, FCMs and IBs to develop and implement a written AML programme reasonably designed to achieve and monitor compliance with BSA requirements, and the programme must include, at a minimum, the four elements outlined in Section 352 of the USA PATRIOT Act (described above). See, e.g., Financial Industry Regulatory Authority (FINRA) Rule 3310; National Futures Association (NFA) Rule 2-9(c), CME Group Rule 981.

Securities industry: SROs such as FINRA have advised their member broker-dealers that they should vest the AML compliance officer with full responsibility and authority to make and enforce the firm's policies and procedures related to money laundering and that whomever the firm designates as its AML compliance officer should have the authority, knowledge, and training to carry out the duties and responsibilities of his or her position. Additionally, SROs have advised their member broker-dealers that AML employee training should be developed under the leadership of a firm's AML compliance officer or senior management, and should be implemented on at least an annual basis. SROs urge their member broker-dealers to instruct their employees about the following topics, at a minimum:

- How to identify "red flags" and possible signs of money laundering that could arise during the course of their duties;
- What to do once the risk is identified;
- What their roles are in the firm's compliance efforts;
- How to perform their roles;
- The firm's record retention policy; and
- Disciplinary consequences, including civil and criminal penalties for non-compliance with the BSA.

SROs have also advised that a broker-dealer should scrutinize its operations to determine if there are certain employees who need additional or specialized training due to their duties and responsibilities, including appropriate instruction to ensure compliance with the BSA. With respect to the required independent testing, SROs have advised their member broker-dealers

that after a test is complete, the internal testing personnel or qualified outside party performing the test should report its findings to senior management or to an internal audit committee, as appropriate; and the firm should ensure that there are procedures for implementation of any of the internal testing personnel's or third party's recommendations and corrective or disciplinary action as the case may warrant. See NASD Notice to Members 02-21[102]; FINRA Anti-Money Laundering (AML) Template for Small Firms.

Prospective employees of broker-dealers are subject to extensive screening procedures to ensure high standards. For example, broker-dealers must have specific employees fingerprinted and submit the fingerprints to the Attorney General of the United States or its designee for identification and appropriate processing. See 17 C.F.R. § 240.17f-2. Furthermore, depending on their functions, employees of broker-dealers must be registered and are subject to qualification and licensing requirements pursuant to SRO rules. See, e.g., FINRA Rules 1021 and 1031. Moreover, federal law and SRO rules subject persons associated with broker-dealers to disqualification from the industry upon the occurrence of enumerated events, such as certain criminal convictions, or a finding that the individual has willfully violated the federal securities laws. See Section 3(a)(39) and Rule 19h-1 of the Securities Exchange Act of 1934.

Derivatives Sector: FCMs and IBs in this sector are also subject to comprehensive AML requirements set forth in the AML programme rules of the designated SROs (i.e., NFA and CME Group). See NFA Compliance Rule 2-9(c) and CME Group Rule 981. See also guidance issued by NFA – NFA Interpretive Notice 9045: FCM and IB Anti-Money Laundering Program. The AML programme rules of the DSROs require FCMs and IBs to appoint a compliance officer to oversee the firm's anti-money laundering program. The compliance officer must report to the firm's senior management, and the firm must provide that person with sufficient authority and resources to effectively implement the firm's program. DSRO rules also require FCMs and IBs to have an employee training programme that requires appropriate personnel to receive ongoing education and training on the firm's AML program, as well as relevant federal laws and NFA AML guidance. FCMs and IBs are also required to have independent testing done at least annually on the adequacy of the firm's AML program. The DSROs monitor their firms for compliance with these requirements. FCM and IB employees in the derivatives sector are subject to requirements similar to those applicable in the securities industry with respect to registration, background checks and disqualification from working in the industry due to the occurrence of certain enumerated events. See NFA Interpretive Notice 9045: FCM and IB Anti-Money Laundering Program.

Money Services Businesses (MSBs): MSBs are required to develop an anti-money laundering program. See 31 C.F.R. § 1022.210. The principles underlying this requirement are the same as for other financial institutions. MSBs that are authorized to operate in the U.S. do not have foreign branches or subsidiaries. However, MSBs that utilize foreign agents or counterparties, must have AML programmes that include risk-based policies, procedures, and controls designed to identify and minimize money laundering and terrorist financing risks associated with foreign agents and counterparties that facilitate the flow of funds into and out of the U.S. FinCEN issued interpretive guidance with respect to its expectations in this area. See 69 Fed. Reg. 74,439 (Dec. 14, 2004). Relevant risk factors are specified to include: (a) the foreign agent or counterparty's location and jurisdiction of organization, chartering, or licensing. This would include considering the extent to which the relevant jurisdiction is internationally recognized

[102] On July 20, 2007, FINRA commenced operations as an SRO. It was created through consolidation of NASD and the member regulation, enforcement, and arbitration operations of the New York Stock Exchange. Nancy Condon & Herb Perone, NASD AND NYSE MEMBER REGULATION COMBINE TO FORM THE FINANCIAL INDUSTRY REGULATORY AUTHORITY FINRA (2007), https://www.finra.org/media-center/news-releases/2007/nasd-and-nyse-member-regulation-combine-form-financial-industry#:~:text=FINRA%20was%20created%20through%20the,today%2C%20July%2030%2C%202007. (last visited May 24, 2024).

as presenting a greater risk for money laundering or is considered to have more robust anti-money laundering standards; (b) the ownership of the foreign agent or counterparty. This includes whether the owners are known, upon reasonable inquiry, to be associated with criminal conduct or terrorism. For example, have the individuals been designated by Treasury's Office of Foreign Assets Control as Specially Designated Nationals or Blocked Persons (i.e. involvement in terrorism, drug trafficking, or the proliferation of weapons of mass destruction); (c) the extent to which the foreign agent or counterparty is subject to anti-money laundering requirements in its jurisdiction and whether it has established such controls; (d) any information known or readily available to the MSB about the foreign agent or counterparty's AML, including public information in industry guides, periodicals, and major publications; (e) the nature of the foreign agent or counterparty's business, the markets it serves, and the extent to which its business and the markets it serves present an increased risk for money laundering or terrorist financing; (f) the types and purpose of services to be provided to, and anticipated activity with, the foreign agent or counterparty; and (g) the nature and duration of the MSB's relationship with the foreign agent or counterparty.

In addition to the due diligence described above, in order to detect and report suspected money laundering or terrorist financing, MSBs should establish procedures for risk-based monitoring and review of transactions from, to, or through the U.S. that are conducted through foreign agents and counterparties. Such procedures should also focus on identifying material changes in the agent's risk profile, such as a change in ownership, business, or the regulatory scrutiny to which it is subject. The review of transactions should enable the MSB to identify and, where appropriate, report as suspicious such occurrences as: instances of unusual wire activity, bulk sales or purchases of sequentially numbered instruments, multiple purchases or sales that appear to be structured, and illegible or missing customer information. Additionally, MSBs should establish procedures to assure that their foreign agents or counterparties are effectively implementing an AML programme and to discern obvious breakdowns in the implementation of the programme by the foreign agent or counterparty.

Similarly, money transmitters should have procedures in place to enable them to review foreign agent or counterparty activity for signs of structuring or unnecessarily complex transmissions through multiple jurisdictions that may be indicative of layering. Such procedures should also enable them to discern attempts to evade identification or other requirements, whether imposed by applicable law or by the MSBs' own internal policies. Activity by agents or counterparties that appears aimed at evading the MSB's own controls can be indicative of complicity in illicit conduct; this activity must be scrutinized, reported as appropriate, and corrective action taken as warranted. MSBs should also have procedures for responding to foreign agents or counterparties that present unreasonable risks of money laundering or the financing of terrorism. Such procedures should provide for the implementation of corrective action on the part of the foreign agent or counterparty, or for the termination of the relationship with any foreign agent or counterparty that the MSB determines poses an unacceptable risk of money laundering or terrorist financing, or that has demonstrated systemic, willful, or repeated lapses in compliance with the MSB's own anti-money laundering procedures or requirements.

Credit Card Operators: Under 31 C.F.R. § 1028.210, the operators of credit card systems are required to maintain AML programmes. In addition to the standard AML programme requirements described above, these programmes are required to ensure that: (a) the operator does not authorize any person to serve as an issuing or acquiring institution without the operator taking appropriate steps to guard against that person issuing the operator's credit card in circumstances that facilitate money laundering; and (b) the operator applies risk-based procedures which, at a minimum, recognize that the following entities pose a heightened risk of money laundering: (1) shell banks; (2) a person appearing on the OFAC lists; (3) a person located in a jurisdiction designated by the Department of State as a sponsor of international

terrorism; (4) a foreign bank operating under an off-shore license (except when it is subject to comprehensive supervision); (5) a person located in a jurisdiction designated as non-cooperative in the fight against money.

Insurance Companies and Residential Mortgage Loan Originators: FinCEN prescribed AML programme requirements for insurance companies that became effective in 2006. These requirements, which apply to the sale of all covered life insurance products, include the four elements listed above in Section 352 of the USA PATRIOT Act, and require insurance companies to integrate its insurance agents and brokers into its AML program, ensure that they have had the necessary training, and to monitor their compliance with the company's program. See 31 C.F.R. § 1025.210. FinCEN has also prescribed AML programmes for residential mortgage loan originators in 2011. See 31 C.F.R. §§ 1029.210 and 1029.320.

Culture of Compliance: In 2014, FinCEN issued an Advisory stating that a financial institution can strengthen its BSA/AML compliance culture by ensuring that, among other things: (1) its leadership actively supports and understands compliance efforts; (2) the compliance programme is effective by, among other things, ensuring that it is tested by an independent and competent party; and (3) its leadership and staff understand the purpose of its BSA/AML efforts and how its reporting is used compliance function to test programmes. FinCEN Advisory to U.S. Financial Institutions on Promoting a Culture of Compliance, at pp. 1-2 (Aug. 11, 2014).

7. Requirement to Conduct Enhanced Scrutiny of Private Banking Accounts held by Senior Foreign Officials.

Section 312 of the USA PATRIOT Act and its implementing regulation, 31 C.F.R. § 1010.620, require that banks, securities broker-dealers, mutual funds, futures commission merchants (FCMs), and introducing brokers (IBs) implement due diligence programmes that include policies, procedures, and controls that are reasonably designed to detect and report known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered or managed for a non-U.S. person. A private banking account is defined as an account that: (1) requires a minimum aggregate deposits of funds or other assets of not less than $1,000,000; (2) is established on behalf of one or more individuals who have director or beneficial ownership interest in the account; and (3) is assigned to or administered or managed by an officer, employee, or agent of the bank acting as a liaison between the bank and a non-U.S. person who is the direct or beneficial owner. See 31 C.F.R. § 1010.605(m). The regulation requires further that, at a minimum, covered financial institutions take reasonable steps to ascertain the identity of the nominal and beneficial owners of such accounts, whether any such person is a senior foreign political figure, the source of funds deposited into the account and the purpose and expected use of the account, and, conduct enhanced scrutiny of any such accounts held by senior foreign political figures either as nominal or beneficial owners. The definition of beneficial owner for purposes of this regulation is set forth in 31 C.F.R. 1010.605(a) and the definition of "senior foreign political figure," is comparable to the FATF definition of foreign PEP. See 31 C.F.R. § 1010.605(p). The private banking account due diligence programme must be part of the covered financial institution's AML program, which must be approved by senior management. See 31 C.F.R. § 1010.620(a). See also FINRA Rule 3310 (stating "[e]ach member's anti-money laundering programme must be approved, in writing, but a member of senior management."). Financial institutions' AML programme requirements are discussed above.

Joint guidance issued in 2001 as well as the FFIEC Manual discuss AML programme obligations and using the risk-based approach to develop policies relating to PEPs, beyond the Section 312 context. Accordingly, a covered financial institution's compliance programme is expected to provide enhanced due diligence procedures over foreign PEPs even if the account

is not subject to the Section 312 regulation.

The FFIEC Manual discusses the role of a bank in providing accounts to foreign PEPs. A bank is required to implement risk-based policies, procedures, and processes that would cover accounts and services provided to foreign PEPs, even if the account is not subject to the Section 312 regulation.

As described in the expanded overview section for foreign PEPs in the FFIEC Manual, because the risks presented by foreign PEPs vary by customer, product/service, country, and industry, identifying, monitoring, and designing controls for foreign PEP accounts and should be risk-based. For example, the opening of an account is the prime opportunity for a bank to gather information for all customers, including foreign PEPs. Banks should conduct risk-based due diligence on foreign PEPs and establish policies, procedures, and processes that provide for appropriate scrutiny and monitoring of all foreign PEP accounts. Commensurate with the identified level of risk, due diligence procedures should include identifying the accountholder and beneficial owner, including the nominal and beneficial owners of companies, trusts, partnerships, private investment companies, or other legal entities that are accountholders, identifying the accountholder's and beneficial owner's source of wealth and funds and determining the purpose of the account and the expected volume and nature of account activity. Furthermore, bank management should be involved in the decision to accept a PEP account. If bank management determines after-the-fact that an account is a PEP account, it should evaluate the risks and take appropriate steps. Ongoing risk-based monitoring of PEP accounts is critical to ensuring that the accounts are being used as anticipated.

Joint guidance issued by the Department of the Treasury, Board of Governors of the Federal Reserve System, OCC, FDIC, and Department of State in 2001 discusses PEPs beyond the Section 312 context of private banking (See Guidance on Enhanced Scrutiny for Transactions that May Involve the Proceeds of Foreign Official Corruption (Jan. 16, 2001) ("2001 Guidance"). The 2001 Guidance advises financial institutions to ascertain the identity of the account holder (and the account's beneficial owner) in the course of opening or maintaining an account for a covered person. Financial institutions are also urged to obtain adequate documentation regarding covered persons, understand the covered person's anticipated account activity, determine the covered person's source of wealth and funds and apply additional oversight to the covered person's account. The 2001 Guidance goes on to list suspicious activities or red flags to which financial institutions should pay particular attention. It also indicates that the decision whether to open an account for a covered person should directly involve a person more senior than the usual account-opening officer.

Taking into account obligations under (i) Section 312 and its implementing regulation; (ii) the preamble to the implementing regulation; (iii) the FFIEC Manual; and (iv) the 2001 Guidance, the United States has implemented a comprehensive framework for managing the AML risks associated with foreign PEP accounts that includes a definition of a foreign PEP and the associated requirements for applying enhanced due diligence measures that is in compliance and consistent with the standard.

Money Services Businesses (MSBs): With few exceptions, MSBs do not offer account-based relationships and are not subject to Section 312 or its implementing regulation. MSBs already have a variety of due diligence requirements under their AML program, recordkeeping, CTR, and SAR rules, which require them to identify their customers and file reports on certain transactions and suspicious activities (31 C.F.R. Chapter X). In addition, MSBs that use foreign agents or counterparties must include risk-based policies, procedures, and controls in the AML programmes designed to identify and minimize money laundering and terrorist financing risks associated with foreign agents and counterparties that facilitate the flow of funds into and out of the U.S. The programme must be aimed at preventing the products and services of the MSB

from being used to facilitate money laundering or terrorist financing through these relationships and detecting the use of these products and services for money laundering or terrorist financing by the MSB or agent. See 31 C.F.R. § 1022.210. See also Interpretive Release 2004-1—Anti-Money Laundering Program Requirements For Money Services Businesses with respect to Foreign Agents or Foreign Counterparties pp. 7-11.

Insurance companies: these companies are responsible under their record-keeping and reporting requirements to establish and implement formal due diligence procedures for their customers, and knowing who their customers are, which would include PEPs. The due diligence procedures must be reasonably designed to ensure proper recordkeeping and reporting, and prevent the insurance company from being used to facilitate money laundering and the financing of terrorist activities. See 31 C.F.R. §§§ 1025.320, 1025.400, and 1025.210.

National Money Laundering Risk Assessment

The 2018 National Money Laundering Risk Assessment (2018 NMLRA) updates the 2015 NMLRA and identifies the most significant money laundering threats, vulnerabilities, and risks that the United States currently faces. It is based on a review of federal and state public sector analysis, enforcement actions, and guidance; as well as interviews with FinCEN staff, intelligence analysts, law enforcement agents, and prosecutors. The NMLRA uses all available information to identify as objectively as possible the priority money laundering risks to the United States. The terminology and methodology of the NMLRA are based in part on the guidance of the Financial Action Task Force, the international standard-setting body for anti-money laundering and countering the financing of terrorism (AML/CFT) safeguards.

The findings of the NMLRA on threats and risks aligned with their state profile for ML. Many of the cases in the 2018 NMLRA involved misuse of legal entities and complicit real estate agents and lawyers, so those vulnerabilities were discussed. Additionally, the 2020 IFS describes the risk in real estate transactions and complicit professionals to include the real estate profession and lawyers.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

The Department of Justice publishes all criminal resolutions and relevant court filings with respect to final criminal actions and declinations that are brought in FCPA cases. A detailed and transparent listing of the cases are located here. United States Attorneys Offices located in 94 districts across the United States also publicize relevant corruption and money laundering cases.

(b) Observations on the implementation of the article

The United States has a comprehensive system designed to prevent and detect money-laundering, although some gaps remain, especially with regard to beneficial ownership transparency and coverage of certain designated non-financial businesses and professions.

The U.S. employs a risk-based approach to regulation and supervision, National Money Laundering Risk Assessments were conducted in 2015 and 2018. The 2018 NRA shows a strong awareness of existing significant vulnerabilities, including with regard to beneficial ownership transparency, but as the scope of the present review extended to the federal level only, the review did not cover gaps specific to the state or territorial level.[1]

The Bank Secrecy Act is a central legislative instrument for combating money-laundering

and contains reporting, risk assessment and record-keeping requirements for financial institutions as defined in 31 USC § 5312(a)(2).

Covered financial institutions (see article 52) are required to report suspicious transactions related to a potential violation of a law or regulation (31 USC § 5318(g)). Suspicious activity report filings are available electronically and in real time to law enforcement and supervisory agencies through a nationwide database. All financial institutions required to report transactions in currency exceeding $10,000 are required to maintain a copy of the report for a period of five years from the date of the report.

Regulations implementing the Bank Secrecy Act also establish enhanced disclosure requirements in relation to the information that must be submitted to FinCEN by various private businesses, including title insurance companies of beneficial owners involved in major real estate purchases in certain markets, because of the potential risk for corruption-related and other money-laundering.

Measures regarding transparency of beneficial ownership are limited. The Treasury's Customer Due Diligence Rule, published in 2016 and in full effect as of 2018, enhanced requirements for certain financial institutions covered by the Bank Secrecy Act by obliging them to establish and maintain policies and procedures to identify and verify the identity of customers that are legal entities and of any individual who owns 25 per cent or more of a legal entity opening a new account. Financial institutions subject to the Rule must also put in place policies and procedures for developing customer risk profiles and conducting ongoing monitoring in order to maintain and update customer information on a risk basis. At the time of the country visit, legislative amendments to the BO regime were envisaged.[103]

The anti-money-laundering requirements of the Bank Secrecy Act can generally be enforced through civil and criminal penalties, injunctions, examinations, and summons authority (31 USC §§ 5321, 5322).

Separate anti-money-laundering laws establishing criminal penalties for the carrying out of financial transactions aimed at concealing or promoting criminal activity in certain circumstances also provide specifically for the prosecution of laundering activity in the United States linked to foreign corruption offences and domestic corruption offences (for example, 18 USC, §§ 1956 and 1957). Enforcement can include various civil and criminal penalties and civil and criminal forfeiture (see, for instance, 18 USC §§ 981 and 982). Exposure to certain criminal and civil penalties is believed to have a preventive role, in addition to certain punitive sanctions.

It is recommended that the United States:

- **consider taking measures to require financial institutions to verify identifying information for occasional customers conducting funds transfers below $3,000 when there is a suspicion of money-laundering or terrorist financing**
- **create and effectively implement a comprehensive anti-money- laundering/counter-terrorist financing supervision mechanism for relevant non-financial businesses and professions, and**

103 After the country visit, the United States enacted legislation addressing the lack of disclosure obligations at the time of company formation. Enacted in January 2021 as part of the National Defense Authorization Act, the Corporate Transparency Act requires reporting companies to disclose their beneficial owners when they are formed (or, in the case of non-United States companies, when they register with a state to do business in the United States) and when they change beneficial owners. On 29 September 2022, FinCEN issued a final rule establishing a beneficial ownership information reporting requirement pursuant to the Corporate Transparency Act. The rule requires specified corporations, limited liability companies and other entities created in or registered to do business in the United States to report information about their beneficial owners to FinCEN.

- **extend beneficial ownership transparency requirements to relevant non-financial businesses and professions and apply the Customer Due Diligence Rule to existing accounts.**

Subparagraph 1 (b) of article 14

1. Each State Party shall: ...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

National coordination and cooperation on AML/CFT issues in the United States has improved significantly. Numerous mechanisms are used which is reflective of the complex nature (Federal, 50 States and numerous local governments) and vast size of the U.S. and its financial system.

The National Security Council staff chair a number of interagency Policy Coordination Committees (PCC), comprised of representatives from relevant government agencies, which address a range of national security concerns, including AML/CFT policy and strategy coordination to protect the financial system and strategic markets from abuse by terrorists and other criminals. For example, the IPC on transnational organized crime and the Threat Mitigation Working Group manage operational implementation of the TOC Strategy, and the IPC on Corruption oversees inter-governmental coordination of strategies to counter foreign corruption. One of the IPCs meets at least weekly to assess implementation of the National Strategy for Counterterrorism, to identify emerging terrorist threats and TF risks, and consider targeted sanctions targets. The AML Task Force is led by the Treasury and is an ongoing interagency group (established in 2012) to review the AML framework, consider where improvements are needed, and implement the necessary legal and operational changes. It includes senior representatives from the CFTC, DOJ, the federal banking agencies, IRS, SEC, and FinCEN. It has a law enforcement sub-group to advise on ML/TF risks and challenges to law enforcement investigations.

A particularly strong feature is the interagency task force model, which integrates authorities from all levels (Federal, State and local), is widely used to conduct ML/TF and predicate investigations, and has proven very successful in sophisticated, large and complex cases. For example, federal law enforcement authorities (LEAs) are able to leverage off the deep knowledge of the State and local LEAs. The State and local benefit from the Federal authorities' expertise in conducting financial investigations, their resources, and the additional legal powers that exist at the Federal level. The task force model also facilitates inter-agency information sharing. The widespread use of fusion centers to address de-confliction and provide enhanced leads to LEAs is another feature of the U.S. system.

There is also coordination at the supervisory level, particularly among FinCEN, the FBAs, and

the State-level supervisors for MSBs. The FFIEC and the FFIEC Manual enhance coordination and provide banking examiners and FIs with consistent guidance. The FFIEC BSA/AML Working Group (FBAs, Conference of State Bank Supervisors, and FinCEN), meets monthly to discuss examination issues and procedures, regulations and guidance; and meets quarterly with OFAC, CFPB, SEC, CFTC, and other stakeholders. The SEC communicates regularly with FINRA, a securities industry self-regulatory organization, to discuss strategic initiatives, examination coordination, risk assessment efforts, and industry risks. The Securities and Commodities Fraud Working Group (chaired by DOJ) facilitates coordination between LEAs and regulatory agencies in the investigation and prosecution of fraud in the securities and futures industries and related ML. The President's National Security Strategy, National Drug Control Strategy, Strategy to Combat Transnational Organized Crime; and National Strategy for Counterterrorism all address ML and/or TF risks and their implementation is reviewed on an ongoing basis.

The Department of Justice (DOJ) coordinates the application of law enforcement authorities in pursuing priority criminal threats, including ML/TF threats, as identified in the DOJ Strategic Plan.

The Financial Crimes Enforcement Network (FinCEN) identifies AML/CFT strategic goals and objectives in its 2014-2018 Strategic Plan, which addresses FinCEN's role as both the Financial Intelligence Unit (FIU) and the primary AML regulator. Pursuant to 31 U.S.C. §310, the United States has established FinCEN as the FIU for the United States. Section 310 establishes FinCEN's functions, including maintaining, collecting, processing, analysing, and disseminating financial and other information to competent authorities at the domestic and international levels.

The AML Task Force, a multi-agency coordination group (see below), identifies priority AML/CFT regulatory and enforcement issues.

The National Security Council (NSC) is the President's principal forum for consideration of national security and foreign policy issues. The NSC staff coordinates development of national security strategies that include AML and CFT initiatives.

The Office of National Drug Control Policy (ONDCP), like the NSC staff, is part of the Executive Office of the President. ONDCP is responsible for developing the National Drug Control Strategy and the consolidated National Drug Control Budget. The Congress of the United States, through the Office of National Drug Control Policy Reauthorization Act of 2006, mandates that ONDCP, in addition to developing the annual National Drug Control Strategy, also develop an annual drug control strategy specific to the U.S. southwest border. ONDCP also oversees development and implementation of a northern border counter narcotics strategy. All of the counter narcotics strategies include an AML component.

The Office of Terrorism and Financial Intelligence (TFI) of the Department of the Treasury is led by an Under Secretary, a high-ranking official who oversees the offices that have the leading role in developing U.S. AML/CFT policies:

- Office of Terrorist Financing and Financial Crimes (TFFC) chairs the AML Task Force, an ongoing interagency group, convened in November 2012 to review the U.S. AML framework, consider where improvements are needed, and implement the necessary legal and operational changes. The Task Force includes senior representatives from the CFTC, DOJ, FBAs, IRS, SEC, and FinCEN. The Task Force includes a law enforcement sub-group to advise on ML/TF risks and challenges to law enforcement investigations. TFFC also heads the U.S. delegation to the Financial Action Task Force.
- FinCEN administers the BSA, the principal U.S. AML law.

- OFAC administers the U.S. targeted financial sanctions programmes, which includes implementing the executive orders that establish the sanctions programmes; conducting investigations into potential violations; and enforcing regulations through civil proceedings.
- Office of Intelligence and Analysis supports TFI AML/CFT policy development and implementation with all-source intelligence analysis.
- Treasury Executive Office for Asset Forfeiture allocates funds forfeited through administrative, civil, and criminal forfeiture procedures to federal law enforcement agencies based on AML/CFT priorities.

The U.S. has mechanisms that allow the FIU, law enforcement agencies, and financial supervisory authorities to provide to foreign counterparts a wide range of cooperation directly or diagonally. In general, exchanges of information concerning money laundering or terrorist financing may be provided promptly, either spontaneously or upon request, and without unduly restrictive conditions. Law enforcement, through the Department of Justice (DOJ) Office of International Affairs (OIA), both requests information and provides information pursuant to requests under mutual legal assistance treaties (MLATs) and letters rogatory. These vehicles provide a mechanism for sharing information between countries, upon official request.

Additionally, federal law enforcement agencies have offices internationally which coordinate directly with local law enforcement and internal security forces and engage directly with foreign counterparts to cooperate on investigations into money laundering, predicate offenses, and terrorist financing.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

FinCEN plays a critical international collaboration role for the U.S., exchanging financial intelligence using the Egmont Group process and on the basis of bilateral and multilateral operational engagements, either on its own behalf or on behalf of its domestic partners. Since FY 2012, FinCEN has sent almost 500 requests per year (on average) to foreign FIUs from U.S. law enforcement and U.S. supervisory agencies. Starting in FY 2014, FinCEN began sending requests on its own. For FY 2015, FinCEN made 409 Egmont requests of its FIU partners on its own behalf or that of a U.S. law enforcement or regulatory agency and has made another 213 during the first half of FY 2016. These are the most up-to-date statistics publicly available.

FinCEN is the most requested FIU for information in the world, supporting requests from an average of 100 FIUs each year, or from approximately 75% of all FIUs with which it maintains a relationship. FinCEN shares the results of its analysis both spontaneously and upon request and, since 2012, has received an average of 871 requests from foreign FIUs for financial intelligence annually. Below are the most up-to-date statistics publicly available and which were included in the U.S. FATF Mutual Evaluation Report.

	2011	2012	2013	2014	2015
Incoming requests received by FinCEN	728	772	765	845	1021

Incoming spontaneous disclosures received by FinCEN	291	327	316	526	914
Outgoing spontaneous disclosures sent by FinCEN	58	57	45	17	779

Examples of Intelligence Provided to Case Requests

FIU A: FinCEN responded to a request from FIU B concerning an individual suspected of facilitating travel of non-U.S. citizens to the U.S. to open bank accounts to launder illicit funds. FIU B indicated that the suspect, who was associated with two travel companies, had been to the U.S. to open to accounts to potentially launder millions in funds. FinCEN reported that SARs were filed by U.S. banks over a two-year period concerning over USD 500 000 in fraudulent credit/debit card activity in the U.S. The fraud was identified with an individual using a known alias for the request suspect as well as a matching business name.

FIU B: FinCEN responded to a request from FIU C regarding two individuals, who are among 25 individuals under U.S. federal indictment as owners of a sports betting Internet website operating illegally in multiple U.S. states that profited more than USD 50 million during an 18-month period by accepting wagers on various sporting events-including horse-racing and professional and college football, basketball, hockey, and baseball. FIU C indicated the subjects of the request intended to liquidate some or all of their ownership in a European holding company. FinCEN reported that both suspects were cited in multiple SAR and SAR by Securities and Futures Industries (SAR-SF) filings involved millions in suspicious wire transfer and checking activity in 2014. Additionally, multiple International Reports of the transportation of CMIRs, CTRs, CTR-filed by Casinos, and FBAR filings were found regarding the subject of the request within the past few years. International cooperation also takes place at the supervisory level. FinCEN signed its first MOU for AML/CFT supervisory purposes with a Mexican supervisory agency in 2013, and similar MOU with a Canadian AML/CFT supervisory agency in 2015. The MOUs provide for strict controls and safeguards to ensure that shared information is well protected and used in a confidential and authorized manner for AML/CFT supervision purposes only. The OCC, the FDIC, and the BGFRS have together entered into a significant number of information-sharing arrangements with foreign supervisors.

(b) Observations on the implementation of the article

Cooperation and exchange of information take place at the policy, supervisory and law enforcement levels and involve relevant authorities, including at the state and local levels. Under the leadership of the Treasury, the inter-agency Anti-Money-Laundering Task Force, established in 2012, is in charge of assessing the anti-money-laundering framework and implementing necessary legal and operational changes. It includes senior representatives from the CFTC, DOJ, the federal banking agencies, IRS, SEC, and FinCEN. A law enforcement subgroup advises on money-laundering and terrorist financing risks identified in the course of investigations. Liaison officers from major law enforcement agencies are placed within

FinCEN. Coordination at the supervisory level takes place in particular among FinCEN, the FBAs, and the State-level supervisors for MSBs.

Internationally the U.S. has mechanisms that allow FinCEN, law enforcement agencies, and financial supervisory authorities to provide to foreign counterparts a wide range of cooperation directly or diagonally. In general, exchanges of information concerning money laundering or terrorist financing may be provided promptly, either spontaneously or upon request, and without unduly restrictive conditions.

FinCEN exchanges financial information with an average of 100 financial intelligence units annually, on the basis of treaties or through the Egmont Group of Financial Intelligence Units. Federal law enforcement agencies, through international offices, can coordinate and engage directly with foreign counterparts in investigations into money-laundering or predicate offences.

International cooperation also takes place at the supervisory level. FinCEN has signed MOUs with Mexico and Canada. The OCC, the FDIC and the BGFRS have together entered into several information-sharing arrangements with foreign supervisors.

Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The United States has implemented a declaration system applicable to all persons, natural or legal for all incoming and outgoing cross-border transportation of currency and other monetary instruments whether by travelers, or through mail and cargo. The full range of currency and bearer negotiable instruments (BNI) is covered: 31 CFR § 1010.100 (mm) & 31 CFR § 1010.100(dd).

The United States has a written declaration system for all cross-border transportations of currency/BNI above USD 10,000 in aggregate, whether the person is acting on his/her own or on behalf of a third party: 31 CFR § 1010.340(a). Whoever receives currency/other monetary instruments in excess of USD 10,000 from a place outside the U.S. must also file a Report of International Transportation of Currency or Monetary Instrument (CMIR) within 15 days of receipt to U.S. Customs and Border Protection: 31 CFR § 1010.340 (b).

CMIR reporting requirements pose little burden to legitimate international travel and trade, and do not impede freedom of capital movements. There are strict safeguards to ensure proper use of the information or data that is reported or recorded and substantial penalties apply in case of misuse or abuse of information.

The United States has a declaration system for the incoming and outgoing physical transportation of currency and other monetary instruments valued at more than $10,000. This report is filed with customs officers in the United States and applies to any physical

transportation, shipment, or mailing done at one time. Compliance with the cross-border reporting requirement is enforced by U.S. Customs and Border Protection (CBP) (responsible for inspections and interdictions at the U.S. border both at and between the ports of entry) and U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) (responsible for investigations involving direct and associated violations involving the cross-border reporting requirement).

Federal law, 31 U.S.C. § 5316, requires persons leaving or entering the U.S. with more than $10,000 in currency or other monetary instruments, or who are shipping or mailing more than $10,000 in currency or other monetary instruments, whether acting on their own or on behalf of someone else, to report the currency movement to customs officers. The implementing regulation is 31 C.F.R. § 1010.340 which further sets forth the reporting requirement and any exceptions to the rule. "Monetary instruments," which include BNIs, are defined under 31 U.S.C. § 5312 and 31 C.F.R. § 1010.100. The report that must be filed is a Report of International Transportation of Currency or Monetary Instruments (CMIR), FinCEN Form 105, and in the U.S. the filing typically is made with CBP Officers at the Port of Entry or Departure (31 C.F.R. § 1010.306(b)). In addition, a person in the U.S. who receives currency or other monetary instruments in excess of $ 10,000, from a place outside the U.S., must also file a FinCEN Form 105 with customs officers if the sender of the currency or other monetary instruments has not done so; this report must be filed within 15 days of receipt.

For purposes of ensuring compliance with the declaration system, customs officers, as defined by 19 U.S.C. § 1401(i), have the authority to stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States. This authority is based on long-standing judicial precedent and is codified, among other places, at 31 U.S.C. § 5317 and 19 U.S.C. § 1499. Outside of the border context, additional information may be obtained by customs officers through the use of administrative subpoenas or summonses, or through the issuance of a court order. The issuance of administrative subpoenas or summonses is based on whether the information to be obtained is based on laws administered or enforced by customs officers; an application for a court order is based on probable cause.

Laws within the investigatory and enforcement jurisdiction of customs officers in the United States include:

Civil and criminal penalties, including under certain circumstances a fine of not more than $500,000 and imprisonment of not more than ten years (31 C.F.R. § 1010.840), are provided for failure to file a CMIR, filing a CMIR containing a material omission or misstatement, or filing a false or fraudulent CMIR. Also currency and other monetary instruments subject to reporting may be seized and forfeited if the required report is not filed (31 C.F.R. § 1010.830).

Under 18 U.S.C. § 1001, a criminal penalty of up to five or eight years imprisonment, depending on the nature of the offense, may apply to any material false statement or entry made to a U.S. Government official. Because, under U.S. customs laws, "currency and other monetary instruments" also qualify as "merchandise," as defined by 19 U.S.C. 1401(c) (#337), the criminal penalties associated with customs violations under 18 U.S.C. §§§ 542, 545, and 554 may also apply.

Under 31 U.S.C. § 5321(a)(2), a civil penalty for not filing a CMIR or filing a report containing a material omission or misstatement may not be more than the amount of the monetary instrument for which the report was required; such a penalty shall be reduced by the amount actually forfeited to the United States for the CMIR violation.

Under 31 U.S.C. § 5324, criminal penalties for failing to file a CMIR, or causing or attempting to cause a person to file a false CMIR, or structuring or assisting in structuring any importation

or exportation of monetary instruments, include a fine set in accordance with the guidelines in Title 18 of the United States Code, imprisonment for not more than 5 years, or both. A person who commits a CMIR violation while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period is subject to having the applicable fine doubled, imprisonment for not more than 10 years, or both.

Under 31 U.S.C. § 5332, criminal penalties of up to five years may apply for the knowing concealment of any currency or other monetary instruments in excess of $10,000 on an individual, or in any conveyance, article of luggage, merchandise, or other container for the purpose of evading or attempting to evade the CMIR requirement.

(b) Observations on the implementation of the article

The U.S. has implemented a declaration system applicable to all persons, natural or legal, for all incoming and outgoing cross-border transportations of currency and other monetary instruments whether by travellers or through mail and cargo. All cross-border transportation of currency and other monetary instruments valued at more than $10,000 is subject to declaration (31 CFR § 1010.340) and civil or criminal sanctions in cases of non-compliance (see, for example, 31 CFR § 1010.840).

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Ordering and intermediary financial institutions (FIs) located within the United States are required to include, for both domestic and cross-border wire transfers, the originator's name, account number, and address in any transmittal order above $3,000: 31 CFR § 1010.410(f). Ordering FIs are required to verify the identity of the originator, and include the following beneficiary information with transmission order: the identity of the beneficiary's FI and as many of the following items as are received with the payment order:

(i) the beneficiary's name and address;

(ii) account number; and

(iii) any other specific identifiers of the beneficiary.

A $3,000 threshold applies to the above requirements. Ordering FIs are required to collect, retain, and transfer this information in the payment chain. Intermediary FIs located in the United States must also record and transmit the same information as ordering FIs. FIs are required to have appropriate controls and systems in place to identify and monitor suspicious

activity and ensure necessary compliance. Appropriate controls include measures to assure and monitor compliance with record-keeping and reporting requirements including internal control systems to identify and monitor for suspicious activity. Such controls may include post- or real time monitoring of funds transfers to identify cross-border wire transfers or international Automated Clearing House transactions lacking required originator or beneficiary information that may indicate suspicious activity.

Record-keeping and wire transfer obligations in 31 CFR 1010.410 (subject to the $3,000 threshold) apply to money remitters, located within the United States, whether operating directly or through their agents.

(a) Any originating or intermediary bank or other financial institution located within the United States is required (31 C.F.R. § 1010.410 (f)) to include in any transmittal order for a transmittal of funds in the amount of $3,000 or more:

- The name of the originator;
- The originator account number if such an account is used to process the payment;
- The address of the originator; and either the name and address or numerical identifier of the transmittor's financial institution.

The following verification requirements apply to the originating financial institution: If a transmittal order is from an "established customer" of the financial institution, the financial institution will have verified customer identification on record. If the transmitter is not an established customer, and the transmittal order is above $3,000, the ordering financial institution is required to (1) if the order is made in person, verify the identity of the person placing the transmittal order, and (2) if the order is not made in person, in addition to the information above, obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number or, if none, alien identification number or passport number and country of issuance, or a notation in the record or lack thereof, and a copy or record of the method of payment for the transmittal of funds. See 31 C.F.R. §§ 1010.410(e)(2), 1020.410(a)(2).

(b) The originating or intermediary bank or other financial institution is required (see 31 C.F.R. § 1010.410(f)) to include the following beneficiary information with a transmittal of funds in the amount of $3,000 or more:

- The identity of the recipient's (beneficiary's) financial institution; and
- As many of the following items as are received with the payment order (transmittal order);

i. The name of the recipient (beneficiary);

ii. The account number of the recipient (beneficiary);and

iii. Any other specific identifier of the recipient (beneficiary).

The recordkeeping and information transmittal requirements of 31 C.F.R. § 1020.410 (banks) and 31 C.F.R. § 1010.410 (financial institutions including non-banks) for wire transfers apply to transfers of $3,000 or more. However, as a practical matter, for funds transfers originated through the U.S. banking system and executed through the Society for Worldwide Interbank Financial Telecommunication (SWIFT), the financial messaging service will not process funds transfers with blank fields. On November 21, 2009, SWIFT implemented a new MT 202 COV message format that contains mandatory, standardized originator and beneficiary data fields. If a MT 202 COV contains a blank field, SWIFT will automatically reject the message. Cover intermediary banks are required to monitor payment message data for manifestly meaningless or incomplete fields. For all transactions for which there is an associated MT 103, the MT 202

COV is now mandatory regardless whether the payments represent cross-border transactions. U.S. originator's banks' procedures must address the appropriate use of the new message format. See FFIEC Manual, and Transparency and Compliance for U.S. Banking Organizations Conducting Cross-Border Funds Transfers (Dec. 2009).

For each transmittal order that a bank or non-bank financial institution accepts as an originator or transmitter's financial institution, the financial institution shall obtain and retain the following information related to the transmittal order:

- The name and address of the transmittor;
- The amount of the transmittal order;
- The execution date of the transmittal order;
- Any payment instructions received from the transmittor with the transmittal order;
- The identity of the recipient's financial institution;
- As many of the following items as are received with the transmittal order:
  - The name and address of the recipient (beneficiary);
  - The account number of the recipient (beneficiary); and
  - Any other specific identifier of the recipient (beneficiary); and
- Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

31 C.F.R. §§ 1020.410(a), 1010.410 (e). The foregoing records are required to be kept for a period of five years. See 31 C.F.R. § 1010.430(d).

In addition to the regulations described above (31 C.F.R. §§ 1020.410(a) and 1010.410(e)), securities broker-dealers are subject to rules that, among other things require them to make and preserve records of all receipts and disbursements of cash and all other debits and credits. 17 C.F.R. §§ 240.17a-3 and 240.17a-4. No de minimis threshold applies to these broker-dealer recordkeeping requirements.

Financial institutions and casinos are required to verify customer identification when establishing an account relationship, but the U.S. does not explicitly require financial institutions to verify identifying information for occasional customers conducting funds transfers below $3,000 including when there is a suspicion of ML or TF. However, non-bank money transmitters have an obligation (31 C.F.R. § 1022.320) to file a SAR to report suspicious transactions above $2,000 conducted or attempted by, at or through the money transmitter, which may involve collecting customer information.

There is no requirement for a financial institution to re-verify customer information if there is a suspicion of money laundering or terrorist financing that merits the issuing of a SAR, as verifying customer information may tip-off the customer that a SAR was filed, or tip-off the customer that there is a suspicion of ML/TF. However, in practice, financial institutions are likely to review the information they have about such a customer to determine how accurate and current the information is.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

The U.S. FATF Mutual Evaluation Report found that banks apply appropriate measures to comply with the record-keeping and travel rule's requirements. Some banks apply the record-keeping and travel rules to all wire transfers, as opposed to only those above the USD 3 000

threshold, in order to streamline their operational processes. Additionally, some banks also generally obtain and include all originator and beneficiary information. Some MSBs are also applying cross-border wire-transfer requirements below the threshold.

Where financial institutions have been found to strip message information from wires to evade sanctions, there have been significant enforcement actions. For example, in 2015, a U.S. court sentenced BNP Paribas SA to five years probation in connection with a record $8.9 billion settlement resolving claims that it violated sanctions against Sudan, Cuba and Iran. U.S. prosecutors said BNP evaded sanctions in part by stripping information from wire transfers so they could pass through the U.S. system without raising red flags.

(b) Observations on the implementation of the article

Ordering and intermediary financial institutions located within the United States are required to include, for all wire transfers, the originator's name, account number and address in any transmittal order above $3,000 (31 CFR § 1010.410(f)). Ordering financial institutions are required to verify the identity of the originator and include the beneficiary information with the transmission order. Financial institutions are required to have appropriate controls and systems in place to identify and monitor suspicious activity and ensure necessary compliance.

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The United States is a member of the Financial Action Task Force (FATF), and is assessed on a regular basis for compliance with the international standards on combating money laundering and the financing of terrorism and proliferation. The most recent Mutual Evaluation Report was concluded in 2016, and the United States is currently in enhanced follow-up review.

FATF, established in 1989, is the international standard-setting body for anti-money laundering and countering the financing of terrorism (AML/CFT) and combatting the proliferation financing of weapons of mass destruction. Through its peer evaluation process and policymaking functions, the FATF promotes the effective adoption and implementation of AML/CFT measures globally for combating money laundering, terrorist financing, and other illicit financing risks to the integrity of the international financial system; reviews illicit financing trends, and monitors members' progress in implementing the FATF standards. The FATF Recommendations provide the basis for establishing effective, risk-based AML/CFT regulation and supervision, among other things. The United States was one of the founding members of FATF and its delegation-led by the Department of the Treasury with participants from the Departments of Justice and State and the federal functional regulators-plays an active role in the FATF's work. (The United States is also an observer at six of the nine FATF-style regional bodies (EAG, ESAAMLG, GAFILAT, GIABA, MENAFATF, and MONEYVAL); a full member of the Asia Pacific Group on Money Laundering (APG); and a co-operating and

supporting nation of the Caribbean Financial Action Task Force (CFATF).) Therefore, the United States has committed to implementation of the FATF standards and uses them as a "guideline" as described in UNCAC article 14, paragraph 4, for its domestic AML/CFT system.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

The United States was most recently assessed by FATF in 2016. The Mutual Evaluation Report of the United States is available at: United States (fatf-gafi.org). The MER summarizes the AML/CFT measures in place in the United States at the time of the on-site visit in early 2016. It analyses the level of compliance with the FATF Recommendations and the level of effectiveness of the U.S. AML/CFT system.

There have been changes to the U.S. regulatory regime made since the FATF MER. Some of these changes include Treasury's CDD Rule, which now requires covered financial institutions to identify and verify the beneficial owners of certain legal entity customers (effective May 2018), and Treasury's issuance and expansion of Geographic Targeting Orders which require U.S. title insurance companies to identify the natural persons behind shell companies used to pay "all cash" for residential real estate in key U.S. markets, including Miami and New York City (effective 2016-present). Both are relevant to the detection, investigation, and successful prosecution of money laundering, including laundering of the proceeds of crime in accordance with the Convention, as well as more general anticorruption enforcement, and related asset recovery.

(b) Observations on the implementation of the article

The United States is a member of FATF and APG, an observer in six additional FATF-style regional bodies, and a cooperating and supporting nation of the Caribbean Financial Action Task Force. At the time of the country visit, legislative amendments with regard to beneficial ownership were underway, including to address gaps identified by the most recent FATF evaluation.

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Please see answer above regarding FATF and the FATF-style regional bodies. The United States also has a number of additional efforts focused on international cooperation for AML purposes, including as it pertains to corruption. Both from a policy perspective and on operational matters, the United States places a premium on promoting international cooperation to combat money laundering.

The United States conducts multi-agency strategic dialogues on illicit finance with key partner countries. The United States also conducts public/private banking working groups with countries whose financial systems are particularly entwined with the United States. Each

agency, including law enforcement agencies, DOJ, FinCEN, Treasury, and the federal banking agencies, conducts its own meetings and outreach with counterparts bilaterally and multilaterally, both at the principal and the staff levels. As just one example, the U.S. central authority for the purposes of mutual legal assistance, DOJ's Office of International Affairs, holds case consultations on matters of mutual interest with countries on a rotating basis, which serve to advance cooperation on including money laundering, corruption, and forfeiture cases, regularly.

Furthermore, the United States Government-through, inter alia, State Department's Bureau of International Narcotics and Law Enforcement Affairs; DOJ's Office of Overseas Prosecutorial Development, Assistance and Training; Treasury's Office of Technical Assistance; and DOJ's International Criminal Investigative Training Assistance Program-provides technical assistance, training, and capacity building to countries around the globe on AML and anticorruption. These efforts promote good practices, compliance with relevant standards, and facilitate cooperation. Law enforcement agencies also have Legal Attaché ("LEGAT") programmes, which station U.S. law enforcement agents at U.S. embassies around the world. These LEGATS serve as focal point for the prompt and continuous exchange of information with foreign law enforcement and security agencies and coordination with U.S. federal law enforcement agencies that have jurisdiction over the matters under investigation. Law enforcement personnel based overseas also assist foreign agencies with requests for investigative assistance in the United States to encourage reciprocal assistance in counterterrorism, criminal, and other investigative matters. The Departments of Treasury and Justice also post their own attachés abroad in a number of world capitals who have, at least in part, an AML mission.

The United States also engages and takes leadership roles in certain topic-specific fora that provide for global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering. One such example is the membership in the Camden Asset Recovery Interagency Network (CARIN), an informal network of law enforcement and judicial practitioners, specialist in the field of asset tracing, freezing, seizure and confiscation. Each member state is represented by a law enforcement officer and a judicial expert (prosecutor, investigating judge, etc., depending on the legal system). The purpose of CARIN is to increase the effectiveness of its members' efforts, on a multi-agency basis, to deprive criminals of their illicit profits. Another example is the United States' active participation in the G20's Anti-Corruption Working Group (ACWG), a leading mechanism for cooperation in raising the standards of transparency and accountability across the G20 and contributing to the global fight against corruption.

See also the answer to Article 14 paragraph 1(b).

(b) Observations on the implementation of the article

The United States is a member of FATF and APG, an observer at EAG, ESAAMLG, GAFILAT, GIABA, MENAFATF, and MONEYVAL, and a cooperating and supporting nation of the Caribbean Financial Action Task Force.

The United States provides technical assistance, training and capacity-building in relation to anti-money-laundering and anti-corruption activities and maintains multi-agency strategic dialogues on illicit finance with partner countries as well as public/private banking-related working groups with countries whose financial systems are particularly entwined with that of the United States.

V. Asset recovery

Article 51. General provision

> *Article 51*
>
> *1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The U.S. has a range of authorities to take action in response to requests by foreign countries to identify, freeze, seize or confiscate laundered property, proceeds, and instrumentalities used or intended for use in money laundering and associated predicate offenses, including corruption offenses, or property of corresponding value, including:

a) Providing assistance in identifying and tracing assets via police-to-police communication and information sharing networks, such as CARIN.

b) Obtaining evidence on behalf of a foreign partner, including testimony, documents (e.g., financial records), or tangible items: 18 U.S.C. § 3512.

c) Restraining or seizing assets located in the United States. upon the request of a foreign country to preserve them for confiscation under foreign law: 28 U.S.C. § 2467(d)(3)(A)(i).

d) Enforcing foreign confiscation orders and judgments: 28 U.S.C. § 2467. This is done on the condition that the requesting country is party to the Vienna Convention, an MLAT, or other international agreement with the U.S. that provides for forfeiture assistance, including UNCAC. The offense must: i) be an offense for which forfeiture would be available under U.S. law, had the criminal conduct occurred in the United States; or ii) is a foreign offense that is a predicate for a U.S. money laundering offense: 28 U.S.C. § 2467 (a)(2) & 18 U.S.C. § 1956(c)(7)(B).

e) Temporary restraint of assets pursuant to a foreign arrest or charge: 18 U.S.C. § 981(b)(4). This provisional measure requires the United States. to set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture. The United States must also show that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

f) Initiation of U.S. non-conviction-based forfeiture proceedings based on U.S. money laundering offenses committed with respect to foreign predicates (e.g., bribery): 18 U.S.C. § 981. Such cases often require foreign evidence and witnesses.

g) Initiation of U.S. criminal proceedings and accompanying conviction based forfeiture: 18 U.S.C. § 982. If persons involved in foreign corruption can be prosecuted in the United States for crimes committed, at least in part, in the United States, forfeiture may be part of the defendant’s sentence. Assets forfeited this way may be appropriate

for international sharing or return to victim countries, depending on the facts of the case.

The United States has arrangements for coordinating seizure and confiscation actions with other countries; and for managing and disposing of property frozen, seized, or confiscated whether by on its own behalf or on behalf of a foreign government.

The United States shares assets with countries that made possible, or substantially facilitated, the forfeiture of assets under U.S. law pursuant to dozens of free-standing international asset sharing agreements, asset sharing provisions within mutual legal assistance treaties, or multilateral treaties: 18 U.S.C. § 981(i), 21 U.S.C. § 881(e)(1)(E), and 31 U.S.C. § 9703(h)(2). DOJ may negotiate case specific, bilateral asset sharing arrangements even in the absence of specific agreement/treaty.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

Through its Kleptocracy Initiative, the United States, has as of January 2020, restrained by U.S. Court order more than $3.8 billion in assets linked to foreign corruption. Since 2010, the United States has successfully completed recovery and assisted foreign governments in the recovery of over $300 million in assets, which have been repatriated or are in the process of repatriation for the benefit of the people harmed by the corruption in their countries linked to the forfeited funds consistent with UNCAC and principles of the Global Forum on Asset Recovery (GFAR) specifically addressing the transparent and accountable return of funds.

DOJ's corruption related returns are not limited to cash. In 2015, the United States restrained, forfeited and repatriated the off- spring of rare snakes to Brazil which were illegally sold to a U.S. breeder by a government official overseeing a zoo in Brazil with custody over the snakes.

International asset sharing is practiced by U.S. authorities and often premised on bilateral asset sharing agreements or asset sharing provisions within mutual legal assistance treaties. The United States can spontaneously share, even when a country makes no direct request for a portion of assets that were forfeited due to assistance provided to the United States by a foreign country.

The United States has two main assets forfeiture funds, the DOJ Assets Forfeiture Fund and the Treasury Forfeiture Fund. As of December 31, 2018, since 1989, more than $283 million in forfeited assets has been transferred to 55 countries from DOJ's fund. In recent years (fiscal years 2013-2015), DOJ has shared $19,714,313 with 18 countries. The countries include the Bahamas, Colombia, the Dominican Republic, Ghana, The Bailiwick of Guernsey, Honduras, Indonesia, Panama and Saint Marten. Since 1994, the Treasury has transferred from its Assets Forfeiture Fund more than $ 37 million to 29 countries. The United States can also accept asset sharing from other countries when it has provided law enforcement or judicial assistance leading to the forfeiture of assets under foreign law. These statistics relate to forfeitures involving all types of crimes.

The United States has issued guidance materials in multiple languages to assist in international cooperation concerning asset recovery cases. The country has also played a role in organizing, co-hosting, or participating in various forums dedicated to asset recovery specialists worldwide, with a specific focus on addressing corruption. These efforts include participation in events such as the Arab Forums on Asset Recovery involving Arab Spring countries, the Ukraine Forum on Asset Recovery post the Dignity Revolution in 2014, and the Global Forum on Asset Recovery in 2017, which concentrated on recovering assets linked to corruption in Ukraine, Nigeria, Tunisia, and Sri Lanka.

For an example of the return of the assets to a foreign nation victimized by the corruption of its former highest official, please see the following DOJ press release: https://www.justice.gov/opa/pr/attorney-general-loretta-e-lynch-announces-return-forfeited-public-corruption-assets-korean.

The United States encourages international asset sharing with countries that facilitate the forfeiture of assets under U.S. law. International sharing, which requires both Department of Justice and Department of State approval, and concurrence by Treasury, must be either approved or pre-approved before any domestic sharing to state and local law enforcement authorities can take place. The percentage granted to a foreign country is often guided by international sharing agreements or is determined based on the facts of the case. It is the policy of the United States in those forfeiture matters that do not involve victims to encourage international asset sharing and to recognize all foreign assistance that facilitates United States forfeitures so far as consistent with United States law. International sharing is governed by 18 U.S.C. § 981(i), 21 U.S.C. § 881(e)(1)(E), and 31 U.S.C. § 9705(h)(2), and is often guided by standing international sharing agreements or may be the subject of bilateral case-specific forfeiture sharing arrangements to be negotiated by DOJ and approved by the Department of State. The decision to share assets that have been forfeited to the United States with a foreign government is a completely discretionary function of the Attorney General or the Secretary of the Treasury. However, this decision also requires the concurrence of the Secretary of State and, in certain circumstances, may be vetoed by Congress.

(b) Observations on the implementation of the article

The United States is committed to the recovery and subsequent return of proceeds of crime in accordance with the Convention offences to countries harmed by corruption, and employs a "whole-of-government" approach to asset return. In particular, the United States regularly makes use non-conviction-based forfeiture, in addition to criminal forfeiture, in order to enable the United States to recover assets, often in cooperation with foreign jurisdictions.

While forfeiture involving foreign corruption can be sought by any federal prosecutor subject to appropriate evidence and venue, the Department of Justice formally established its Kleptocracy Asset Recovery Initiative in 2010 to provide dedicated resources making it possible to litigate more cases, including in rem proceedings in respect of property located in and outside the United States if the property is traceable to criminal acts involving foreign or domestic corruption in, or partly in, the United States. The Initiative also brings criminal forfeiture cases where appropriate. According to "U.S. Asset Recovery Tools and Procedures: A Practical Guide for International Cooperation", a key objective of the Initiative is "to recover assets for the benefit of the people of the country harmed by the abuse of public office through transparent and accountable means".

Through its Kleptocracy Initiative and the Initiative's predecessor team in the Department of Justice, the United States had, as at July 2019, restrained by United States court order more than $2.6 billion in assets linked to foreign corruption. Also as at July 2019, the United States had successfully obtained by forfeiture and settlement approximately $1 billion and returned or assisted in returning approximately $300 million in assets. A significant proportion of the recovered funds is in the process of repatriation, including over $300 million to Nigeria, approximately $35 million to Equatorial Guinea and several hundred million dollars to Malaysia.[104] Since 2015, the Initiative has brought criminal charges with a view to seeking the

[104] As at January 2022, the Kleptocracy Initiative and its predecessor team in the Department of Justice had recovered or assisted in recovering more than $1.8 billion in assets and returned or assisted in returning more

forfeiture of assets. Charges are pending against 13 individuals and one legal entity. Nine persons have been convicted and ordered to forfeit assets through money judgments.

In addition, the corruption related returns secured by the Department of Justice are not limited to cash. In 2015, the United States restrained, ordered the forfeiture of and returned to the offspring of rare snakes that had been illegally sold to a United States breeder by a government official overseeing a zoo in Brazil with custody overthe snakes.

The international sharing of proceeds forfeited through foreign law enforcement cooperation and assistance is also practised by United States authorities and is often based on bilateral asset sharing agreements or asset sharing provisions forming part of mutual legal assistance treaties governing forfeiture, which may cover corruption as well as other crimes. The United States may share such proceeds even when a country does not directly request a portion of assets that have been forfeited in connection with assistance provided to the United States by that country.

The United States has two main asset forfeiture funds into which forfeited proceeds of any crime are deposited pending further disposition. As at 31 December 2018, more than $283 million in forfeited assets had been transferred to 55 countries since 1989 from the fund administered by the Department of Justice, mostly in recognition of forfeiture assistance. In recent years (fiscal years 2013–2015), the Department of Justice has shared $19,714,313 with 18 countries. Since 1994, the Treasury has transferred from its Assets Forfeiture Fund more than $37 million to 29 countries, mostly in recognition of forfeiture assistance. The United States can also accept assets from other countries when it has provided law enforcement or judicial assistance leading to the forfeiture of assets under foreign law. The aforementioned statistics relate to forfeitures involving all types of crimes.

The United States has published multilingual guidance materials on international cooperation in asset recovery cases and has hosted, co-hosted or participated in various forums for asset recovery specialists from around the world, including multiple Arab forums on asset recovery involving the Arab Spring countries, the Ukraine Forum on Asset Recovery following the Dignity Revolution in 2014, and the Global Forum on Asset Recovery in 2017, which focused on the recovery of assets linked to corruption in Ukraine, Nigeria, Tunisia and Sri Lanka.

It is recommended that the United States continue to take measures to strengthen the fight against money-laundering and corruption and take measures pursuant to its legal system to uniformly enforce and implement the provisions of the Convention throughout its jurisdiction.

(c) Successes and good practices

As demonstrated by the amounts of forfeited assets returned to other States, the United States is strongly committed to asset recovery and return and pursues recovery proceedings in cooperation with foreign competent authorities. Much of this work may be attributed to the Department of Justice Kleptocracy Asset Recovery Initiative, which is augmented by the work of other prosecutors and law enforcement authorities at all levels of government. The

than $1.6 billion, including $1.2 billion to Malaysia, $311 million to Nigeria in February 2020, $115 million for Kazakhstan, $100 million to Italy, over $26 million toEquatorial Guinea and smaller sums to a number of other countries. Approximately $2 billion in additional assets are currently restrained pending forfeiture litigation in civil and criminal cases. Since 2022, the Kleptocracy Initiative has brought criminal charges against 35 individuals and two legal entities, seeking forfeiture in all but one case, in which the corporation concerned was ordered to pay significant fines.

United States makes active use of the instrument of civil forfeiture, and criminal forfeiture where possible, and subsequently transfers successfully forfeited assets.

A whole-of-government approach is employed in asset recovery cases, and forensic investigators and accountants, as well as business professionals, support investigations and legal proceedings, often using intelligence information provided by FinCEN.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Financial institution examination procedures in the FFIEC Examinations Manual expands regulatory expectations beyond the parameters set in the BSA and requires covered FIs to take risk-based measures to determine if politically exposed persons (PEP) open accounts at covered FIs. The Manual also generally requires developing PEP-related policies which include involving bank management in decisions to accept or retain PEP accounts, and evaluations of the risks and appropriate steps to be taken, if it becomes known subsequently that the customer is a PEP. Also, see responses to Article 14. National Money Laundering Risk Assessment at: https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf

(b) Observations on the implementation of the article

The definition of financial institutions as set out in the Bank Secrecy Act covers certain non-financial businesses and professions such as casinos and dealers in vehicles or precious metals and stones. However, other at-risk non-financial businesses and professions are not subject to anti-money-laundering policy or supervisory measures, most notably real estate agents and intermediaries such as lawyers. A general obligation exists for all trades and businesses to report cash transactions that exceed a value of $10,000.

Private banking accounts of senior foreign political figures, their immediate family members and close associates, with a value of at least $1,000,000, are subject to enhanced due diligence (sect. 31 USC § 5318 (i)(3)(B)). For politically exposed persons not subject to enhanced due diligence, banks should obtain risk-based due diligence information and provide for appropriate scrutiny and monitoring, in line with the Federal Financial Institutions Examination Council (FFIEC) *Bank Secrecy Act/Anti-Money Laundering (BSA/AML)*

Examination Manual. Some financial institutions voluntarily subject domestic politically exposed persons to enhanced due diligence.

The Treasury's Customer Due Diligence Rule, published in 2016 and in full effect as of 2018, enhanced requirements for certain financial institutions covered by the Bank Secrecy Act by obliging them to establish and maintain policies and procedures to identify and verify the identity of customers that are legal entities and of any individual who owns 25 per cent or more of a legal entity opening a new account. Financial institutions subject to the Rule must also put in place policies and procedures for developing customer risk profiles and conducting ongoing monitoring in order to maintain and update customer information on a risk basis.

At the discretion of the Treasury, cash transactions in the real estate sector can be partially addressed – since 2016 – through the issuance of Geographic Targeting Orders (31 USC § 5326), which require financial institutions to identify the beneficial owner of legal persons involved in cash acquisitions of luxury real estate objects in designated United States real estate markets.

It is recommended that the United States extend beneficial ownership transparency requirements to relevant non-financial businesses and professions and apply the Customer Due Diligence Rule to existing accounts.[105]

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The United States government issues advisories from time to time both to the public and to financial institutions regarding the laws and regulations designed to prevent and detect the transfer of proceeds of crime. For example, the United States Treasury Department's Financial Crimes Enforcement Network, or FinCEN, has a public website that provides a wealth of information regarding FinCEN's work and applicable United States anti-money laundering laws and regulations, including matters relating to the regulations regarding the types of customers and accounts that are subject to enhanced scrutiny, and related recordkeeping requirements. FinCEN's website can be found at: http://www.fincen.gov/index.html.

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[105] After the country visit, the United States enacted legislation addressing the lack of disclosure obligations at the time of company formation. Enacted in January 2021 as part of the National Defense Authorization Act, the Corporate Transparency Act requires reporting companies to disclose their beneficial owners when they are formed (or, in the case of non-United States companies, when they register with a state to do business in the United States) and when they change beneficial owners. On 29 September 2022, FinCEN issued a final rule establishing a beneficial ownership information reporting requirement pursuant to the Corporate Transparency Act. The rule requires specified corporations, limited liability companies and other entities created in or registered to do business in the United States to report information about their beneficial owners to FinCEN.

Additionally, the United States Federal Financial Institutions Examination Council, an inter-agency United States government entity, periodically publishes the Bank Secrecy Act/Anti-Money Laundering Examination Manual for financial institutions, which sets forth in substantial detail the requirements contained in the various anti-money laundering laws and regulations of the United States. That manual can be found at https://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2014_v2.pdf. The relevant sections of the United States Code of Federal Regulations (CFR), can be found at https://www.ecfr.gov/cgi-bin/text-idx?SID=4ed28aff321d97007276a7736cae032e&c=ecfr&tpl=/ecfrbrowse/Title31/31cfrv3_02.tpl

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

See FinCEN's website at http://www.fincen.gov and the National Money Laundering Risk Assessment at: https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf

(b) Observations on the implementation of the article

FinCEN publishes a wealth of information related to compliance with laws and regulations on combating money-laundering and the financing of terrorism.

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Section 314(a) Authority

Under Section 314(a) of the USA PATRIOT Act of 2001 and its implementing regulations, see 31 C.F.R. § 1010.520, FinCEN, either on its own, on behalf of other Treasury components, or assisting federal, state, local, and foreign law enforcement agencies, can locate accounts and transactions of persons that may be involved in terrorism or significant money laundering. Certain financial institutions are required to search their records and identify if they have responsive information regarding individuals, entities, and organizations engaged in or reasonably suspected, based on credible evidence, to engage in terrorist acts or money laundering activities, with respect to a particular criminal investigation. FinCEN relays targets of its own analysis or law enforcement investigations to a wide range of financial institutions ranging from a select few to thousands and requires these financial institutions to provide real

time responses. Section 314(a) inquiries require the requestor to submit a form certifying that the investigation is based on credible evidence of terrorist financing or significant money laundering and that all traditional means of investigation have been exhausted or are unavailable. Section 314(a) provides lead information only and is not a substitute for a subpoena or other legal process.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

To date, the 314 Program Office has processed 3,911 requests pertinent to the following significant criminal investigations:

Terrorism/Terrorist Financing - 600 cases Money Laundering - 3,311 cases

The 314(a) process has proven to be an effective tool in many law enforcement investigations. Results yield productive leads for both terrorist financing and money laundering cases and often lead to the identification of new accounts and transactions. These results enable law enforcement to efficiently direct its use of legal processes to promptly obtain critical evidence to help advance their investigations.

The following figures are averages derived from feedback FinCEN has received from law enforcement requesters who have utilized the 314(a) Program.

10 - New Accounts Identified per request

47 - New Transactions Identified per request

10 - Follow up initiatives taken by Law Enforcement with Financial Institutions per request

Based on the total feedback received using the current revised feedback reporting form, 95% of 314(a) requests have contributed to arrests or indictments.

(b) Observations on the implementation of the article

FinCEN can locate accounts and transactions of persons potentially involved in significant money-laundering, and may relay subject and business names, addresses and as much identifying data as possible to a wide range of financial institutions and require those financial institutions to provide real-time responses (sect. 314(a) of the USA PATRIOT Act).

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

In general, financial institutions are required to maintain records pertaining to customers and

accounts referred to in the above discussion of Article 52(1), containing information relating to identity of customers and beneficial ownership of accounts (as well as all other records) for at least five years. More specifically, financial institutions are required to develop and implement enhanced due diligence practices to detect foreign official corruption related to high-value private banking accounts. Under 31 U.S.C. § 5318(i)(3), financial institutions are required to take reasonable steps to identify the nominal and beneficial owners, identify the source of funds for, and file suspicious transaction reports regarding private banking accounts. In addition, financial institutions are required to conduct enhanced scrutiny designed to detect foreign corruption involving accounts requested or maintained on behalf of senior foreign political officials, an immediate family member, or close associate.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

See FinCEN's website at http://www.fincen.gov and the 2015 file://washdc.state.sbu/stateshares/INLPublic$/INL_C/INL_CP%20Shared/AC%20Team/6.%20Multilat/Questionnaires%20-%20Reviews%20(Copies)/UNCAC/U.S.%20Review/Second%20Cycle/Questionnaire/Responses%20to %20Questionnaire/2015 National Money Laundering Risk Assessment at: https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf.

(b) Observations on the implementation of the article

All records must be kept for a minimum period of five years (12 USC § 1829b,31 USC §§ 5311, 5318(l), 5325 and 5326).

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The United States has a robust system of laws and regulations designed to prevent and detect the transfer of proceeds of crime.

Section 313 of the USA PATRIOT Act (31 U.S.C. 5318(j)) and its implementing regulation (31 C.F.R. § 1010.630(a)) prohibit covered financial institutions from establishing, maintaining, administering or managing correspondent accounts in the U.S. for, or on behalf of, foreign shell banks and require covered financial institutions to take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed in

the United States. for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank. Covered financial institutions can comply with this requirement by obtaining a certification from each foreign bank every three years certifying that it is not a foreign shell bank. See 31 C.F.R. § 1010.630(b). A foreign shell bank is defined as a foreign bank without a physical presence in any country. See 31 C.F.R. § 1010.605(g).

Additionally, the FFIEC Manual outlines procedures for assessing banks' compliance with statutory and regulatory requirements prohibiting correspondent accounts for foreign shell banks.

U.S. law prohibits "covered financial institutions" from providing correspondent accounts in the United States to foreign banks that do not have a physical presence in any country (otherwise known as foreign "shell banks"): 18 U.S.C. § 5318(j), 31 C.F.R. § 1010.630(a). Covered FIs are prohibited from establishing, maintaining, administering or managing correspondent accounts in the United States. for, or on behalf of, foreign shell banks and are required to take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank. Separately, the FFIEC Examinations Manual outlines procedures for assessing banks' compliance with statutory and regulatory requirements prohibiting correspondent accounts for foreign shell banks. In addition, the establishment of shell banks is not permitted in the United States, either at the federal or state level, and the banking regulators continuously monitor for, and issue public advisories regarding, any entity engaged in unauthorized banking activity (including shell banks).

Moreover, it is a crime under U.S. law to operate an unlicensed money transmitting business (MSB). Money transmitting is defined under U.S. law to include transferring funds on behalf of the public by any and all means, including but not limited to transfers within the U.S. or to locations abroad by wire, check, draft, facsimile, or courier. MSBs are subject to certain registration requirements with FinCEN. It is a crime in the United States to conduct, control, manage, supervise, direct, or own an MSB (1) without a state license (if that is a crime in the state); (2) without registering with FinCEN in accordance with 31 U.S.C. § 5330; or (3) while transmitting or transporting funds known to be derived from a criminal offense or with the intention to promote unlawful activity. *See* 18 U.S.C. § 1960.

Similarly, to engage in the business of banking, in the United States, a company must seek the appropriate federal or state license/charter.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

In the U.S. FATF Mutual Evaluation Report, the assessment team found that banks providing correspondent banking services have specific measures for monitoring transactions flowing through them including EDD for foreign correspondent relationships as required by the BSA, and monitoring all transactions through the bank for suspicious activity and SDNs (sanctions). The United States does not collect statistics on this issue.

(b) Observations on the implementation of the article

Section 313 of the USA PATRIOT Act and its implementing regulation prohibit covered financial institutions from establishing, maintaining, administering or managing correspondent accounts in the United States for, or on behalf of a foreign bank without a physical presence in any country. Covered financial institutions are required to take reasonable steps to ensure

that any correspondent account established, maintained, administered, or managed in the United States (31 CFR 1010.6 30 (a)(ii)). Covered financial institutions can comply with this requirement by obtaining a certification from each foreign bank every three years certifying that it is not a foreign shell bank.

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

As described in response to Article 7, the United States has a robust system of laws and regulations designed to increase transparency, including a system of required financial disclosures by appropriate public officials that includes appropriate sanctions for non-compliance. The principal laws governing financial disclosure by senior United States government officials are located 5 U.S.C. § 13101 et seq. These laws require all senior officials of the federal government – including the President of the United States, Vice President of the United States, Members of Congress, and Supreme Court Justices– to file a public financial disclosure report. Copies of those reports are available upon request to anyone in the world, including foreign governments. Failure to file, or filing a false financial disclosure report, is subject to applicable administrative, civil or criminal penalties. Additionally, United States law requires financial disclosure on a confidential basis for public officials in the executive branch who do not hold senior positions but who do hold positions with a higher risk of conflict of interest. (5 U.S.C. § 13109 and 5 C.F.R. part 2634, subpart I.) Although those reports are not available to the public due to United States privacy laws, under certain circumstances they can be made available to federal law enforcement authorities.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

See answer to Article 8, paragraph 5.

(b) Observations on the implementation of the article

U.S. laws require all senior officials of the federal government to file a public financial disclosure report. Failure to file, or filing a false financial disclosure report, is subject to applicable administrative, civil or criminal penalties. Additionally, United States law requires financial disclosure on a confidential basis for public officials in the executive branch who do not hold senior positions but who do hold positions with a higher risk of conflict of interest. Failure to file or the filing of a false financial disclosure report is subject to sanctions. For further information, please cf. observations under article 8 paragraph 5.

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Pursuant to Title 31, United States Code of Federal Regulations, Section 1010.306 persons subject to U.S. jurisdiction having a financial interest or control over a foreign account are required to report that relationship to the Commissioner of Internal Revenue and to maintain records related to such accounts for five years.

In addition, as discussed in Article 7, the United States has a robust system laws and regulations designed to increase transparency, including a system of required public financial disclosures by appropriate public officials. Among other things, public financial disclosure filers are required to provide a description of, and the value of interests in, property held by the official (and specified family members) for investment or the production of income above certain minimal thresholds. This includes beneficial interests in trusts and estates (over $1,000); deposits in banks or other financial institutions (over $5,000); and accounts or other funds receivable (over $1,000). The law makes no distinction between assets held inside or outside the United States, and thus includes foreign financial accounts consistent with Article 52(6). The filer must also report the source and amount of investment and non-investment income in excess of $200, regardless of whether the source of that income is within or outside of the United States. Financial disclosure reports of this nature are required upon entry into a senior position, annually and at the termination of service in the position. Copies of those reports are available upon request to anyone in the world, including foreign countries.

Like any "U.S. person," a domestic public official would also be required to file a Form 114 with FinCEN to declare that he or she has an interest in, or signature authority over, foreign financial accounts whose aggregate value exceeded $10,000 during the calendar year. *See* 31 C.F.R. § 1010.350. This requires disclosure of bank accounts, brokerage accounts, mutual funds, trusts, or other types of foreign financial accounts held abroad. Foreign public officials might also have such filing obligations if they meet the definition of a U.S. person, which includes U.S. citizens; U.S. residents; entities, including but not limited to, corporations, partnerships, or limited liability companies, created or organized in the United States or under the laws of the United States; and trusts or estates formed under the laws of the United States. Distinct from this obligation is the additional requirement on U.S. citizens and resident aliens to comply with the Foreign Account Tax Compliance Act, known as FATCA, which requires certain taxpayers to report specified foreign financial assets for the purpose of reporting worldwide reporting of taxable income.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

All U.S. persons, including U.S. legal entities, are required to file a Report of Foreign Bank

and Financial Accounts (FBAR) if they have a financial interest or signature authority over a financial account outside of the U.S., and the aggregate value of the account exceeded $10,000 at any time during the calendar year. Between 2012-2014, FinCEN received an average of 927,151 FBARs annually. (Table 2 of the U.S. Mutual Evaluation Report).

(b) Observations on the implementation of the article

Under the Bank Secrecy Act, United States citizens, residents and legal entities as defined in the Act are required to annually disclose to the federal Government their interests in foreign financial accounts if the aggregate value of the amount in the accounts is $10,000 or more in a year. Failure to do so can result in civil or criminal penalties (31 USC §§ 5321(a), 5322(a) and 31 CFR §103.59(b).

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

U.S. law (whether constitutional, statutory or otherwise) does not preclude or prohibit foreign governments from initiating, as plaintiffs in a United States civil action, lawsuits in United States courts to establish title to or ownership of property acquired through the commission of an offense established in accordance with the Convention, consistent with United States constitutional principles of due process and other principles and practices of United States law.

In practice, however, instead of foreign States litigating directly, the United States far prefers to conduct asset recovery *in cooperation with* foreign competent authorities such that an arrangement can be made whereby the U.S. Department of Justice (DOJ) litigates the case and then either shares or transfers assets that are successfully forfeited to the country harmed by the corruption.

The Department of Justice has a team of specialized prosecutors dedicated to enforce foreign court's restraining and forfeiture orders through the Kleptocracy Asset Recovery Initiative. That Initiative is housed within DOJ's Money Laundering and Asset Recovery Section and is responsible for investigation and litigation to recover the proceeds of foreign official corruption. Litigating claims or petitions from foreign countries in U.S. non-conviction-based forfeiture proceedings can burden the resources of both countries; therefore, while countries are free to seek the appropriate legal remedy in each situation, the United States is committed to the return of the proceeds of crime in accordance with the Convention.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

There have been instances of foreign sovereigns bringing civil actions to directly recover stolen assets in U.S. courts, although the U.S. Government does not track these efforts as it is not a party to the litigation. For example, one state government of a foreign nation has sued, in a U.S. state court, a number of defendants and seeks from them financial damages for their alleged roles in facilitating offenses reportedly committed by a former foreign public official.

(b) Observations on the implementation of the article

Based on the principles of common law, foreign governments or subunits can bring cases in federal or state courts and are treated like any other private litigant with the same access and right to litigate in U.S. courts as any other corporation or individual.

If the cause of action arises under state law, claims can be contractual or based on tort and include compensation for pure economic loss or punitive damages, depending on the laws of the state the state in which the action is initiated. If the cause of action arises under federal law, the damages or remedies that could be awarded would be circumscribed by the relevant federal statutes under which the claim arises. U.S. authorities cited several examples of foreign States pursuing civil cases before U.S. courts. In practice, authorities explained that DOJ can pursue the claims of foreign governments on their behalf. Through the instrument of civil forfeiture, the Kleptocracy initiative can recover stolen assets and share them with the other State, avoiding lengthy and costly trials for the foreign State, possibly in several jurisdictions.

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

United States law (whether constitutional, statutory or otherwise) does not preclude or prohibit United States courts from ordering persons who have been convicted of offenses established in accordance with the Convention from paying restitution as part of a criminal sentence, including to another State Party, consistent with United States constitutional principles of due process.

Additionally, 18 U.S.C. § 3512 permits the United States to apply for court orders, in response to a request for assistance from a foreign authority in the investigation or prosecution of criminal offenses, including in proceedings related to restitution, to enable the execution of such requests.

(b) Observations on the implementation of the article

United States law does not preclude or prohibit its courts from ordering persons convicted of offences established under the Convention from paying restitution as part of a criminal

sentence, including to another State party.

Restitution is available for almost any federal offense which causes an identifiable victim a recoverable loss. Restitution orders can address property loss (e.g., court can order return of property or value), bodily injury (e.g., cost of necessary medical and related services, psychological care, non-medical care and treatment, therapy, and lost income); death expenses (e.g., funeral expenses), participation expenses (costs associated with a victim's participation in the investigation and prosecution), and "extraordinary costs" (case specific') of victims in some cases.

In addition, as outlined under article 53 a, based on the general principles of common law, any person or entity can pursue civil claims before U.S. courts. Claims can be contractual or based on tort and include compensation for pure economic loss or punitive damages, depending on the state they are brought in.

Several case examples of foreign States litigating in United States courts were presented during the country visit.

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

United States law (whether constitutional, statutory or otherwise) does not preclude or prohibit another State Party from submitting and litigating claims to be declared the legitimate owner of property that is the subject of United States confiscation proceedings related to the commission of an offense established in accordance with the Convention. Provisions of U.S. law governing procedures for such claims and petitions include, among others, 18 U.S.C. §§ 981, 982, and 983, the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (particularly, but not limited to Supplemental Rule G), and the Federal Rule of Criminal Procedure 32.2(c). Furthermore, once assets are finally forfeited by the United States, a victim, including, potentially, a state that qualifies as a victim, may utilize a legal process known as remission to seek compensation from the forfeited assets. The United States prioritizes victim compensation and an individual or entity may apply for remission under U.S. law if they can show, generally speaking, a pecuniary loss as a result of the crime leading to forfeiture.

However, as outlined under article 53 paragraph a, in practice the United States prefers to conduct asset recovery *in cooperation with* foreign competent authorities such that an arrangement can be made whereby the U.S. Department of Justice (DOJ) litigates the case and then either shares or transfers assets that are successful forfeited to the country harmed by the corruption.

(b) Observations on the implementation of the article

A criminal forfeiture order remains preliminary if a third party – which may be a State –

files a petition asserting an interest in the property to be forfeited. The court must then conduct an ancillary proceeding in which all potential third-party claimants may challenge the forfeiture by asserting a superior interest in the property and may seek return or compensation (rule 32.2 of the Federal Rules of Criminal Procedure). In the context of non-conviction based proceedings, the Supplemental Rules for Admiralty and Maritime Claims ("Rule G") set forth the requirements for filing a claim in a pending non-conviction based forfeiture action.

Notice and claim procedures exist in both non-conviction based and criminal forfeiture proceedings and all notices to prospective legitimate owners of property are published online on a government website, as well as in any foreign State that may bring a claim of legitimate ownership.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Pursuant to 28 U.S.C. § 2467, Federal courts are authorized to enforce final judgments of forfeiture from foreign nations. Specifically, § 2467(c)(1) provides that the United States may file an application in the District of Columbia, or any district in which the defendant or the property to be forfeited is located, to enforce a foreign forfeiture judgment "as if the judgment had been entered by a court in the United States." A prerequisite for enforcement of a final forfeiture judgment is the Attorney General's certification that enforcement of the foreign judgment "is in the interest of justice." § 2467(b)(2) and (c). There are additional statutory considerations that the U.S. Attorney General and the federal court will consider when granting this type of mutual legal assistance, such as those related to the finality and non-appealability of the foreign judgment and whether it comports with notions of due process, i.e., whether the foreign defendant and other affected parties were provided with notice and an opportunity to challenge the forfeiture in the foreign proceedings. The United States can enforce foreign confiscation orders from countries with which it has a formal agreement providing for forfeiture assistance such as an MLAT, or from countries that are, like the United States, parties to the Vienna Convention, Palermo Convention, UNCAC, or any other suitable multilateral agreement.

This statute also allows the United States to restrain and even seize assets, if needed, on behalf of foreign partners, via enforcement of a foreign court order (e.g., a restraint, seizure warrant, or similar command issued by a court of competent jurisdiction), or, on the basis of particular

evidence contained in an affidavit from a foreign government official. Such restraints are possible to "preserve the availability of property subject to civil or criminal forfeiture under foreign law." Thus, 28 U.S.C. § 2467, in addition to providing the authority for the United States to recognize and enforce foreign final confiscation orders or judgments, provides a provisional measure available once an investigation or forfeiture proceeding is underway in the foreign nation. Whether registering and enforcing a final or provisional order, the foreign country should seek this assistance through a formal mutual legal assistance request.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

DOJ has restrained approximately $125 million in assets by enforcing foreign restraining orders in U.S. courts at the request of foreign governments pending the outcome of foreign forfeiture proceedings, and has recently enforced or is in the process of seeking enforcement of foreign final forfeiture judgments totaling over $39 million of those restrained assets.

(b) Observations on the implementation of the article

Federal courts can enforce final judgments of forfeiture, including those not based on a criminal conviction, issued in foreign States as if the judgment had been handed down by a court in the United States (28 USC § 2467). A prerequisite for enforcement is certification by the Attorney General that enforcement of the foreign judgment is "in the interest of justice". Other considerations to be made during exequatur proceedings relate to finality, non-appealability, dual forfeitability, and whether or not due process was afforded to property holders and third parties in obtaining the foreign judgment. Several examples of enforcement under the aforementioned mechanism were discussed during the country visit.

It is recommended that the United States continue the practice whereby the Attorney General and the Secretary of the Treasury exercise discretion in a way that respects the binding obligations established under the Convention.

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The U.S. money laundering statutes, 18 U.S.C. §§ 1956 and 1957, have the money laundering "transaction" as their unit of prosecution. The transaction must affect interstate or foreign

commerce, or, involve the use of a financial institution engaged in activities affecting interstate or foreign commerce. The interstate commerce requirement is both jurisdictional and an essential element of the offense. The statutes also have certain extraterritorial application, in addition to the usual territorial rule that an offense committed in the United States can be prosecuted here.

Under 18 U.S.C. § 1956(f), the United States has extraterritorial jurisdiction over a money laundering offense committed by a U.S. citizen. The United States also has jurisdiction over conduct by a foreign person in violation of §§ 1956 and 1957 that occurs *in part* in the United States. For example, a transfer conducted in dollars between two foreign banks can be enough to satisfy jurisdictional requirements when that transfer briefly touches the United States as it passes through a U.S. correspondent bank account.

The underlying predicate crimes, or specified unlawful activities, which generate the proceeds laundered into or through the United States, may also occur entirely abroad. Of particular relevance here, certain foreign predicates for money laundering include bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official: 18 U.S.C. § 1956(c)(7)(B)(iv). Other possible foreign predicates for U.S. money laundering charges include offenses which the United States could extradite an offender for under a multilateral treaty, such as, e.g., UNTOC or UNCAC, if the offender were found within the territory of the United States: 18 U.S.C. § 1956(c)(7)(B)(vi).

Finally, under 18 U.S.C. § 982, the court, in imposing a sentence on a person convicted of the money laundering statutes described above shall order that the person forfeit any property, real or personal, involved in such an offense, or any property traceable thereto. Property "involved in" money laundering includes proceeds and instrumentalities of the crime.

(b) Observations on the implementation of the article

Property originating from predicate offences to money-laundering committed abroad may be subject to forfeiture (18 USC §§ 982, 1956).

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

United States law permits U.S. courts, where they have jurisdiction, to order the confiscation of property, consistent with Article 54(1)(c), without a criminal conviction, when that property is involved in or traceable to certain offenses. Pursuant to 18 U.S.C. § 981, U.S. courts can order "in rem" forfeiture in connection with a wide variety of offenses, including but not limited

to money laundering (§ 981(a)(1)(A)), certain offenses against a foreign nation (§ 981(a)(1)(B)), and certain domestic or transnational offenses related to foreign corruption, among others (§ 981(a)(1)(C)). This non-conviction-based forfeiture is an "in rem" proceeding in that U.S. Government files suit as plaintiff against real or personal property as the defendant due to its nexus to criminal acts. The defendant is not an individual, and thus, this statute can be used in cases in which the underlying offender cannot be prosecuted criminally for reasons of death, flight, fugitivity, or in other appropriate cases. The standard of proof for the Government in civil forfeiture actions is "preponderance of the evidence," which is lower than the criminal forfeiture standard ("beyond a reasonable doubt"), however, bona fide third party rights (such as "innocent owners," under U.S. terminology) are protected through claim and answer process, whereby claimants may contest and thoroughly litigate the forfeiture.

(b) Observations on the implementation of the article

United States courts can order non-conviction-based forfeiture, including in relation to bribery or money-laundering proceedings in which the offender who committed the predicate offence cannot be prosecuted (18 USC § 981). However, the inability to prosecute criminally is not a necessary pre-requisite to bringing such cases. In the United States, the use of non-conviction based forfeiture is available in all instances where the government can establish a nexus between identified assets and an alleged criminal offense.

Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

U.S. courts and the Attorney General of the United States have authority under U.S. law, consistent with Article 54(2)(a), to give effect to a freezing or seizure order issued by a court of another State Party pursuant to 28 U.S.C. § 2467(d)(3)(B)(ii) (enforcement of foreign restraining order). See the above answer provided for article 54, paragraph 1(a).

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

See answer provided for 54, paragraph 1(a).

(b) Observations on the implementation of the article

To preserve the availability of property subject to non-conviction-based or criminal forfeiture under foreign law, 28 USC § 2467 (d)(3) allows the registration and enforcement of restraining orders issued by a foreign court, or the application for a domestic restraining

order on the basis of an affidavit setting forth a reasonable basis to believe that the property to be restrained will eventually be subject to forfeiture proceedings by a foreign nation. At the time of the country visit, the United States had restrained approximately $125 million in assets by enforcing foreign restraining orders. Several case examples were discussed during the country visit, including cases in which a restraining order had been lifted to effectuate settlements or acquittals in foreign countries.

Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

U.S. courts and the Attorney General of the United States have authority under U.S. law to freeze or seize property, consistent with Article 54(2)(b), pursuant to 28 U.S.C. § 2467(d)(3)(B)(i). U.S. courts, in issuing a restraining order to preserve property for criminal or civil forfeiture under foreign law, "may rely on information set forth in an affidavit describing the nature of the proceeding or investigation underway in the foreign country, and setting forth a reasonable basis to believe that the property to be restrained will be named in a judgment of forfeiture at the conclusion of such proceeding." See also the above answer provided for article 54, paragraph 1(a).

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

See answer provided for 54, paragraph 1(a).

(b) Observations on the implementation of the article

To preserve the availability of property subject to non-conviction-based or criminal forfeiture under foreign law, 28 USC § 2467 (d)(3) allows the registration and enforcement of restraining orders issued by a foreign court, or the application for a domestic restraining order on the basis of an affidavit setting forth a reasonable basis to believe that the property to be restrained will eventually be subject to forfeiture proceedings by a foreign nation.

While for long term restraint a formal request is needed, an informal request from another State can suffice to restrain property for a limited amount of time.

Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

U.S. courts and the U.S. Attorney General have authority to preserve property for confiscation, consistent with Article 54(2)(c), pursuant to 18 U.S.C. § 981(b)(4). The use of this law is predicated on the foreign arrest or charge of a suspect or defendant for an offense that would give rise to forfeiture, had the same offense occurred in the United States. In other words, there is a dual criminality requirement. Such measures can be issued by a U.S. court on an ex parte basis (without notice), however, they are temporary in nature, lasting for 30 days with the possibility of extension for good cause. The application for the U.S. restraining order must set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture. Additionally, a statement that the restraining order is needed to preserve the availability of property pending the receipt of evidence from the foreign country or elsewhere, to support probable cause for the seizure of the property under U.S. law is required. Alternatively, the United States may enforce a foreign court order under other legal authority (see discussion of 28 U.S.C. § 2467 above), essentially converting the temporary measure based on an arrest or indictment to a more long-term restraint which can last until a final conviction and confiscation order are obtained abroad.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

See answer provided for 54, paragraph 1(a).

(b) Observations on the implementation of the article

18 USC § 981(b)(4) provides for the temporary restraint of assets on the basis of a foreign arrest or charge of a suspect or defendant for an offence that would give rise to forfeiture had the same offence been committed in the United States. Restraint may be ordered ex parte for up to 30 days with the possibility of extension.

Confiscated assets are managed by the U.S. Marshalls based on asset management rules. In-house businessmen within DOJ advise on the management of seized assets.

(c) Successes and good practices

United States law allows for the ex parte order of the temporary restraint of assets on the basis of a foreign arrest or charge of a suspect or defendant for an offence that would give rise to forfeiture if the same conduct constituted an offence giving rise to forfeiture under United States law.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effectuate its implementation.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

See answer above.

(b) Observations on the implementation of the article

The central authority of a foreign country may request assistance from the United States. Requests are received and processed by the central authority, the Office of International Affairs of the Criminal Division of the Department of Justice.

OIA reviews the foreign assistance request to ensure that legal requirements are met, the transmitted information is sufficient to provide the type of assistance sought, and there are no grounds for refusal. OIA will either proceed to gather the evidence requested or refer the request to another competent authority (i.e., a federal prosecutor or law enforcement agency) to gather the evidence or complete the steps necessary to provide the assistance. Once execution of the request is completed, OIA will respond to the requesting authority through the same channel used to make the request (i.e., through the requesting country's central authority or

other designated channel).

In addition to mutual legal assistance, assistance in identifying and tracing assets can be provided to other States on the basis of informal channels, such as police-to-police communication and information-sharing networks, in connection with non-compulsory measures.

It is recommended that the United States continue the practice whereby the Attorney General and the Secretary of the Treasury exercise discretion in a way that respects the binding obligations established under the Convention.

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effectuate its implementation.

(b) Observations on the implementation of the article

The United States can also obtain evidence on behalf of a foreign State through the application of compulsory measures under 18 USC § 3512.

Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effectuate its implementation.

(b) Observations on the implementation of the article

Requirements for mutual legal assistance requests are laid out in multilingual guidance material.

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effectuate its implementation.

In the absence of an applicable treaty, an MLA request can be executed, under U.S. domestic law, on the basis of comity and reciprocity. A treaty is needed, however, to provide assistance in restraining assets and obtaining tax information.

(b) Observations on the implementation of the article

Mutual legal assistance can be provided pursuant to a bilateral mutual legal assistance treaty or, in the absence of such a treaty, pursuant to the Convention or any other multilateral treaty, or on the basis of comity and reciprocity. Guidance for mutual legal assistance requests is laid out in multilingual materials. Where the level of effort necessary to execute a request is not proportional to the gravity of the offense, the United States may decline execution on proportionality grounds. Before declining assistance in such instances, the United States takes into account all aspects of the case in order to determine whether, for example, the case might be part of a larger scheme involving a greater aggregate loss amount or more serious harm. Other grounds for refusal to execute a request are set forth in mutual legal assistance treaties, the Convention and other multilateral treaties. Any measures must be in line with domestic law.

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States referred to its first cycle review for details regarding implementation of article 46.

(b) Observations on the implementation of the article

Copies of the laws that give effect to this article were furnished in the course of the first cycle review. Subsequent changes to these laws were furnished along with the self-assessment checklist for the second cycle review.

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effectuate its implementation.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

See answer above.

(b) Observations on the implementation of the article

The United States can provide mutual legal assistance based on bilateral mutual legal assistance treaties, pursuant to the Convention or any other multilateral treaty, or on the basis of comity and reciprocity. The United States has bilateral MLA treaties that pertain to more than 80 countries and territories and is an active party to several multilateral treaties..

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effectuate its implementation.

Where the level of effort necessary to execute a request is not proportional to the gravity of the offense, the United States will decline execution on proportionality grounds.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

See answer above

(b) Observations on the implementation of the article

The United States has the discretion to refuse assistance in cases deemed to be of minor significance, such as mutual legal assistance (MLA) requests requiring resources significantly disproportionate to the actual loss or harm. Before declining assistance in such situations, the United States will consider all aspects of the case, including the possibility that it may be part of a larger scheme with a greater overall loss or more serious harm. Other reasons for refusal to execute a request are specified in Mutual Legal Assistance Treaties (MLATs), the Convention, and other relevant multilateral treaties.

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effectuate its implementation.

Engaging in consultations with the States making requests is standard practice, including efforts to enhance incomplete mutual legal assistance requests by providing additional information or clarifications. Continuous communication channels are upheld between the Department of Justice and its international counterparts. Serving as the designated central authority for the United States responsible for mutual legal assistance in criminal matters, the Office of International Affairs strives to conduct regular consultations with its foreign partners, in particular its primary partners in mutual legal assistance treaties (MLATs) and, together with the Department of State, their primary partners on extradition treaties.

(b) Observations on the implementation of the article

Consultations with requesting States before and after formal requests are submitted, including with a view to supplementing incomplete mutual legal assistance requests with additional evidence or explanations, are standard procedure and open communication channels are maintained between the Department of Justice and its foreign counterparts. The Office of International Affairs regularly seeks consultations with foreign partners, in particular, its largest mutual legal assistance, and, with the Department of State, on matters pertaining to treaty and extradition treaty partners.

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of

Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effectuate its implementation.

(b) Observations on the implementation of the article

During any forfeiture procedures, third-party rights are protected. Notice is given to all parties with a potential interest to allow for possible claims to be brought.

Article 56. Special cooperation

Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Federal Rule of Criminal Procedure 6(e) contains a relevant exception to the usual restrictions surrounding information obtained by the grand jury, which is an investigative body used by prosecutors in a U.S. federal criminal investigations. The grand jury is the vehicle through which prosecutors obtain evidence and testimony, and the authority from which they must seek an indictment, based on probable case that a person has committed a federal crime in the federal judicial district where the grand jury is empaneled. To make foreign disclosures, without a foreign request, U.S. prosecutors must seek a judicial order. [Note that there is a similar procedure for disclosures when a foreign request has been made and the U.S. investigation has brought to light information that may be relevant to a foreign request.] *See generally* Federal Rule of Criminal Procedure 6(e)(3)(E)(iii) and (iv), through Egmont channels, bilaterally through agreements providing for mutual legal assistance or through informal channels.

With the appropriate authorization from a judge, the United States may employ an exception to the usual rule which requires that information obtained through the grand jury, such as witness testimony and financial records, be kept strictly secret and confidential. Under Rule 6(e), disclosures can be authorized to foreign authorities when they are necessary for the purposes of enforcement of foreign criminal law. *See* Federal Rule of Criminal Procedure 6(e)(3)(E)(iv). The exact language of the Rule provides that "the court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand jury matter . . . at the request of the [U.S.] government if it shows that the matter may disclose a violation of . . . foreign criminal law, as long as the disclosure us to an appropriate . . . foreign government official for the purpose of enforcing that [foreign] law."

(b) Observations on the implementation of the article

Disclosure of information to foreign authorities is possible on the basis of judicial orders (Federal Rules of Criminal Procedure 6(e)(3)(E)(iii) and (iv)), through Egmont Group channels, bilaterally through agreements providing for mutual legal assistance or through informal channels, such as direct police-to-police communication or networks such as the Camden Asset Recovery Inter-Agency Network and several other regional asset recovery inter-agency networks in which the United States participates or provides a supporting role.

Article 57. Return and disposal of assets

Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The asset forfeiture laws of the Unites States permit U.S. authorities substantial flexibility to dispose of confiscated property pursuant to, and consistent with, paragraphs 1 and 3 of Article 57. U.S. authorities have the authority to return confiscated assets to a victim of an offense giving rise to the forfeiture (which could potentially include a foreign government) pursuant to 18 U.S.C. §§ 981(e)(5) and (e)(6) and 982(b)(1) (via reference to 21 U.S.C. § 853(i)). U.S. authorities also have the authority to return confiscated assets to a foreign government that participated, directly or indirectly, in the forfeiture (which, depending on the facts of a given case, likely would include the requesting State Party), pursuant to 18 U.S.C. §§ 981(i) and 982(b)(1) (via reference to 21 U.S.C. §§ 853(i)(4) and 881(e)).

The United States considers itself bound by the provisions of UNCAC regarding asset recovery, including the mandatory return provisions of Article 57 and mutual legal assistance provisions of Article 46 and 55.

(b) Observations on the implementation of the article

The domestic asset recovery regime permits the transfer of confiscated assets as remission or restoration to a victim that has suffered a financial loss, including a requesting State (18 USC §§ 981(e)(6), 982(b)(1), 21 USC § 853(i)). Confiscated assets may further be shared with a foreign Government which has directly or indirectly participated or assisted in the seizure of criminal proceeds and/or their related forfeiture (18 USC §§ 981(i), 982(b)(1), 21 USC §§ 853(i)(4), 881(e)).

In practice, United States authorities usually opt for asset-sharing, which is possible on the basis of bilateral or multilateral asset-sharing agreements or treaties (18 USC § 981(i), 21 USC § 881(e)(1)(E), 31 USC § 9703(h)(2)). The United States may initiate processes to transfer even in the absence of a request from another State or the assistance of that State in the forfeiture proceedings.

All means of asset return are at the discretion of and must be approved by the Attorney General or the Secretary of the Treasury.

At the same time, the United States considers itself bound by the provisions of the Convention regarding asset recovery, including the mandatory return provisions of article 57 and the mutual legal assistance provisions of articles 46 and 55.

To facilitate asset return, during the country visit it was explained that close cooperation exists between the Department of Justice and the Department of State, regarding both policy matters and concrete cases. The State Department can establish contact with the foreign State.

Since 1989, more than $257 million in forfeited assets has been transferred to 47 countries from DOJ's fund. In recent years (fiscal years 2013-2015), DOJ has shared $19,714,313 with 18 countries. Since 1994, the Treasury has transferred more than $ 37 million to 29 countries.

It is recommended that the United States continue the practice whereby the Attorney General and the Secretary of the Treasury exercise discretion in a way that respects the binding obligations established under the Convention, in particular with regard to requests for asset return in cases of embezzlement or laundering of public funds.

Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The asset forfeiture laws of the Unites States permit U.S. authorities substantial flexibility to dispose of confiscated property pursuant to, and consistent with, paragraphs 1 and 3 of Article 57. U.S. authorities have the authority to return confiscated assets to a victim of an offense giving rise to the forfeiture (which could potentially include a foreign government) pursuant to 18 U.S.C. §§ 981(e)(5) and (e)(6) and 982(b)(1) (via reference to 21 U.S.C. § 853(i)). U.S. authorities also have the authority to transfer confiscated assets to a foreign government that participated, directly or indirectly, in the forfeiture (which, depending on the facts of a given case, likely would include the requesting State Party), pursuant to 18 U.S.C. §§ 981(i) and 982(b)(1) (via reference to 21 U.S.C. §§ 853(i)(4) and 881(e)).

(b) Observations on the implementation of the article

Please cf. observations under para 1.

Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The asset forfeiture laws of the Unites States permit U.S. authorities substantial flexibility to dispose of confiscated property pursuant to, and consistent with, paragraphs 1 and 3 of Article 57. U.S. authorities have the authority to return confiscated assets to a victim of an offense giving rise to the forfeiture (which could potentially include a foreign government) pursuant to 18 U.S.C. §§ 981(e)(5) and (e)(6) and 982(b)(1) (via reference to 21 U.S.C. § 853(i)). U.S. authorities also have the authority to return confiscated assets to a foreign government that participated, directly or indirectly, in the forfeiture (which, depending on the facts of a given case, likely would include the requesting State Party), pursuant to 18 U.S.C. §§ 981(i) and 982(b)(1) (via reference to 21 U.S.C. §§ 853(i)(4) and 881(e))

(b) Observations on the implementation of the article

Please cf. observations under para 1.

Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The asset forfeiture laws of the Unites States permit U.S. authorities substantial flexibility to dispose of confiscated property pursuant to, and consistent with, paragraphs 1 and 3 of Article 57. U.S. authorities have the authority to return confiscated assets to a victim of an offense giving rise to the forfeiture (which could potentially include a foreign government) pursuant to 18 U.S.C. §§ 981(e)(5) and (e)(6) and 982(b)(1) (via reference to 21 U.S.C. § 853(i)). U.S.

authorities also have the authority to share confiscated assets with a foreign government that participated, directly or indirectly, in the forfeiture (which, depending on the facts of a given case, likely would include the requesting State Party), pursuant to 18 U.S.C. §§ 981(i) and 982(b)(1) (via reference to 21 U.S.C. §§ 853(i)(4) and 881(e)).

Furthermore, once assets are finally forfeited by the United States, a victim, including, potentially, a state that qualifies as a victim, may utilize a legal process known as remission to seek compensation from the forfeited assets. The United States prioritizes victim compensation and an individual or entity may apply for remission under U.S. law if they can show, generally speaking, a pecuniary loss as a result of the crime leading to forfeiture.

(b) Observations on the implementation of the article

Please cf. observations under para 1.

Subparagraph 3 (c) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Disposition of forfeited assets to victims takes priority over other possible uses of federally forfeited assets. After all claims and victim payments, whether through remission or restoration, international asset sharing takes priority over any domestic sharing with state or local law enforcement agencies.

(b) Observations on the implementation of the article

Please cf. observations under para 1.

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Provisions for the payment of expenses of forfeiture include, 18 U.S.C. § 981(d) (via reference to provisions of the customs laws including 19 U.S.C. § 1613 and 18 U.S.C. 982(b)(1) (via

reference to 21 U.S.C. §§ 853(i) and 881(e)). Title 18 United States Code, section 981(i), also directs expenses of confiscation proceedings to be borne by the foreign government where assets are transferred in recognition of that government's assistance leading to confiscation pursuant to 18 U.S.C. § 981.

(b) Observations on the implementation of the article

The United States generally deducts expenses incurred in seizure or forfeiture proceedings (18 USC § 981(i)).

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

U.S. law generally permits the United States, on a case-by-case basis and depending upon the facts and circumstance of a given case, to conclude agreements or other mutually acceptable arrangements between governments. In addition, where assets are transferred to a foreign nation in recognition of that nation's assistance leading to the forfeiture, pursuant to 18 U.S.C. §§ 981(i) or 982(b)(1) (via reference to 21 U.S.C. §§ 853(i) and 881(e)), such transfers must be authorized pursuant to an international agreement.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

The United States has been successful in efforts to ensure that recovered assets are disposed of consistent with the aims of the U.S. Department of Justice and U.S. obligations under UNCAC. For instance, the U.S. Department of Justice transferred over $1 million in corruption proceeds to the Republic of Korea in connection with the Chun Doo Hwan matter. The United States also brought confiscation proceedings to recover millions of dollars' worth of assets allegedly derived through corruption involving Teodoro Nguema Obiang, the Vice President of Equatorial Guinea. In 2014, the United States entered into a settlement through which Obiang's $30 million Malibu mansion and other properties in the United States were liquidated. Under the agreement, approximately $20 million of the recovered funds will be designated to a charity to benefit the people of Equatorial Guinea, and $10.3 million has been forfeited to the

United States. The agreement ensures the confiscated funds will be disposed of in a manner that benefits the people of Equatorial Guinea. In another case, the United

States consented to the transfer of more than $115 million in recovered stolen assets to the BOTA Foundation, which was created by the governments of Kazakhstan, the United States, and Switzerland to dispose of these assets in a manner that directly benefitted the citizens of Kazakhstan who were harmed by public official corruption in that country. When funds are repatriated, it is crucial that they be transferred and administered in a public, transparent, and accountable manner in order to ensure that they benefit the people harmed by the abuse of office and to reinforce the anticorruption message from public awareness of successful asset

recovery actions.

(b) Observations on the implementation of the article

The United States has concluded numerous agreements and other mutually acceptable arrangements regarding the disposal of forfeited property.

Article 58. Financial intelligence unit

> *Article 58*
>
> *States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.*

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

Pursuant to 31 U.S.C. §310, the United States has established the Financial Crimes Enforcement Network (FinCEN) as the financial intelligence unit (FIU) for the United States. Section 310 establishes FinCEN's functions, including maintaining, collecting, processing, analysing, analysing, and disseminating financial and other information to competent authorities at the domestic and international levels.

Examples of the implementation of the provision, including related court or other cases, available statistics etc.:

FinCEN and other competent authorities cooperate, coordinate, and exchange financial intelligence and other information to combat financial crime and the financing of terrorism. FinCEN works closely with U.S. law enforcement agencies at the federal, state, local, and international levels. Multiple law enforcement agencies station liaisons at FinCEN to enhance coordination and cooperation. Law enforcement agencies also have access to FinCEN data that FinCEN collects from reporting entities. FinCEN works collaboratively with Suspicious Activity Report (SAR) Review Teams that exist in all 94 federal judicial districts and meet monthly to review SARs received in that judicial district. FinCEN has an extensive framework of memoranda of understanding (MOUs) to support information sharing across hundreds of state and federal law enforcement and U.S. supervisory agencies. FinCEN has executed more than 500 MOUs for inter-agency sharing of information and access to FinCEN's data.

(b) Observations on the implementation of the article

The Financial Crimes Enforcement Network (FinCEN) is the financial intelligence unit (FIU) for the United States. Its functions include maintaining, collecting, processing, analysing, analysing, and disseminating financial and other information to competent authorities at the domestic and international levels.

Article 59. Bilateral and multilateral agreements and arrangements

> *Article 59*
>
> *States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

With regard to this provision, the United States reported the following:

The United States has mutual legal assistance treaties with more than 80 countries and territories. Bilateral mutual legal assistance treaties, as well as cooperation under regional and multilateral conventions such as UNCAC, allow for and indeed mandate a broad range of assistance to be provided, included with regard to asset recovery. The United States considers these treaties first to facilitate and second to enhance effectiveness of international cooperation.

(b) Observations on the implementation of the article

While United States legislation allows for the provision of mutual legal assistance in the absence of a treaty, the United States has bilateral mutual legal assistance treaties with over 80 countries and territories and is an active party to several multilateral treaties.