

Annex [Note verbale reference: CU 2022/264]

1. The secretariat has prepared the following questionnaire as a guide that States parties may wish to use to provide relevant information in line with paragraphs 22 to 24 of resolution 9/1, entitled “Sharm el-Sheikh declaration on strengthening international cooperation in the prevention of and fight against corruption during times of emergencies and crisis response and recovery”, including the provision of information on good practices and challenges concerning international cooperation to further prevent, identify, investigate and prosecute corruption during times of emergencies and crisis response and recovery.
2. States parties may wish to take a broad view of emergencies and crisis response and recovery when responding to this questionnaire. Emergencies and crisis response and recovery may include humanitarian emergencies, natural disasters, conflict and post-conflict contexts, as well as health emergencies such as the COVID-19 pandemic, among others.
3. Collecting the information for this questionnaire may require cooperation by several different agencies/authorities. States parties may wish to send the questionnaire to agencies/authorities particularly involved in response and recovery efforts during times of emergencies, depending on their national system, as it calls for information on preventive anti-corruption measures, law enforcement and international cooperation. Such agencies/authorities may include:
 - Anti-corruption bodies, supreme audit institutions and other oversight bodies, and relevant entities with mandates to prevent and counter corruption;
 - National procurement agencies;
 - National law enforcement authorities;
 - National competent authorities responsible for international cooperation in criminal matters;
 - Development agencies.

Questionnaire

Contact Information

Please provide contact details for potential follow-up questions. Contact details will be treated confidentially.

Country: United States of American

Please describe (cite and summarize) good practices your country has taken (or is planning to take, together with the related appropriate time frame) concerning international cooperation to further prevent, identify, investigate and prosecute corruption during times of emergencies and crisis response and recovery.

States parties are invited to provide information on experiences, good practices and challenges concerning the following:

I. Understanding corruption risks and typologies during times of emergencies and crisis response and recovery, including transnational elements

1. Has your government assessed corruption risks during emergencies or crisis response and recovery, either through formal risk assessments or other informal means? Please provide details, such as key findings and mitigation plans. Please describe whether any other (existing) risk assessment has been carried out that is relevant to the emergency response (such as sectoral risk assessments in procurement, healthcare, infrastructure, etc) and provide details.

The COVID-19 pandemic represents one of the most significant emergencies the United States has faced, and as such, is a good lens in which to answer this questionnaire. Since the start of the pandemic, the U.S. government has conducted and publicly released numerous reports assessing challenges that may impact the effectiveness of the government's response. Among the challenges identified in these assessments is the increased risk for fraud, waste, and abuse. Many of these reports are publicly available on the website of the Pandemic Response Accountability Committee (PRAC)¹, an independent oversight committee within the U.S. Council of the Inspectors General on Integrity and Efficiency that was established at the start of the pandemic. Below is an illustrative sample of some of the reports released that touch on the topic of preventing and combatting waste, abuse, and fraud during the pandemic response.

Top Challenges Facing Federal Agencies: COVID-19 Emergency Relief and Response Efforts²

This report was drafted by the PRAC. It consolidates and provides insight into the most frequently reported challenges for the agencies involved in implementing programs under the Coronavirus Preparedness and Response

¹ Available at <https://www.pandemicoversight.gov/oversight>

² Available at: <https://www.oversight.gov/report/prac/top-challenges-facing-federal-agencies-covid-19-emergency-relief-and-response-efforts>

Supplemental Appropriations Act, Families First Coronavirus Response Act, Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, and Paycheck Protection Program (PPP) and Health Care Enhancement Act. Based on the PRAC's review of submissions by 37 Offices of Inspectors General (OIGs) overseeing agencies involved in the pandemic response, the report reflects a wide range of challenges, including many related to specific agency programs as well as areas of common concern among agencies of different sizes and with disparate agency missions. Among these common areas are challenges related to the financial management of CARES Act and other funds, and grant management. On the topic of financial management, many OIGs noted that key areas of concern include both the need for accurate information concerning pandemic-related spending and the significant amount of money federal agencies may lose as the result of improper payments. Several OIGs also identified grant management as a separate performance and management challenge for their agencies even before the pandemic, citing the increasing number, size, and complexity of grants. According to these OIGs, these factors make it more difficult for agencies to ensure grantees use funds solely for authorized purposes and to maintain documentation to support their spending, as well as to measure grant performance.

COVID-19 Expenditures — Lessons Learned Regarding Awareness of Potential Fraud, Waste, and Abuse Risk³

In this memorandum to the Secretary of Defense, the Defense Department's OIG notes the Department must move quickly to use the COVID-19 response funds while also avoiding fraud, waste, and abuse. The memo notes fraudsters have already begun targeting these funds, and Defense Department personnel need to be on the lookout for fraud and waste and be proactive in their efforts to thwart these activities before they occur. The document provides best practices and lessons learned that were identified during previous oversight work. It recommends the Defense Department should seek to focus on, among other things, contractor vetting, oversight and surveillance, and financial management. For example, the report stresses contracting officials should maintain complete, consistent, and accurate contract files and accounting records to reduce the potential for improper use of CARES Act funding and violations of the Anti-deficiency Act and to minimize the number of problem disbursements.

In addition, the Government Accountability Office (GAO), which as the U.S. Supreme Audit Institution, provides Congress and federal agencies with objective, reliable information to help the government work more efficiently, is issuing a series of reports related to the federal government's response to the COVID-19 pandemic.⁴ Below is

³ Available at: <https://www.oversight.gov/report/dod/covid-19-expenditures-%E2%80%94-lessons-learned-regarding-awareness-potential-fraud-waste-and>)

⁴ Available at https://www.gao.gov/coronavirus/newest_covid-related_reports

an illustrative sample of some of the reports released that touch on the topic of preventing and combatting waste, abuse, and fraud during the pandemic response.

*GAO: COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*⁵

Among the report's many findings, GAO noted the increased risk of fraud due to the large number of payments U.S. agencies are processing. Recognizing these challenges, GAO reaffirmed the importance of establishing transparency and accountability mechanisms early on to provide greater safeguards and reasonable assurance that federal funds reach the intended people, are used for the intended purposes, help ensure program integrity, and address fraud risks. GAO also provided several recommendations for agencies to consider in addressing these challenges. One such recommendation was for the Administrator of the Small Business Administration (SBA) to develop and implement plans to identify and respond to risks in the Paycheck Protection Program to ensure program integrity, achieve program effectiveness, and address potential fraud, including in loans of \$2 million or less. One of the report's appendices discusses fraud risk management in the context of the pandemic, highlighting emergency-related considerations and adjustments.

In 2022, the United States Department of the Treasury issued the National Money Laundering Risk Assessment (NMLRA). The NMLRA identifies the most significant money laundering threats, vulnerabilities, and risks faced by the United States. Among other sources of information, it is based on a review of federal and state public sector analysis, enforcement actions, and guidance, as well as interviews with Treasury staff, intelligence analysts, law enforcement agents, and prosecutors. The NMLRA uses all available information to identify the current money laundering environment within the United States. Relevant component agencies, bureaus, and offices of the Treasury, the U.S. Department of Justice (DOJ), and DHS, as well as U.S. regulatory agencies, participate in the development of NMLRA. *See, e.g.,* <https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf>

Also, in 2022, The U.S. Treasury Department issued the United States' [National Strategy for Combating Terrorist and Other Illicit Financing \(treasury.gov\)](https://www.treasury.gov/press-releases/Pages/20220727). The 2022 Strategy addresses the key risks from the 2022 National Money Laundering, Terrorist Financing, and Proliferation Financing risk assessments and reflects the complex challenges posed by a world remade by the Covid-19 pandemic, the increasing digitization of financial services, and rising levels of corruption and fraud.

U.S. law enforcement agencies have also conducted a number of assessments on topics that are relevant to preventing corruption, fraud, and financial crimes in the pandemic response. For example, disaster-relief and other emergency projects can create opportunities for vendors to violate the antitrust laws by conspiring to fix prices, rig bids, or allocate markets. In the context of emergency disaster relief, the U.S. Department of Justice has published a resource entitled *Preventing and Detecting Bid*

⁵ Available at: <https://www.gao.gov/products/gao-20-625>

Rigging, Price Fixing, and Market Allocation in Post-Disaster Rebuilding Projects: an Antitrust Primer for Agents and Procurement Officials. The [primer](#) contains an overview of the federal antitrust laws and the penalties that may be imposed for their violation. It describes the most common antitrust violations and outlines those conditions and events that may indicate anticompetitive collusion so that officials might better identify and investigate suspicious activity.

The Federal Bureau of Investigations (FBI) has produced numerous threat assessment and public service announcements since the pandemic's inception. For example, the FBI has posted the following assessments on their www.fbi.gov website, in addition to numerous local and national press release and appearances: *Staying Safe During the Pandemic; FBI Warns of Money Mule Schemes Exploiting the COVID-19 Pandemic; FBI Warns Healthcare Professionals of Increased Potential for Fraudulent Sales of COVID-19-Related Medical Equipment; FBI Warns of Potential Fraud in Antibody Testing for COVID-19; FBI Warns of Advance Fee and BEC Schemes Related to Procurement of PPE and Other Supplies During COVID-19 Pandemic; Protect Your Wallet – and Your Health – from Pandemic Scammers; and FBI Sees Spike in Fraudulent Unemployment Insurance Claims Filed Using Stolen Identities.*

Additionally, prior to the pandemic, in 2015, GAO released *A Framework for Managing Fraud Risks in Federal Programs*.⁶ GAO's Framework provides a comprehensive set of leading practices for federal agency managers to develop or enhance efforts to combat fraud in a strategic, risk-based manner. The leading practices of the Framework are also required to have been incorporated into Office of Management and Budget guidelines and agency controls under the Fraud Reduction and Data Analytics Act of 2015 and its successor provisions in the Payment Integrity Information Act of 2019. Since the issuance of the Framework, GAO has issued a number of reports in which it assessed the extent to which federal programs are adhering to the leading practices for fraud risk management.⁷ Beyond those reports that applied the Framework to specific programs, GAO has issued numerous other reports examining risks in emergency scenarios based on its audit and investigative work.⁸ Finally, every two years, GAO calls attention to agency and program areas that are high risk due to their vulnerabilities to fraud, waste, abuse, or mismanagement or are in need to transformation.⁹ There are 35 areas on the high risk list currently.

⁶ Available at: <https://www.gao.gov/products/GAO-15-593SP>.

⁷ See for example *Medicare and Medicaid: CMS Needs to Fully Align Its Antifraud Efforts with the Fraud Risk Framework*, GAO-18-88; *Low-Income Housing Tax Credit: Improved Data and Oversight Would Strengthen Cost Assessment and Fraud Risk Management* GAO-18-637; *Supplemental Nutrition Assistance Program: Disseminating Information on Successful Use of Data Analytics Could Help States Manage Fraud Risks* GAO-19-115; and *Identity Theft: IRS Needs to Better Assess the Risks of Refund Fraud on Business-Related Returns* GAO-20-174.

⁸ See for example *Hurricane Sandy: FEMA Has Improved Disaster Aid Verification but Could Act to Further Limit Improper Assistance* GAO-15-15 and *2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Recovery Challenges*, GAO-18-472.

⁹ See <https://www.gao.gov/highrisk/overview>.

2. Please list the main typologies of corruption (corruption risks) you have identified in your country's emergency or crisis responses and recovery. You may select from the list below, and add any additional risks not listed:

Public Procurement

- Bribery of procurement officials
- Excessive use of non-competitive bidding procedures, including by single or limited source tendering, with limited safeguards
- Improper application of emergency procurement procedures allowing for expedited delivery of goods and services
- Bid-rigging (e.g. use of inflated prices)

Misappropriation of Emergency Relief Funds

- Non-eligible beneficiaries circumventing rules and regulations, including through bribes, to obtain access to relief and support
- Diversion of donations away from intended beneficiaries
- Exploiting international financial assistance related to emergency relief or other types of support (such as donor funding or technical assistance)
- Embezzlement of profit gained from the sale and distribution of emergency supplies
- Manipulation and inflation of claims for economic relief
- Fraudulent billing for the provision of goods and services
- Diversion of donated equipment/supplies to the black market
- Companies hoarding/not discharging support received from the government

Conflicts of Interest

- Conflicts of interest between suppliers and authorities in procurement processes
- Political appointees or persons entrusted with prominent public functions involved in, or the beneficial owners of, companies bailed out by the government or companies involved in procurement processes
- Support packages distributed according to ethnicity and/or political affiliation

Misuse of Information

- Use of social media to spread misinformation, undertake fraudulent activities such as phishing, cyber-criminal fraud

Inadequate Reporting/Protection Mechanisms

- Inadequate reporting/protection mechanisms for whistle-blowers and witnesses
- Restricted ability to report potential corrupt activities

Other Corruption Risks

- Extensive use of government emergency powers and regulations, with insufficient controls, consultations and/or guidance
- Provision of counterfeit good and supplies
- Fraudulent or illicit production of goods, including research
- Impeded anti-corruption enforcement actions during emergency and crisis responses due to corruption
- Impeded provision of international cooperation (e.g. mutual legal assistance) due to the emergency or crisis due to corruption
- Links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering

Please list any other typologies or risks:

Please see the following advisories issued by the United States Financial Intelligence Unit, FINCEN, regarding presently identified corruption and financial fraud risks:

<https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2019-a002>;

<https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-fincen-encourages-financial-institutions>;

<https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-provides-further-information-financial>;

<https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2020-a002>;

https://www.fincen.gov/sites/default/files/shared/May_18_Notice_Related_to_COVID-19.pdf;

<https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2020-a003>;

<https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2020-a005> ;

<https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2020-a007>;

<https://www.fincen.gov/sites/default/files/shared/COVID-19%20Vaccine%20Notice%20508.pdf>;

<https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2021-a001>;

<https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2021-a002>;

<https://www.fincen.gov/sites/default/files/shared/Consolidated%20COVID-19%20Notice%20508%20Final.pdf>;

https://www.fincen.gov/sites/default/files/2022-03/FinCEN%20Alert%20Russian%20Elites%20High%20Value%20Assets_508%20FINAL.pdf;

On April 14, 2022, FinCEN issued an advisory on kleptocracy and foreign public corruption, urging financial institutions to focus their efforts on detecting the proceeds of foreign public corruption—a priority for the U.S. Government as it continues to implement the U.S. Strategy on Countering Corruption. The advisory provides typologies and potential indicators of kleptocracy and other forms of foreign public corruption, namely bribery, embezzlement, extortion, and the misappropriation of public assets.

See, <https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2022-a001>

Please also note the National Money Laundering Risk Assessment, *see*, <https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf> and [National Strategy for Combating Terrorist and Other Illicit Financing \(treasury.gov\)](https://www.treasury.gov/press-releases/Pages/nmcl20220127.aspx).

3. Did any of the corruption risks (typologies) identified in question 2 entail an international element? For example, fraudulent or collusive procurement practices involving foreign or international bidders or suppliers, donors or international financial institutions; aspects of transnational bribery; diversion of resources, assets or persons across borders)? Please be as specific as possible and provide details and examples. If the information is sensitive, please describe the typology or give anonymized examples.

Yes. Please reference the response to Question Nos. I.1 through 3. Please also see the following case examples illustrating the above-described risks.

[California Firm and Owner Sentenced for COVID-19 Fraud Scheme | OPA | Department of Justice](#)

[Nigerian National Sentenced to Eight Years in Federal Prison for an Elder Fraud Scheme and Unrelated Cares Act Covid-19 Unemployment Fraud Scheme | USAO-MD | Department of Justice](#)

[Nigerian citizen pleads guilty to COVID-19 unemployment fraud on Washington and 17 other states | USAO-WDWA | Department of Justice](#)

[Bergen County Company Sentenced for Price Gouging KN95 Masks During COVID-19 Pandemic | USAO-NJ | Department of Justice](#)

[Brooklyn Company Admits Price Gouging KN95 Masks During COVID-19 Pandemic | USAO-NJ | Department of Justice](#)

[Kwong Yau Lam Sentenced for Selling Illegal Products Claiming to Protect Against Viruses | USAO-GU | Department of Justice](#)

4. Please describe whether the corruption risks identified in question 2 appear to be longer-term trends. Have they required new or strengthened anti-corruption actions as a result? If so, please elaborate.

Please see the response to I.2.

5. Please describe any measures taken to support the private sector in identifying and mitigating corruption risks. This may include particular risks associated with supply chains and procurement processes.

Please see the response to I. 2.

6. Please provide an overview of efforts taken to understand the particular impact corruption in times of emergencies and crisis response and recovery may have on women and marginalized and vulnerable groups. If possible, please include reference to any research, analyses or assessments undertaken in this regard.

The United States does not have information to provide at this time.

7. Is there a greater need for international cooperation in responding to corruption risks in the context of emergency and crisis responses than in other situations? Why, or why not?

Well before the global spread of COVID-19, the United States encouraged the electronic transmission, via e-mail, of mutual legal assistance (MLA) requests and responsive materials maintained electronically (e.g., business and bank records), but a number of our foreign partners insisted on sending MLA requests, as well as receiving all responses, in paper. During the COVID-19 crisis, where there was

limited in-office staffing and other restrictions, certain foreign partners recognized the great value in cooperating to the fullest extent possible via e-mail. Because the United States had systems and procedures in place for electronic handling of requests, we were well prepared to transition to telework status. As cooperation continues in this new environment, we hope to advance with our foreign partners to securely make full use of 21st Century digital technology in MLA in a manner that will enhance MLA practice beyond the COVID-19 pandemic.

In addition, the United States has worked with several foreign partners to accept, on a reciprocal basis, and where acceptable under applicable treaties and domestic law, electronic signatures on certifications for extraditions and on MLA requests. This has enabled much more efficiency, while so many people are working from home, in preparing and transmitting extradition packages and MLAT requests.

II. Addressing corruption during times of emergencies and crisis response and recovery at the domestic level

1. Please describe the anti-corruption controls, safeguards and/or measures put in place to address the corruption risks identified above in question 2. Please highlight any special measures that may have been introduced in response to a particular emergency, and whether those measures may be useful for future crises. These may include anti-corruption task forces, the use of real-time audits, transparency portals and specific reporting channels for reporting corruption in the context of emergencies, including in the areas below.

In addition to actively implementing its existing anticorruption framework, the U.S. government put in place a number of specific measures related to the COVID-19 pandemic responses. While specific to the COVID-19 crisis, these measures represent good practices for addressing corruption during any time of emergency or crisis. Below is an illustrative, rather than comprehensive, list of such measures.

Pandemic Response Accountability Committee (PRAC)

In March 2020, the U.S. Congress passed the CARES Act and three related pieces of emergency legislation to provide approximately trillions of dollars in economic relief to individual citizens, loans for businesses, support for hospitals and other medical providers, and economic relief for impacted industries. In addition to the economic relief funding, the CARES Act created the PRAC. The purpose of the PRAC is to “promote transparency and conduct and support oversight” of the government’s coronavirus response to “prevent and detect fraud, waste, abuse, and mismanagement” and “mitigate major risks that cut across program and agency boundaries.” Composed of federal Offices of Inspectors General (OIGs), the PRAC is not a stand-alone organization, but rather a Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), an independent entity established within the executive branch by the Inspector General Act of 1978, as amended. The CIGIE includes

the 75 statutorily created federal Inspectors General with a mission to address integrity, economy, and effectiveness issues that transcend individual government agencies.

The CARES Act specifically identified Inspectors General from 9 agencies as members of the PRAC but provides that the CIGIE Chair may designate additional Inspectors General to serve on the Committee from any agency that receives funds or is otherwise involved in the government's response to the coronavirus pandemic. Consistent with the CARES Act, the Inspectors General serving on the Committee will continue to perform their Inspector General duties. At present, the PRAC is composed of 21 Inspectors General, including the recently created Special Inspector General for Pandemic Recovery. The PRAC currently oversees more than \$5 trillion in pandemic relief programs and spending.

On the PRAC website, members of the public can find reports, investigative press releases, and recommendations published by the individual OIGs and the PRAC. The public can also track how federal funds appropriated for pandemic response are being spent. This includes information on contract spending for pandemic relief broken down by individual states. The website also provides information on potential fraud risks, and provides a secure channel for individuals to report waste, abuse, and fraud.

U.S. Government Accountability Office (GAO)

The CARES Act also includes a provision for GAO to conduct monitoring and oversight of the use of funds made available to prepare for, respond to, and recover from the COVID-19 pandemic. GAO is to report on, among other things, the pandemic's effects on the public health, economy, and public and private institutions of the United States, including the federal government's public health and homeland security efforts. Additionally, GAO is to report on loans, loan guarantees, and other investments and to conduct a comprehensive audit and review of charges made to federal contracts pursuant to the CARES Act, among other things. The CARES Act includes a provision for GAO to submit a report to Congress within 90 days of enactment on its ongoing monitoring and oversight efforts related to the COVID-19 pandemic, with subsequent reports due every 60 days.

Law Enforcement COVID-19 Working Groups

On March 16, 2020, the U.S. Attorney General issued a memorandum on fraud in connection with COVID-19. Within days of this memo, the FBI established a COVID-19 Working Group comprised of representatives from all 56 FBI field offices and 500 total participants from the Department of Justice (DOJ) and FBI to combat the criminals undermining our nation during this crisis. The FBI also formed a PPP Fraud Working Group in coordination with the DOJ's Fraud

Section and the Small Business Administration OIG. Through the efforts of the FBI field offices, the PPP Working Group, and DOJ's Fraud Section hundreds of defendants have been charged with criminal offenses based on fraud schemes connected to the COVID-19 pandemic. These cases involve attempts to obtain over hundreds of millions of dollars from the U.S. government and unsuspecting individuals through fraud. These investigations involve bank insiders, previously convicted felons, the use of dormant or cash businesses, and identity theft.

Building off prior investigations of antitrust crimes affecting public funds and government victims, in November 2019, DOJ launched a Strike Force focused on collusion affecting public procurement.¹⁰ The Procurement Collusion Strike Force (PCSF) is an interagency partnership of law enforcement personnel and prosecutors from the Antitrust Division and 13 U.S. Attorneys' Offices leading the national fight against criminal antitrust violations and other crimes affecting public procurement. The problem the PCSF seeks to address is a real one, which is particularly acute amid emergency procurement. According to the Organization for Economic Cooperation and Development (OECD), eliminating bid rigging could help reduce procurement costs by 20% or more.¹¹ To address that problem, the PCSF has two core objectives. The first is to deter and prevent antitrust and related crimes on the front end of the procurement process through outreach and training. The second objective is to effectively detect, investigate, and prosecute crimes that do occur through better coordination and partnership in the law enforcement and inspector general communities. The DOJ introduced the PCSF model to the global law enforcement community at the virtual meeting of the OECD this spring and looks forward to continue sharing lessons learned from the PCSF and best practices with enforcers worldwide.¹²

¹⁰ Press Release, U.S. Dep't of Justice, *Justice Dep't Announces Procurement Collusion Strike Force: a Coordinated National Response to Combat Antitrust Crimes and Related Schemes in Government Procurement, Grant and Program Funding* (Nov. 5, 2019), available at: <https://www.justice.gov/opa/pr/justice-department-announces-procurement-collusion-strike-force-coordinated-national-response>.

¹¹ See, e.g., DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *EX OFFICIO CARTEL INVESTIGATIONS AND THE USE OF SCREENS TO DETECT CARTELS*, at 212 (2013), <http://www.oecd.org/daf/competition/exofficio-cartel-investigation-2013.pdf>.

¹² Press Release, U.S. Dep't of Justice, *Assistant Att'y Gen Makan Delrahim Presents Procurement Collusion Strike Force to The International Competition Community* (June 16, 2020), available at: <https://www.justice.gov/opa/pr/assistant-attorney-general-makan-delrahim-presents-procurement-collusion-strike-force> ("We hope the Strike Force can serve as a model for other countries looking for innovative ways to more effectively fight bid rigging and other anticompetitive schemes that impact public procurement, and cheat taxpayers, all over the world.").

Public procurement and the management of public finances

2. Please describe measures taken to develop and/or further strengthen accountability and transparency in public procurement during times of emergencies and crisis response and recovery. These may include:
- The development of specific guidelines, circulars or memorandums for procurement in emergency contexts;
 - The development of new codes of conduct or guidelines for procurement personnel during times of emergencies and crisis response and recovery;
 - Requirements to disclose potential and real conflicts of interest;
 - Reforms of legal, regulatory and policy frameworks governing public procurement;
 - Requirements to collect and publish the beneficial ownership information of entities contracting with the government;
 - Requirements to cross-check information available on the ultimate beneficial owners of companies involved in procurement processes;
 - Publication of information on the whole procurement cycle, from tender to delivery (including type and amount of contract, reference information for the awarded company, beneficial ownership information, validation of delivery, etc.);
 - Specific labels or “tags” for procurement contracts to facilitate the monitoring of contracts associated with a particular emergency or crisis;
 - Measures to ensure procurement in emergency contexts have appropriate oversight and sanctions, including the potential disqualification of companies;
 - Measures to help ensure that compliance programmes and safeguards are in place for bidders;
 - The use of online portals that afford opportunities to track procurement contracts through the whole procurement cycle;
 - Feedback mechanisms for monitoring by groups outside the public sector, such as civil society organizations.

The information outlined below are meant to provide an illustrative, rather than comprehensive, overview of such measures.

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. However, federal law and regulation provide for a number of streamlined processes for obtaining competition. These authorities include the ability to award task and delivery order contracts to multiple awardees through full and open competition who then compete against one another for delivery orders or tasks under highly streamlined processes when requirements arise. Another authority allows agencies to transact using fewer compliance requirements under the “simplified acquisition threshold” (currently \$250,000) and to use streamlined procedures when buying commercial items up to \$7 million. In addition, agencies are allowed to make sole source purchases on the open market using government purchase cards (credit cards) for very small transactions under \$10,000, known as “micro-purchases.”

U.S. procurement regulations do allow for flexibility for emergency acquisition.¹³ These flexibilities allow for, inter alia, the waiver of full and open competition, the ability for agencies to enforce qualification requirements when an emergency exists, and solicitation from a single source. Additional flexibilities are available for emergency or major disaster declarations.

One particularly important U.S. federal agency during emergencies is the Federal Emergency Management Agency (FEMA). FEMA provides financial assistance to states, territories, tribes, local governments, nonprofits, institutions of higher education, and other non-Federal entities. All FEMA grant programs are subject to the Federal procurement standards.¹⁴ States are required to follow their own procurement procedures as well as the Federal requirements for procurement of recovered materials and inclusion of required contract provisions.¹⁵ For all other types of entities, often referred to as “non-state entities,” Federal regulations establish requirements for the exigency or emergency exception that permit the use of noncompetitive procurements, frequently referred to as “sole-source contracting.”

As noted above, federal regulations allow for noncompetitive procurements under certain circumstances, including when a non-state entity determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation. This represents an exception to requirements for full and open competition. FEMA approval is not required for use of noncompetitive procurements under the emergency or exigency exception; however, the non-state entity must document its justification for using noncompetitive procurements and must still comply with other procurement requirements and ensure that costs are reasonable. When referring to procurement activity, FEMA defines both exigency and emergency as situations that demand immediate aid or action. The difference between the two is that, in the case of an exigency, there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the non-state entity, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.

¹³ See Federal Acquisition Regulation subpart 18

¹⁴ See 2 C.F.R. §§ 200.317 – 200.326

¹⁵ See per 2 C.F.R. §§ 200.317, 200.322, and 200.326

In the case of an emergency, a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

Use of the public exigency or emergency exception is only permissible during the actual exigent or emergency circumstances. Exigency or emergency circumstances will vary for each incident, making it difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. Exigent or emergency circumstances may exist for two days, two weeks, two months, or even longer in some cases. Non-state entities must ensure that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in effect at the time of procurement. Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, non-state entities should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.

To ensure procurement transparency, the United States also provides the public with information on all contract awards through the Federal Procurement Data System (FPDS), which is the authoritative source for federal contracts data. The Federal Acquisition Regulation requires agencies to report contract awards to the FPDS within three days of awards with exceptions for contracts awarded during an emergency and other limited cases. The Department of Defense data are delayed for 90 days due to operational considerations. When an emergency is declared, contracts issued under the emergency designation are identified using a National Interest Action (NIA) code. These data are highlighted through a report published publicly on FPDS that details all the contracts associated with the particular emergency. The public availability of these data provides opportunity for multiple stakeholders, including agency Inspectors General, Congressional oversight committees, the Government Accountability Office, non-government organizations, business groups, and others with the ability to monitor contract activity during any public emergency. In addition to the publicly available information for contracts, information is also available on grants via [USASpending.gov](https://www.usaspending.gov). Users interested in more detail than are publicly available can request additional documents via a Freedom of Information Act request.

3. Please highlight 2-3 good practices and challenges faced when developing, implementing and/or monitoring the measures you have identified in question 2.

In accordance with the Office of Management and Budget's Memorandum M-20-21, all financial information that agencies are required to report concerning their disposition of CARES Act and other supplemental COVID-19 appropriated funds is publicly available on [USASpending.gov](https://www.usaspending.gov). The COVID-19 Contract Obligation Tracking Dashboard – located on [USASpending.gov](https://www.usaspending.gov) - allows any member of the public the ability to understand how agencies are spending a large portion of federal funds. The Dashboard is a visual display of the total Emergency Acquisitions spending through different views including

filters for Government-Wide Categories, Sub-Categories, Contracting Agencies, Contract Vehicles, Small Business Socio-economic categories, and more

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

4. Were internal audit systems, real-time audit mechanisms and/or other mechanisms used to help monitor and oversee the management of public resources during times of emergencies and crisis response and recovery? If so, please describe. Please provide any information on good practices and/or lessons learned.

U.S. law requires 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. As referenced before, government spending is available at USAspending.gov. Data for this website is uploaded directly from more than a hundred federal agencies' financial systems. Data is also pulled or derived from other government systems. For example, contract award data is pulled into USAspending.gov daily from the Federal Procurement Data System Next Generation (FPDS-NG), which is the system of record for federal procurement data; Financial Assistance award data is loaded in from the Financial Assistance Broker Submission system (FABS). In the end, more than 400 points of data are collected. Federal agencies submit contract, grant, loan, direct payment, and other award data at least twice a month to be published on USAspending.gov. Federal agencies upload data from their financial systems and link it to the award data quarterly. This quarterly data must be certified by the agency's Senior Accountable Official before it is displayed on USAspending.gov. Effective for the June 2020 reporting period, agencies with COVID-19 relief funding were required to submit their account data to the Treasury DATA Act Broker on a monthly basis. This requirement affects most agencies that submit regular financial reports to USAspending.gov. Beginning in Fiscal Year 2022 Quarter 1, the remaining agencies must report on a monthly basis rather than on their current quarterly schedule. New or updated data appear on USAspending.gov the day after they are submitted (i.e., published) by the agency. This ensures up-to-date spending information is available for public review and oversight.

5. Please describe what measures or initiatives could be used/have been used to help ensure transparency in the allocation, use, distribution and management of the national budget during times of emergencies and crisis response and recovery. These may include dedicated budget lines, measures to present budget items, public hearings or rendering such information accessible to the public.

In addition to the provisions outlined in questions 13 and 14, the U.S. government-hosted website “Oversight.gov” also strives to promote transparency. This website was created by the U.S. Council of the Inspectors General on Integrity and Efficiency (CIGIE) to consolidate in one place all public reports from Federal Inspectors General (IGs) in order to improve the public’s access to independent and authoritative information about the Federal Government. The site includes a publicly accessible, text searchable repository of reports published by IGs. The public can find the most recently posted IG reports as well as reports that are “trending,” which are the reports most often viewed in the last seven days. The public can also find useful information on government oversight on the website of the Government Accountability Office (GAO). On this website, the public can find recent reports conducted by the GAO as well as testimony from GAO officials. The website allows visitors to search by topic and by reviewed agency. The website also provides information on decisions issued by GAO regarding federal bid protests, appropriations law, and other legal matters.

In terms of legislative transparency, except when closed sessions are ordered for reasons of secrecy, floor proceedings are open to the public, are televised, and are available to watch via webcast. Further, on all days where Congress is in session, a substantially verbatim report of proceedings is published in the Congressional Record. The results of votes are announced in real time via television and webcast. After the fact, records of votes for each piece of legislation, and by each Senator or House Member, are publicly available on the Senate or House websites.

Inter-institutional coordination at the national level

6. Please outline measures which could be taken or have been taken to enhance coordination among institutions at the national level involved in response and recovery efforts, such as Memorandums of Understanding, data sharing agreements, standard operating procedures or other formal and informal mechanisms that enable institutions to share information and respond in a coordinated manner to corruption risks in the context of emergencies.

The information outlined below are meant to provide an illustrative, rather than comprehensive, overview of such measures.

PRAC’s Fraud Task Force serves as a resource for the IG community by surging investigative resources into areas with the greatest need: pandemic loan fraud. It has 34 agents from nine OIGs who have been detailed to work on Task Force cases. These agents are located around the country and are working cases that would otherwise go unaddressed due to the scale of the fraud we are seeing. The objective of the PRAC Task Force is to harness the expertise of the oversight community and attack this problem with every tool available: criminal, civil, forfeitures of money and property,

suspension and debarments. The PRAC Fraud Task Force works closely with other initiatives to combat pandemic fraud such as the Department of Justice COVID-19 Fraud Enforcement Task Force. The Pandemic Analytics Center of Excellence provides investigative support to the Task Force, flagging anomalies or potential leads in pandemic relief data.

It should also be noted that prior to the COVID-19 pandemic, the Department of Justice established the Procurement Collusion Strike Force (PCSF), which is an interagency partnership comprised of prosecutors from the Antitrust Division, prosecutors from 13 U.S. Attorneys' Offices, and the FBI, the Department of Defense Office of Inspector General, the U.S. Postal Service Office of Inspector General, and other partner federal Offices of Inspector General. The PCSF aims to deter, detect, investigate, and prosecute antitrust crimes and related fraudulent schemes in government procurement, grant, and program funding. Since the onset of the COVID-19 pandemic, the PCSF has taken a proactive approach to identifying criminal actors who seek to exploit the pandemic to suppress or eliminate competition for relief or recovery contracts.

Transparency measures, including access to information

7. Does the government have specific measures in place to identify individuals who may be involved in, or who help facilitate, corrupt acts? Such measures may include requirements to disclose beneficial ownership information and requirements to make such information accessible to law enforcement or other authorities. For example, information contained in beneficial ownership registries or information contained in open tender portals may be used by supreme audit institutions and other oversight bodies to audit, and inform, response and recovery measures.

While not specifically targeting emergencies and crises, in December 2021, the U.S. Financial Intelligence Unit – the Financial Crimes Enforcement Network (FinCEN) - issued a Notice of Proposed Rulemaking (NPRM) to implement the beneficial ownership information reporting provisions of the Corporate Transparency Act (CTA). The proposed rule is designed to protect the U.S. financial system from illicit use and impede bad actors from abusing legal entities, like shell companies, to conceal proceeds of corrupt and criminal acts. The proposed rule addresses, among other things, who must report beneficial ownership information, when they must report, and what information they must provide. Collecting this information and providing access to law enforcement, financial institutions, and other authorized users will diminish the ability of bad actors to hide, move, and enjoy the proceeds of illicit activities.

Additionally, a number of U.S. laws and regulations ensure and encourage public sector transparency. Principal among these laws is the Freedom of Information Act (5 U.S.C. § 552) ("FOIA"). This law generally provides that any person has a right, enforceable in court, to obtain access to federal agency records and agencies must respond to the requests within ten days. 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 830,000 FOIA requests in Fiscal Year 2020 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.

8. How does the government ensure that emergency measures are limited in duration and scope? Please describe any measures taken to mitigate the use of broad emergency executive authority, such as legislative oversight, regular reports to committees, and review and monitoring mechanisms.

Congressional oversight of the executive branch is a critical part of the United States federal government's system of checks and balances, and an important part of promoting integrity and exposing malfeasance where necessary. Congressional oversight processes include those related to investigations, impeachment, confirmation of nominees, appropriations, authorization, and budget. Congress conducts much of its oversight through committees, with the support of a number of federal agencies and offices that investigate, audit, and provide information and analysis on executive branch activities. As necessary, Congress can use these oversight authorities to ensure emergency measures are appropriate in scope and duration.

9. Have your authorities applied or strengthened whistle-blower protection or reporting systems, including those that afford opportunities for confidential and/or anonymous reports, and how to address such reports?

The United States maintains a number of systems available for whistleblowers to report, among other things, fraud and corruption. For example, the government website *Oversight.gov* provides a centralized site to help whistleblowers report fraud, waste, and abuse in Federal programs. The site not only provides information about how to report such acts, it also helps whistleblowers navigate to the appropriate reporting channel. *Oversight.gov* is complemented by other reporting channels. For example, the U.S. Office of Special Counsel (OSC), which serves as a confidential channel for disclosures by federal employees, former employees, and applicants, of fraud, waste, and abuse, and investigates claims of whistleblower retaliation against federal employees, former employees, and applicants, had previously launched an updated and more streamlined complaint form to make it even easier for reporting persons to confidentially disclose alleged wrongdoing. The user-friendly complaint form is accessible on *OSC.gov*. With respect to the coronavirus, earlier this year OSC established an internal taskforce to coordinate the quick assessment of disclosures of wrongdoing, such as those related to health and safety, and claims of retaliation by those reporting such concerns.

In addition to existing reporting channels, the United States has implemented or strengthened channels to address fraud and corruption specific to the COVID-19 pandemic. For example, the DOJ’s NCDF complaint website allows individuals to submit complaints of fraud, waste, abuse, or mismanagement related to any man-made or natural disaster, to include criminal activity related to the coronavirus (COVID-19).¹⁶ Individuals can also contact the NCDF telephone hotline. Similarly, individuals can report allegations of fraud, waste, and abuse associated with the federal government’s response to the pandemic to GAO’s FraudNet hotline, which is operated by GAO’s investigative unit.¹⁷

The FBI also provides several secure reporting channels for individuals who want to report a crime. For example, individuals can use the FBI’s Tip website - tips.fbi.gov – to report federal crimes, including those involving corruption. The website provides links to the reporting channels of other federal agencies, such as the Federal Trade Commission, the Department of Homeland Security, and the Department of the Treasury’s Inspector General for Tax Administration. Individuals can also use the FBI’s website - ic3.gov - to report internet-based fraud. Additionally, individuals can report federal crimes to their local FBI field office.

Use of information and communication technology tools

10. Has the government used information and communication technology tools to build, implement and/or maintain resilient emergency response systems? If yes, please explain what types of tools have been used and include relevant links, if possible.

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

The Department of Justice manages the National FOIA Portal, which resides on [FOIA.gov](https://www.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

¹⁶ Available at: <https://www.justice.gov/disaster-fraud/ncdf-disaster-complaint-form>

¹⁷ See <https://www.gao.gov/about/what-gao-does/fraudnet/>

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.

11. If possible, please describe the benefits and challenges of using the tools identified in 10?

The tools outlined above provide important transparency to the public during times of emergency and crisis. This transparency helps build public trust that resources are being distributed fairly and equitably. These tools also allow the public to provide additional oversight over government spending and relief programs. Such oversight helps expose waste, abuse, and fraud.

12. Has the government used information and communication technology to help manage and oversee public procurement during times of emergencies? If yes, please explain the particular tool, its benefits and challenges and include relevant links, if possible.

While not specific to emergencies and crises, the United States has prioritized using ICT to promote integrity in public procurement and management of public finances. One example is the Integrated Award Environment (IAE), a government-wide initiative administered by General Services Administration. The IAE facilitates the federal awards processes in multiple online systems, including the System for Award Management (SAM). Those systems are used for registering to receive federal financial assistance or contracts from the federal government, listing contract opportunities, capturing contractor performance, viewing contract data, searching assistance listings, reporting subcontracts, and more. The public can access SAM on the website SAM.gov. In May 2021, GSA completed work to modernize and improve the SAM.gov platform. The system will, among other things, provide a modern portal for entities to register, update, renew, and check the status of their registration SAM.gov. Federal and non-federal users will also be able to search for registrations and exclusions as well as other public information about entities seeking federal awards. Additionally, users can use SAM.gov to access publicly available award data via data extracts and system accounts.

In addition to the IAE, the public can find procurement information on a variety of public websites. For example, the U.S. Treasury Department manages USAspending.gov. This website is the official source for overall spending data for the U.S. government and shows the public how much the federal government spends every year and how it spends the money. It also allows the public to follow the money from the Congressional appropriations to the federal agencies and down to local communities, businesses, and other organizations. The financial data on USAspending.gov are uploaded directly from more than a hundred federal agencies' financial systems. Contract data are provided from the GSA IAE, financial assistance award and financial data are submitted by agencies. On a quarterly basis, all the different information is pulled together to provide the federal spending picture. The

quarterly data must be appropriately linked using a certain key, usually the award ID, and agency Senior Accountable Officials must certify that the quarterly submissions are correctly linked for display. All this data is available to copy, adapt, redistribute, or otherwise use for non-commercial or for commercial purposes, subject to some limitations. This type of transparency gives civil society and ordinary citizens the ability to track and understand how tax dollars are being spent, and potentially identify irregularities or areas of concern.

Also, as referenced before, to ensure procurement transparency, the United States provides the public with information on all contract awards through the Federal Procurement Data System (FPDS)¹⁸, which is the authoritative source for federal contracts data. When an emergency is declared, contracts issued under the emergency designation are identified using a National Interest Action (NIA) code. These data are highlighted through a report published publicly on FPDS that details all the contracts associated with the particular emergency. The public availability of these data provides opportunity for multiple stakeholders, including agency Inspectors General, Congressional oversight committees, the Government Accountability Office, non-government organizations, business groups, and others with the ability to monitor contract activity during any public emergency.

13. Has the government used information and communication technology to promote transparency in the management of public finances during times of emergencies and crisis response and recovery? If yes, please explain the particular tool, its benefits and challenges and include relevant links, if possible.

Please see the response to question 14.

Engagement of actors outside the public sector

14. If possible, please provide an overview of how the government has partnered with, or encouraged the participation of, actors outside the public sector to help monitor and support oversight of government actions during times of emergencies and crisis response and recovery. Please also include any future initiatives planned.

The United States has long recognized the role that non-governmental stakeholders can play in transparency and accountability efforts. These important actors continued to play this role during the COVID-19 response, and the U.S. government continues to work to implement the legal and policy framework that allows for non-governmental oversight.¹⁹ The DOJ's Office of Information Policy (OIP) provided advice to agencies that focuses on finding workable solutions within current

¹⁸ Available at https://www.fpds.gov/fpdsng_cms/index.php/en/

¹⁹ Codified at 5 U.S.C. § 552 (2018).

workforce policies to maximize the efficiency and effectiveness of FOIA programs. The FOIA program allows members of the public to request certain public information related to the U.S. COVID-19 response.

The DOJ publicly stated that, even as agencies are working under new constraints in light of COVID-19, agencies' legal obligations under the FOIA continue.²⁰ The law remained an important tool for the public to gain access to government information to stay informed about government activities. Accordingly, as a general matter, to the extent feasible DOJ/OIP encouraged agencies to work to ensure that their FOIA operations continue in compliance with the FOIA's requirements.

All of the FOIA's statutory response timeframes continued to apply during workforce adjustments such as maximum telework or building closures. DOJ/OIP has advised that agencies should do their best to timely acknowledge requests and appeals, notify requesters of any unusual circumstances, and make timely determinations on requests for expedited processing.

In April 2020, DOJ/OIP held a best practices workshop featuring the Chief FOIA Officers Council Technology Committee; many best practices were shared at the workshop, including lessons learned from the COVID-19 emergency. A recap of this event and the best practices shared can be found on the Best Practices page of DOJ/OIP's website.²¹ Agencies that have questions about the technological solutions other agencies are using or that might be available to benefit their programs can contact DOJ/OIP or the Chief FOIA Officers Council Technology Committee.

The financial services sector has also been active in working with law enforcement to detect, investigate and disrupt criminal actors using the U.S. financial system to defraud CARES Act funds, and to launder the proceeds of ill-gotten gains. The DOJ's Procurement Collusion Strike Force is structured to leverage non-governmental actors. In addition to training and working with governmental actors, on the "sell" side of the equation, it conducts outreach to government contractors, their trade associations, and public contract lawyers in order to educate them about criminal antitrust violations and associated penalties.

15. Are there any policies or initiatives that particularly facilitated the engagement of actors outside the public sector in these contexts? If yes, please describe.

See above.

III. Responding to corruption during times of emergencies and crisis response and recovery, including through international cooperation

²⁰ Available at <https://www.justice.gov/oip/guidance-agency-foia-administration-light-covid-19-impacts>.

²¹ Available at <https://www.justice.gov/oip/best-practices-workshop-series>

1. If possible, please provide examples of detected or suspected instances of domestic or transnational corruption and how these were identified in your country. If the information is sensitive, please describe the typology or give anonymized examples.

Through DOJ's International Computer Hacking and Intellectual Property (ICHIP) program, ICHIP advisors have provided assistance and case-based mentoring to foreign counterparts around the globe to help detect, investigate and prosecute fraud related to the pandemic. The ICHIPs have helped counterparts combat cyber-enabled crime (e.g., online fraud) and intellectual property crime, including fraudulent and mislabeled COVID-19 treatments and sales of counterfeit pharmaceuticals. ICHIPs conducted webinars for foreign prosecutors and law enforcement in Asia, Africa, Europe, and South America on how to take down fraudulent COVID-19 websites. These webinars addressed methods for finding the registrar for a particular domain and requesting a voluntary takedown as well as the U.S. legal processes necessary for obtaining a court order that would bind a U.S. registrar. This has resulted in the take down of multiple online COVID-19 scams and significant seizures of counterfeit medicines and medical supplies such as masks, gloves, hand sanitizers and other illicit goods.

2. How did the government respond? Has your country taken any steps to identify, investigate or prosecute corruption in emergency and crisis responses and recovery? Examples may include an interagency cooperation taskforce among anti-corruption authorities, analysis of suspicious transaction or financial disclosure reports, greater cooperation across international borders, strengthening investigation and prosecution capacity, etc.

Please see the response to I.2 through I.3.

We have continued to investigate and prosecute all forms of corruption. As stated above, we have focused on investigating and prosecuting all forms of pandemic and relief funds related fraud schemes. Our efforts to investigate and prosecute foreign bribery matters has continued unabated.

3. In its response, did your authorities find it necessary to seek or request international cooperation (e.g. mutual legal assistance or direct law enforcement cooperation)? Please provide details and examples. How effective do you believe the cooperation was, and what were the main challenges? Was the assistance provided, were there any obstacles?

4. Has your government received any requests for international cooperation from other countries seeking to identify, investigate or prosecute corruption during times of emergencies and crisis response and recovery? Please provide details and examples. How effective do you believe your authorities cooperated, and

what were the main challenges? Was the assistance provided, were there any obstacles?

Requests for mutual legal assistance (MLA) typically request confidentiality pursuant to a bilateral MLA treaty or multilateral convention. As a result, the United States is treaty-bound to maintain the confidentiality of those investigations and prosecutions and is not in a position to provide any information regarding those matters.

As described in the response to I.7 above, the United States accepts MLA requests electronically and has been encouraging foreign authorities to submit requests in electronic form in order to maintain open channels of cooperation during emergencies. One obstacle has been foreign countries with domestic laws that require the sending of MLA requests in paper and, in some instances, through diplomatic channels.

IV. Mechanisms to respond to corruption during times of emergencies and crisis response and recovery through international cooperation

1. Have your authorities had any practical experience in sharing information, including spontaneously, with authorities in other countries concerning suspected corruption in the context of emergency or crisis responses?

Yes. While not limited to sharing information solely in the context of emergency or crisis circumstances, 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 related to suspected criminal conduct. 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 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. Further, information may be shared as appropriate through the United States' law enforcement attachés and legal advisors located in U.S. embassies worldwide as well as through various law enforcement and asset recovery networks in which the United States participates.

2. Has your government used electronic communication channels or networks, including those of INTERPOL or the Globe Network, that enable the prompt exchange of information for the investigation and prosecution of corruption offences in the context of emergency and crisis responses?

Yes. 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 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. On behalf of the Egmont Group, FinCEN maintains the Egmont Secure Web (ESW), which permits members to communicate with one another via secure e-mail, requesting and sharing case information, as well as posting and assessing information on typologies, analytical tools, and technological developments.

The United States is also a member and supporter of the Global Focal Points Network on Asset Recovery. Through U.S. support, the Focal Points Network has grown to 136 countries with 236 registered focal points. The Network represents a valuable platform through which asset recovery practitioners can exchange information and collaborate on actual cases. It has helped facilitate operations and case coordination on a number of cases, convening relevant stakeholders to identify key actions for streamlining and accelerating the pending procedures and intelligence exchanges, in order to resolve any current impediments to the investigative and/or asset recovery efforts in this investigation.

Law enforcement agencies also have Legal Attaché (“LEGAT”) programs, 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.

3. Are you aware of any examples of joint or parallel investigations or the bilateral sharing of capacity and expertise on investigating and prosecuting corruption in this context?

While not limited to the emergency context, when appropriate, the United States Department of Justice has conducted parallel criminal investigations of conduct in instances where corrupt offenses occur both in the United States and a foreign jurisdiction. Representative examples of such actions are included below:

<https://www.justice.gov/usao-sdfl/pr/miami-based-financial-advisor-pleads-guilty-conspiring-launders-money-relating-fcpa-and>

<https://www.justice.gov/usao-sdfl/pr/miami-based-financial-advisor-pleads-guilty-conspiring-launders-money-relating-fcpa-and>

<https://www.justice.gov/opa/pr/petr-leo-brasileiro-sa-petrobras-agrees-pay-more-850-million-fcpa-violations>

<https://www.justice.gov/usao-sdfl/pr/colombian-businessman-charged-money-laundering-extradited-united-states-cabo-verde>
<https://www.justice.gov/opa/pr/former-chief-financial-officer-siemens-argentina-pleads-guilty-role-multimillion-dollar>
<https://www.justice.gov/usao-edny/pr/former-ceo-braskem-sentenced-20-months-prison-foreign-bribery-and-securities-law>
<https://www.justice.gov/usao-edny/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-criminal>
<https://www.justice.gov/opa/pr/mobile-telesystems-pjsc-and-its-uzbek-subsiary-enter-resolutions-850-million-department>
<https://www.justice.gov/usao-edny/pr/keppel-offshore-marine-ltd-and-us-based-subsiary-agree-pay-422-million-global>
<https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsiary-enter-global-foreign-bribery-resolution-more-965>
<https://www.justice.gov/opa/pr/soci-t-g-n-rale-sa-agrees-pay-860-million-criminal-penalties-bribing-gaddafi-era-libyan>
<https://www.justice.gov/opa/pr/technipfmc-plc-and-us-based-subsiary-agree-pay-over-296-million-global-penalties-resolve>
<https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>

4. Have you taken additional measures to analyse asset declarations, financial disclosures and/or suspicious transaction reports during times of emergencies or crisis response and recovery?

Please see the following regarding the United States Department of Justice's response to the Covid crisis.
<https://www.justice.gov/opa/pr/justice-department-takes-action-against-covid-19-fraud>.

Please also see the response to I.2.

5. Have you experienced challenges in accessing adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons in other jurisdictions? In your view, what may be improved to enable effective, timely access to such information?

Access to appropriate beneficial ownership information remains challenging. Please see the linked G20 Principles on Beneficial Ownership, which address steps that could be taken to improve access to adequate, accurate, and up to date beneficial ownership information. [G20 High-Level Principles on Beneficial Ownership Transparency \(unodc.org\)](https://www.unodc.org/g20-high-level-principles-on-beneficial-ownership-transparency). Steps that the U.S. has taken to improve access to such information include:

- implementation of the Corporate Transparency Act (CTA). This law requires certain U.S. and foreign companies to disclose their beneficial owners to Treasury’s Financial Crimes Enforcement Network (FinCEN) when they’re formed or registered in the United States, and when their ownership changes. The law also requires FinCEN to build a central registry of this information.

See also, <https://www.fincen.gov/news/news-releases/fact-sheet-beneficial-ownership-information-reporting-notice-proposed-rulemaking>

6. Have you experienced challenges in verifying assets beneficially owned by public officials abroad? In your view, what may be improved to enable effective, timely access to such information?

Please see the response to Question No. IV.5.

7. Have there been any efforts to support anti-corruption practitioners and law enforcement authorities in your country, including human resources management and opportunities for capacity-building and peer-learning on methods, tools and technologies for countering corruption in the context of emergency and crisis responses?

Yes. In 2010, the U.S. Department of Justice (DOJ) launched the Kleptocracy Asset Recovery Initiative and dedicated a team of experienced prosecutors from its Money Laundering and Asset Recovery Section (MLARS) to recovering the proceeds of foreign official corruption. Through this Initiative, DOJ seeks to deny corrupt officials the use of their criminal proceeds, safeguard the U.S. financial system from becoming a safe haven for these proceeds, and remedy some of the harm caused by high-level foreign corruption. The Kleptocracy Team is responsible for implementing the Department’s Kleptocracy Asset Recovery Initiative through investigation and litigation to recover the proceeds of foreign official corruption. The Initiative focuses on assets in the U.S. or which used the U.S. financial system.

8. In your view, are there any unique aspects of requesting or providing international cooperation in emergency and crises responses as opposed to regular cases?

As described above in I.7, the emergency measures upon which the United States has relied during the COVID-19 pandemic—electronic submission of mutual legal assistance (MLA) requests and the sending of responsive materials in electronic form—were procedures the United States had been attempting to incorporate into its MLA practice well before any crises. The COVID-19 pandemic only helped to persuade many countries to start sending MLA requests and receive responsive materials electronically.

In our view, MLA procedures in emergencies cannot stray too far from usual practice because the evidence obtained in response to a request, must still meet the requirements for admissibility in court. Additionally, new MLA procedures may take

a long time to put in practice. The most reliable means of maintaining good cooperation through an emergency is by ensuring that strong, well-staffed Central and Competent Authorities are in place before any crises so that communication on urgent MLA requests can be maintained despite any emergencies or crises.

9. Does your government have any experience in receiving or providing international financial assistance (such as donor funding or technical assistance) to address emergency situations? In your view, what are effective mechanisms to strengthen integrity and prevent corruption in the provision of emergency relief funds? What should be improved?

V. Effectiveness of international frameworks to respond to corruption during times of emergencies and crisis response and recovery, including through international cooperation

1. Are there any longer-term trends related to addressing corruption in emergency and crisis responses that require a new or improved anti-corruption approach in the future? Or that require greater international cooperation or new ways of working together? Please explain.

The current means we have for addressing corruption have been demonstrated to be effective, including with respect to cooperating with foreign authorities.

2. Are there any measures or processes that you would consider good practices to facilitate international cooperation and rapid exchange of information in emergency and crisis situations? Examples could include measures to accept electronic copies of mutual legal assistance requests and prioritize requests concerning corruption during times of emergencies and crisis response and recovery. Has your country had any experience in this regard?

See I.7 and IV.8 above.

3. How should countries strengthen collaboration to address corruption risks arising in emergency and crisis situations, with respect to international cooperation? Please list up to three measures countries could apply that would strengthen international cooperation in this regard.

See I.7 and IV.8 above. Countries could:

1. Allow transmission of mutual legal assistance (MLA) requests electronically on a routine basis and not just in emergencies;
2. Allow the receipt of materials in response to MLA requests electronically as admissible evidence in court;

3. Establish a Central Authority where no Central Authority has been designated and, even where a Central Authority has been designated, strengthen the Central Authority with proper staffing of prosecutors with expertise in MLA.

4. Have there been any efforts by your government to enhance cooperation with multilateral, international or regional bodies to address corruption and other forms of crime during times of emergencies and crisis response and recovery?

The United States cooperates to the fullest extent possible, through bilateral and multilateral fora, to address corruption and other forms of crime. As explained above in IV.8, it is important to establish these relationships before any emergencies and crises.

VI. Data collection

1. Have your authorities collected data or statistics to track and analyse trends concerning international cooperation to further prevent, identify, investigate and prosecute corruption during times of emergencies and crisis response and recovery. Are these publicly available?

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2. Have your authorities collected data or statistics to track and analyse trends and links between corruption and other forms of crime? Are these publicly available?

Yes. Please see the response to I.2.

Please outline actions required to ensure or improve the implementation of the commitments contained in paragraph 23 of resolution 9/1, as well as any challenges faced or technical assistance required.

Please describe (cite and summarize) measures/steps your country has taken, if any (or is planning to take, together with the related appropriate time frame) to explore and enhance knowledge of the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering, including during times of emergencies and crisis response.

States parties are invited to respond to the following questions:

I. Analyses and assessments to explore and enhance knowledge of the links between corruption and other forms of crime

1. Has your government undertaken any analyses or assessments to better understand the links between corruption and other forms of crime, including typologies of crime and how corruption may be used to facilitate and enable organized crime?

Please see the response to I.2.

2. Has your government taken any measures to strengthen legal, regulatory and policy frameworks that recognize how corruption and other forms of crime may be linked and that call for coordinated anti-corruption action?

Yes. Please see the United States' Strategy on Countering Corruption, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>. Please also see the response to I.2.

3. Does your country's national risk assessment or other policy framework to prevent and combat money-laundering recognize and address the risk of laundering of proceeds of corruption and other economic crime?

Yes. Please see the response to I.2.

II. **Specific mitigation measures to address corruption and other forms of crime during times of emergencies and crisis response and recovery**

1. Have your country's authorities undertaken any investigations into unfair commercial practices, such as price-gouging and the manipulation of prices of essential goods and services, or bids, or abuse in the allocation, distribution, use and management of relief and recovery funds? Have your country's authorities undertaken any investigations into corruption during times of emergencies and crisis response and recovery, such as bribery of procurement or other public officials, embezzlement of profits, diversion of resources and conflicts of interest? Have any measures been applied to freeze and seize related proceeds of crime?

During the COVID-19 pandemic, the U.S. Department of Justice was committed to preventing hoarding and price gouging for critical supplies during this crisis. To combat this misconduct, the President issued an Executive Order under section 102 of the Defense Production Act of 1950, which prohibits hoarding of designated items, and the Department has created the COVID-19 Hoarding and Price Gouging Task Force. In a memo to U.S. Attorneys, it states that "we will aggressively pursue bad actors who amass critical supplies either far beyond what they could use or for the purpose of profiteering. Scarce medical supplies need to be going to hospitals for immediate use in care, not to warehouses for later overcharging."

The Secretary of Health and Human Services issued a Notice, on March 25, 2020, designating categories of health and medical supplies that must not be hoarded or sold for exorbitant prices, including:

- Personal protective equipment (PPE), including masks, shields, and gloves.
- Respirators
- Ventilators

- Drug product with active ingredient chloroquine phosphate or hydroxychloroquine HCl
- Sterilization services
- Disinfecting devices
- Medical gowns or apparel

Additionally, the U.S. Secret Service, U.S. Department of Labor-Office of Inspector General, Federal Bureau of Investigation, Homeland Security Investigations, Internal Revenue Service-Criminal Investigation, U.S. Postal Inspection Service, Social Security Administration-Office of the Inspector General, and the U.S. Department of Homeland Security-Office of Inspector General, coordinating with U.S. Attorney's Offices, are investigating numerous fraud schemes targeting the unemployment insurance (UI) programs of various state workforce agencies (SWAs) across the United States.

In response to the unprecedented scope of UI fraud, the Department of Justice established the National Unemployment Insurance Fraud Task Force (NUIFTF). The NUIFTF is a prosecutor-led multi-agency task force with representatives from FBI, DOL-OIG, IRS-CI, HSI, DHS-OIG, USPIS, USSS, SSA-OIG, FDIC-OIG, and other agencies. The NUIFTF is working with SWAs, financial institutions, and other law enforcement partners across the country to fight UI fraud, and consumers should be vigilant in light of these threats and take the appropriate steps to safeguard themselves.

Also, in response to reports that certain landlords have been responding to requests to defer rent payments with demands for sexual favors and other acts of unwelcome sexual conduct, the Attorney General issued a memorandum, on April 23, 2022, to stop predatory practices related to COVID-19 and housing. Specifically, the Attorney General directed the Civil Rights Division and every U.S. Attorney's Office to devote all necessary resources to investigate reports of housing-related sexual harassment resulting from the COVID-19 crisis. Further, in order to address the many reports of housing-related sexual harassment anticipated at the local level, the Attorney General directed that the Justice Department's efforts be coordinated with state and local officials to help them understand that the Justice Department stands ready to take aggressive action against this misconduct whenever it occurs.

Please outline actions required to ensure or improve the implementation of the commitments contained in paragraph 22 of resolution 9/1, as well as any challenges faced or technical assistance required.