

In response to the request for information (CU 2014/52(A)/DTA/CEB) the United States is pleased to provide the following:

**(a) Mandates of anti-corruption body or bodies in respect of prevention (art.6)**

With regard to the mandates of anti-corruption bodies in respect of prevention (Article 6), the prevention of corruption at the federal level of the United States is a substantial part of the purpose of the programs of a number of bodies. For this request, we have chosen to highlight only one of those bodies, the US Office of Government Ethics. Having said that other bodies that have significant activities that help prevent of corruption in the topics covered by Article 6 include, but are not limited to:

- The US House of Representatives Committee on Ethics addresses the conduct of Members and staff and provides advisory services and education regarding the standards to which Members and staff are to adhere. <http://ethics.house.gov/jurisdiction>
- The US Senate Select Committee on Ethics addresses the conduct of Senators and staff and provides advisory services and education regarding the standards to which Senators and staff are to adhere. <http://www.ethics.senate.gov/public/index.cfm/jurisdiction>
- The Judicial Conference of the United States is the body through which federal court system governs the non-criminal conduct of its members. <http://www.uscourts.gov/FederalCourts/JudicialConference/Committees.aspx>
- The US Office of Personnel Management (OPM) is the central human resources agency for the Federal Government providing human resource advice and leadership to Federal agencies, supporting agencies with human resource policies, holding agencies accountable for their human resource practices, and upholding the merit system principles. <http://www.opm.gov/>
- The US Office of Special Counsel responsibilities include protecting Federal employees and applicants from prohibited personnel practices, including reprisal for Whistleblowing; providing a safe channel for federal employees to disclose wrongdoing; and enforcing restrictions on the political activity of federal employees and employees of certain state and local agencies. <http://www.osc.gov/>
- The Council of Inspectors General on Integrity and Efficiency (CIGIE) is responsible for addressing integrity, economy and effectiveness issues that transcend individual Government agencies. Individual agencies then have individual offices of the Inspectors General (OIGs). The individual Offices of Inspectors General maintain a "hot line" procedure established under the Inspector General Act of 1978. This hot line allows anyone to confidentially report allegations of fraud, abuse, waste or mismanagement by Federal employees, contractors or grantees. <http://www.ignet.gov/cigie1.html>
- The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget plays a central role in shaping the policies and practices federal agencies use to

acquire the goods and services they need to carry out their responsibilities.

[http://www.whitehouse.gov/omb/procurement\\_default/](http://www.whitehouse.gov/omb/procurement_default/)

- The Office of Federal Financial Management (OFFM) in the Office of Management and Budget is responsible for the financial management policy of the Federal Government, including establishing government-wide financial management policies of executive agencies. [http://www.whitehouse.gov/omb/financial\\_default/](http://www.whitehouse.gov/omb/financial_default/)
- The Government Accountability Office is an independent, nonpartisan agency that works for Congress. Often called the "congressional watchdog," GAO investigates how the federal government spends taxpayer dollars. <http://www.gao.gov/>
- The Department of Justice's Office of Information Policy (OIP)) is responsible for encouraging agency compliance with the Freedom of Information Act (FOIA) and for ensuring that the President's FOIA Memorandum and the Attorney General's FOIA Guidelines are fully implemented across the government. <http://www.justice.gov/oip/index.html>
- The Committee Management Secretariat of the General Services Administration monitors agency compliance with the requirements for establishing, operating, overseeing and terminating advisory bodies that have been formed by agencies to secure objective advice from the public and from the private sector. <http://www.gsa.gov/portal/content/104514>
- The Financial Crimes Enforcement Network which establishes, oversees, and implements policies and programs that link law enforcement, financial and regulatory communities into a single information sharing network. <http://www.fincen.gov/>

## **The United States Office of Government Ethics**

### **I - Information requested from States parties in relation to mandates of anti-corruption body or bodies in respect of prevention (art. 6)**

#### ***1. Please describe the measures you have taken to implement art. 6 of the Convention.***

*In particular, States parties may wish to cite and describe measures that:*

- *Allocate responsibility to a specific body or bodies for the development and implementation of preventive anti-corruption policies;*
- *Outline the institutional structure and approach in relation to the monitoring and evaluation of the national anti-corruption strategy or anti-corruption policies;*
- *Outline the scope of the mandate of preventive anti-corruption bodies;*
- *Safeguard the independence of anti-corruption bodies, enable them to carry out their functions effectively and protect them from any undue influence;*
- *Establish focal points or units within government ministries and departments responsible for the implementation of anti-corruption policies;*
- *Establish structures to deal effectively with grievances and complaints from citizens, such as an anti-corruption commission, ethics office, auditor general's office, ombudsman office, central procurement office, etc;*

The U.S. Office of Government Ethics (OGE), established by the Ethics in Government Act of 1978, provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interests.

While OGE sets policy for the entire executive branch ethics program, the head of each agency has primary responsibility for implementation of the ethics program in that agency. To support the day-to-day activities of the ethics program, each agency head appoints individuals to serve as the agency's Designated Agency Ethics Official and Alternate Designated Agency Ethics Official. Depending on the size of the agency, there may be additional professional ethics staff that support the ethics program. Approximately 5,600 full-time and part-time ethics officials work in the executive branch to provide all executive branch employees assistance in detecting and resolving potential conflicts of interest.

OGE is led by a Director who is appointed to a five-year term by the President, with confirmation by the Senate. In addition to the Office of the Director, OGE is divided into four divisions that work in concert to carry out OGE's mission:

- The General Counsel and Legal Policy Division is responsible for (1) establishing and maintaining a legal framework for the executive branch ethics program, which includes standards of ethical conduct for employees of the executive branch; and (2) providing assistance to the President and the Senate in the Presidential appointment process.
- The Compliance Division is responsible for (1) managing elements of the public financial disclosure program; and (2) monitoring and reviewing agency ethics programs to ensure

compliance with applicable ethics requirements established by statutes, rules, regulations, and Executive Orders.

- The Program Counsel Division is responsible for (1) coordinating and conducting outreach between OGE and its many stakeholders such as Congress, the Office of Management and Budget (OMB), government watchdog groups, and the public; (2) developing and providing training to agency ethics officials; (3) carrying out initiatives that reach across executive branch agencies such as e-filing; (4) providing agency-specific administrative and legal support to OGE; (5) managing OGE's budget, performance, and legislative affairs programs; and (6) supporting agency ethics officials, through its Desk Officer program, in carrying out the executive branch ethics program.
- The Internal Operations Division is responsible for supporting OGE's internal operations.

More information about the divisions is available at <http://www.oge.gov/About/Organization/>.

OGE has no role in the ethics programs of the legislative or judicial branches of the federal government. Similarly, OGE has no jurisdiction over state or local government ethics programs. OGE does not conduct investigations into allegations of individual misconduct and cannot represent citizens in legal matters. For information about the legislative branch ethics program, visit <http://www.ethics.senate.gov/public/> and <http://ethics.house.gov/>. For information about the codes of conduct for federal judges, visit <http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct.aspx>. For a list of state-level ethics oversight bodies, visit <http://www.ncsl.org/research/ethics/state-ethics-oversight-agencies.aspx>.

There are many ways in which OGE itself is held accountable. With respect to monitoring and evaluation, like all executive branch agencies, OGE is required to have in place a number of systems of internal controls, which include an annual independent financial audit and a process for assessing progress toward established performance goals. This information is submitted, annually, to the President and Congress in its Performance Accountability Report (PAR). Copies of OGE's most recent PARs are available at <http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/Performance---Strategic-Documents/>.

There are various measures that help safeguard the independence and political neutrality of OGE. First, the Director serves a five-year term, thereby guaranteeing a bridge across the Director's term and a four-year Presidential Administration. Second, 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. Third, Congress appropriates money to OGE in a public budgeting process and can provide more or less than the President has asked for in his annual budget.

***2. Please provide information demonstrating the impact of the work conducted by national bodies with mandates in respect of the prevention of corruption.***

*In particular, States parties may wish to provide information such as:*

- *Key conclusions and recommendations from reports prepared by anti-corruption bodies and institutions;*

On-site reviews of agency ethics programs are an important component of OGE's statutorily mandated oversight activities. The primary objective of reviews is to report on the strengths and vulnerabilities of the program by evaluating agency compliance with ethics requirements, and ethics-related systems, processes, and procedures. In fiscal year 2013, OGE completed plenary reviews and follow-up monitoring for more than 35 executive branch agencies. Copies of program review reports are available at <http://www.oge.gov/Program-Management/Program-Review/Program-Review-Reports/Program-Review-Reports/>.

- *Results of public perception surveys regarding the effectiveness and performance of the anti-corruption body or bodies (bullet 2); Results from public awareness surveys of the extent of public knowledge about the prevention of corruption (bullet 3);*

Although it does not conduct public perception or awareness surveys, OGE substantially increased its efforts to reach audiences outside of the Federal government in fiscal year 2013. These audiences include members of the general public, state and local governments, private sector organizations, professional associations, government watchdog groups, the media, and foreign delegations. For example, OGE launched an official Twitter account (@officegovethics) to increase visibility of the executive branch ethics program by sharing information about the executive branch ethics with the public and media. Additionally, OGE continued to make public records readily available on its website. Specifically, in fiscal year 2013, OGE posted 1,013 public financial disclosure reports and 505 semiannual agency reports of travel payments accepted from non-Federal sources.

OGE also engages with good governance and watchdog groups. This direct, proactive communication ensures that these non-Federal organizations and, by extension, the general public, understand the executive branch ethics program and the reasoning behind various policy decisions. These efforts also help OGE to be transparent and responsive to public concerns.

- *Key conclusions and recommendations from evaluation reports on the effectiveness and performance of relevant anti-corruption bodies.*

OGE assesses its progress towards established performance goals in its Performance Accountability Report (PAR). Copies of OGE's most recent PARs are available at <http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/Performance---Strategic-Documents/>.

- (b) Public sector legislative and administrative measures, including measures to enhance transparency in the funding of candidatures for public office and, where applicable, the funding of political parties (arts. 5 and 7)**

*Part II, Question 1: Please describe the legislative and administrative measures you have taken to prevent corruption in the public sector. In particular, please provide information on measures you have taken to enhance transparency in the funding of candidatures for elected public office and the funding of political parties.*

*States parties may wish to cite and describe measures that:*

- *Establish a legal definition of what constitutes a donation or contribution to a candidate for public office or a political party;*
- *Require public disclosure of donations received by candidates for public office and political parties, including the identity of individual and corporate donors;*
- *Establish a ceiling or limits on donations that can be made to candidates or political parties;*
- *Clarify the permissibility and limits applicable to donations by foreign donors or legal entities owned in whole or in part by the State;*
- *Establish regular financial reporting obligations of donations and expenditures, including pre- and post-election, for candidates and political parties;*
- *Apply sanctions for the violation of any relevant laws, rules and regulations applicable to political candidates or political parties; and*
- *Allow for the independent monitoring of financing of political candidates or political parties.*

## **Federal Election Commission**

### **I. Introduction**

In the United States, the financing of elections is regulated at the federal level and at the state and local levels. The Federal Election Commission regulates the financing of elections for federal offices – President, Vice President, the House of Representatives, and Senate.

The Commission is the federal agency tasked with implementing, interpreting, and civilly enforcing campaign finance laws and regulations. The Commission is an independent agency

comprised of six members appointed by the President of the United States with the advice and consent of the United States Senate. 2 U.S.C. § 437c(a). No more than three of the Commissioners may belong to the same political party. *Id.* The Commissioners are appointed to a single six-year term. *Id.* The Department of Justice is charged with criminal enforcement of campaign finance laws. *See* 2 U.S.C. § 437g(d).

The Commission's activities are grouped into four categories: facilitating disclosure of campaign finance reports, interpreting the law, enforcing the law, and administering the public financing of presidential campaigns. The Commission makes public on its website all reports filed by political committees, as well as its own analysis and data generated from those reports. The Commission also clarifies the Federal Election Campaign Act (the "Act" or "FECA") by issuing regulations, advisory opinions, and other forms of public guidance.

## **II. FECA Limitations and Prohibitions on Contributions to Candidates and Political Parties**

FECA places limits on contributions by individuals and groups to candidates, political party committees, and other political committees. 2 U.S.C. § 441a. A contribution is "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing an election for Federal office." 2 U.S.C. §431(8)(A)(i); *see also* 11 C.F.R. 100.52(a). The chart below shows how the contribution limits apply to the various participants in federal elections for the 2013-14 election cycle.

Contribution Limits 2013-14

	To each candidate or candidate committee per election	To national party committee per calendar year	To state, district & local party committee per calendar year	To any other political committee per calendar year <sup>1</sup>	Special Limits
<b>Individual may give</b>	\$2,600*	\$32,400*	\$10,000 (combined limit)	\$5,000	No limit
<b>National Party Committee may give</b>	\$5,000	No limit	No limit	\$5,000	\$45,400* to Senate candidate per campaign <sup>2</sup>
<b>State, District &amp; Local Party Committee may give</b>	\$5,000 (combined limit)	No limit	No limit	\$5,000 (combined limit)	No limit
<b>PAC (multicandidate)<sup>3</sup> may give</b>	\$5,000	\$15,000	\$5,000 (combined limit)	\$5,000	No limit
<b>PAC (not multicandidate) may give</b>	\$2,600*	\$32,400*	\$10,000 (combined limit)	\$5,000	No limit
<b>Authorized Campaign Committee may give</b>	\$2,000 <sup>4</sup>	No limit	No limit	\$5,000	No limit

\* These contribution limits are indexed for inflation.

1. A contribution earmarked for a candidate through a political committee counts against the original contributor's limit for that candidate. In certain circumstances, the contribution may also count against the contributor's limit to the PAC. 11 CFR 110.6. See also 11 CFR 110.1(h).

2. This limit is shared by the national committee and the national Senate campaign committee.

3. A multicandidate committee is a political committee with more than 50 contributors which has been registered for at least 6 months and, with the exception of state party committees, has made contributions to 5 or more candidates for federal office. 11 CFR 100.5(e)(3).

4. A federal candidate's authorized committee(s) may contribute no more than \$2,000 per election to another federal candidate's authorized committee(s). 11 CFR 102.12(c)(2).

FECA further restricts contributions by corporations, labor organizations, and federal government contractors. See 2 U.S.C. §§ 441b, 441c. FECA also provides that foreign nationals

may not contribute, donate, or spend funds in connection with any federal, state, or local election in the United States, either directly or indirectly. 2 U.S.C. § 441e. Foreign nationals subject to this prohibition include foreign governments, political parties, corporations, associations, partnerships, and individuals who are neither United States citizens nor lawfully admitted for permanent residence in the United States. *Id.*; *see also* 22 U.S.C. § 611(b) (defining foreign national).

In addition, FECA imposes the following restrictions on contributions:

- No one may make a contribution in another person's name. 2 U.S.C. § 441f.
- No one may make a contribution in cash of more than \$100. 2 U.S.C. § 441g.
- No anonymous contribution in excess of \$50 may be accepted by any candidate or candidate's political committee. 2 U.S.C. § 432(c)(2); 11 C.F.R. § 110.4(c)(3).

While FECA contains limitations and prohibitions on contributions, as described above, it generally does not impose limitations on spending. In 1976, the United States Supreme Court determined that such limitations violated the U.S. Constitution. *See Buckley v. Valeo*, 424 U.S. 1, 23 (1976).

*See* Attachment A (FEC Contributions Brochure), available at [http://www.fec.gov/pages/brochures/contributions\\_brochure.pdf](http://www.fec.gov/pages/brochures/contributions_brochure.pdf).

### **III. Disclosure Requirements**

FECA requires all political committees — including candidate campaign committees and political party committees — to file periodic reports disclosing the money they receive and spend. 2 U.S.C. § 434; *see also* 11 C.F.R. § 104.3. All reports filed with the FEC are publicly available on the FEC's website [www.fec.gov](http://www.fec.gov).

Candidates and political party committees must identify on their periodic reports all political committees that contribute to them and those individuals who contribute, in the aggregate, more than \$200 in an election cycle. The reports also must identify the date of the contribution, the contributor's name, address, occupation, and the name of the contributor's employer. The threshold for detailed disclosure is based on the aggregate, therefore, a series of smaller contributions that add up to more than \$200 must be detailed once the \$200 mark is passed. All other types of receipts (loans, refunds received, inter committee transfers, interest income, etc.), are also reported, subject to the \$200 threshold.

Political committees also must report all disbursements. When disbursements to a particular payee exceed a total of \$200 during an election cycle (for candidates) or a calendar year (for other political committees), a political committee must provide detailed information about the payee, including the name and address of the payee, the date and amount of the disbursement, and the purpose of the disbursement. Certain types of disbursements must be detailed regardless

of amount, including loans made, loan repayments made, transfers and contributions to other political committees, and the refund of contributions previously received.

Candidate campaign committees and political party committees must keep detailed records of receipt and disbursement information. 2 U.S.C. § 432(c); *see also* 11 C.F.R. § 102.9. The political committee treasurers are responsible for keeping these records and copies of all reports filed for three years.

#### **IV. Sanctions for Violations of Law**

The Commission possesses civil jurisdiction to enforce the FECA, including the powers to investigate and file suit in federal court. 2 U.S.C. §§ 437d, 437g. The Commission has the authority to depose witnesses and subpoena testimony and documentary evidence in the course of its investigations. *See* 2 U.S.C. § 437d.

The Commission receives complaints of violations from the public, through its internal review of disclosure reports, by referral from other government agencies, and by individuals who believe they may have violated campaign finance law. If the Commission concludes that there is “reason to believe” or “probable cause to believe” a violation of the law has occurred, the Commission attempts to resolve the matter through a conciliation agreement, which may require the payment of a civil penalty or other remedial measures. 2 U.S.C. § 437g. If agreement cannot be reached between the Commission and respondent, the Commission has authority to bring suit in federal court. 2 U.S.C. § 437g(a)(6).

In enforcement matters where the only violation is a political committee’s failure to file a report on time (or at all), the Commission has the authority to impose civil penalties directly, without engaging in conciliation or filing suit in court. 2 U.S.C. § 437g(a)(4)(C); 11 C.F.R. §§ 111.30-.46. Congress recently enacted legislation extending and expanding the Commission’s authority to impose civil penalties directly, and the Commission is considering the implementation of this new law.

The Commission further administers an alternative dispute resolution program through which certain cases may be negotiated to a mutually agreeable settlement. While an agreement reached in such cases may contain a monetary penalty, its primary focus is generally on remedial terms negotiated by the parties.

The Commission also has the authority to audit political committees’ financial disclosure reports and underlying records. 2 U.S.C. § 438(b). The Commission audits all presidential campaigns that receive public funds.

Finally, the Commission may refer cases involving knowing and willful FECA violations to the U.S. Department of Justice for criminal prosecution, which may result in criminal fines and imprisonment. 2 U.S.C. § 437g(a)(5)(c).

*See* Attachment B (Guidebook for Complainants and Respondents on the FEC Enforcement Process), available at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

## **V. Public Financing**

In addition to enforcing the FECA, the Commission administers a public funding program for presidential candidates. *See* 26 U.S.C. §§ 9001-42. Public funding is voluntary and some candidates choose not to participate. American taxpayers can voluntarily designate \$3 of their tax dollars to finance the public funding program. The Commission certifies candidates' eligibility to enter the program, establishes eligibility for payments, and audits the candidates' qualified campaign expenses. The accompanying table shows the total amounts paid in public funds from 1976 through 2012. *See* Attachment C. To receive public funding, presidential general election candidates must agree not to accept any private contributions and, with certain exceptions, to limit spending to amount of the grant.

### ***2. Please provide information demonstrating implementation of the measures described above.***

*In particular, States parties may wish to provide information such as:*

- *Disclosure reports made by candidates for public office and/or political parties;*
- *Examples or statistics regarding cases involving violations of the political funding provisions, including any sanctions applied or criminal prosecutions that resulted;*
- *Key conclusions and recommendations from reports produced by government agencies responsible for oversight of the system applicable to the funding of election candidates and political parties; and*
- *Statistics regarding public perception of integrity and transparency in the funding of election candidates and political parties.*

## **I. Disclosure Reports**

As explained above, FECA requires all political committees to file periodic disclosure reports with the Commission. Sample forms these committees must file are included in Attachment D.

## **II. Enforcement Statistics**

### *1. Enforcement Matters*

As explained above, the Commission has civil jurisdiction to enforce FECA, including the power to investigate and file suit in federal court. During Fiscal Year (FY) 2013, which spanned October 1, 2012, through September 30, 2013, the Commission closed 134 enforcement cases, which included \$730,390 in negotiated civil penalties.

### *2. Alternative Dispute Resolution Program*

In FY 2013, the Commission completed 39 cases through its alternative dispute resolution program, which included \$36,850 in negotiated civil penalties.

### *3. Administrative Fine Program*

The Administrative Fines program assesses civil money penalties for violations involving the failure to file reports on time or failure to file reports at all. Since the program's inception in July 2000 through September 30, 2013, the Commission has closed 2,623 cases and assessed fines of \$4.9 million.

### *4. Audits*

In FY 2013, the FEC closed 13 audit reports and initiated 13 new audits. The approved audit reports include two audits of presidential committees and 11 audits of non-presidential committees.

### *5. Public Financing*

In the 2012 election cycle, the Commission certified the payment of public funds to three presidential primary candidates and to two presidential nominating conventions. Due to recently enacted legislation, presidential nominating conventions will no longer be eligible for public financing.

## **III. Legislative Recommendations**

The Commission annually transmits to Congress legislative recommendations for consideration. *See* Attachment E for the Commission's most recent set of legislative recommendations. The recommendations are also available at <http://www.fec.gov/law/legrec2013.pdf>.