

**USA Response: Collection of Information Prior to the Sixth Intersessional Meeting of the  
Open-Ended Intergovernmental Working Group on Prevention  
Established by the Conference of States Parties to the UN Convention against Corruption**

In response to the Secretariat's request for information contained in Note Verbale CU2015/58/DTA/CEB, the United States is pleased to provide the following response:

**I. Integrity in public procurement processes, management of public finances and transparency and accountability in public administration.**

Article 9 (1) Public Procurement

In relation to integrity in public procurement processes, States parties and signatories may wish to cite and describe measures that:

- *Ensure the national procurement system is based on principles of transparency, competition and objective criteria in decision-making; establishing in advance the conditions for participation, including selection and award criteria and tendering rules;*
- *Provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure;*
- *Provide for transparent publishing of all procurement decisions including publishing the invitations to tender;*
- *Establish procedures, rules and regulations for review of the procurement process, including a system of appeal;*
- *Provide for a thorough selection of personnel responsible for procurement, including screening procedures; as well as establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases;*
- *Put in place other administrative practices promoting integrity in procurement (such as the rotation of personnel, debarment procedures, etc.).*

The federal government of the United States procures over 450 billion dollars of goods and services each year. With few exceptions, the contracts are executed agency-by-agency following the requirements and procedures found in the Federal Acquisition Regulation (FAR) contained within Chapter 1 of Title 48 of the [Code of Federal Regulations](#). The FAR (found at [www.acquisition.gov](http://www.acquisition.gov)) includes uniform policies and procedures for acquisition processes describing appropriate practices for almost all Executive Branch agencies to use during the pre-award, award, and post-award contract process. The FAR includes 53 parts that govern the acquisition process. Specific areas are highlighted below:

- Part 1 – Federal Acquisition Systems includes Subpart 1.6 Career Development, Contracting Authority, and Responsibilities for acquisition professionals integral to the contracting process.
- Part 3 – Improper Business Practices and Personal Conflicts of Interest. Subpart 3.10— Contractor Code of Business Ethics and Conduct (a) Implements [41 U.S.C. 3509](#), Notification of Violations of Federal Criminal Law or Overpayments; and (b) prescribes policies and procedures for the establishment of contractor codes of business ethics and conduct, and display of agency Office of Inspector General (OIG) fraud hotline posters.

- Part 5 – Publication of solicitation notice and award notices on [www.fedbizopps.gov](http://www.fedbizopps.gov)
- Part 7 – Acquisition Planning
- Part 9 – Integrity, ethics compliance plans, and suspension and debarment. Of note, the Interagency Suspension and Debarment Committee (ISDC) holds particular functions in this area. The ISDC website includes reports, regulations, and guidance documents – see <https://isdc.sites.usa.gov/about-us/> for more information.
- Part 10 – Market Research
- Part 14 and 15 - solicitation of bid and source selection and contract award, communication with industry
- Part 33 - Protest procedures
- Part 42 - Contract management
- Part 46 - Quality Assurance
- Part 49 – Termination of contracts

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. (See [https://www.whitehouse.gov/omb/procurement\\_default/](https://www.whitehouse.gov/omb/procurement_default/) for more information.) OFPP was established by Congress in 1974 to provide overall direction for government-wide procurement policies, regulations and procedures and to promote economy, efficiency, and effectiveness in acquisition processes. OFPP is headed by an Administrator who is appointed by the President and confirmed by the Senate. In carrying out their duties, the OFPP Administrator chairs the Federal Acquisition Regulatory Council (FAR Council) and members include the Secretary of Defense (for the military departments and defense agencies), the Administrator of General Services (for civilian agencies other than NASA), and the Administrator of NASA (for NASA activities). The FAR Council was established to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government, in accordance with Title 41, Chapter 7, Section 421 of the Office of Federal Procurement Policy (OFPP) Act. The Administrator, in consultation with the Council, shall ensure that procurement regulations, promulgated by executive agencies, are consistent with the Federal Acquisition Regulation (FAR) and in accordance with any policies issued pursuant to Section 405 of Title 41. The Council manages coordinates controls and monitors the maintenance and issuance of changes in the FAR. For more information on the FAR Council see [https://www.whitehouse.gov/omb/procurement\\_far\\_council](https://www.whitehouse.gov/omb/procurement_far_council). OFPP also issues circular memoranda, guides, reports, policy letters and memos on various aspects of federal procurement. For example, the following is a selection of recent and notable information provided by OFPP in order to help improve communications with contractors:

- [Acquisition 360 – Improving the Acquisition Process through Timely Feedback from External and Internal Stakeholders](#) (March 18, 2015)
- [“Myth-Busting”: Addressing Misconceptions and Further Improving Communication During the Acquisition Process](#) (May 7, 2012)
- ["Myth-Busting": Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process](#) (February 2, 2011)
- [Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings](#) (December 4, 2014)

OFPP has also provided guidance on strengthening the Acquisition Workforce. Examples include:

- [Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings](#) (December 4, 2014)
- [Revisions to the Federal Acquisition Certification for Program and Project Managers \(FAC-P/PM\)](#) (December 16, 2013)
- [Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives \(FAC-COR\)](#) (September 6, 2011)
- [Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce](#) (September 3, 2013)
- [Attracting Talent to the Acquisition Workforce](#) (February 4, 2011)

For additional OFPP guidance, see [www.whitehouse.gov/omb/procurement\\_index\\_memo/](http://www.whitehouse.gov/omb/procurement_index_memo/). The OFPP Administrator and the FAR Council work closely with the Chief Acquisition Officers Council (CAO Council) to promote the use of effective business practices in the acquisition system. The CAO Council was established pursuant to Section 16 of the Office of Federal Procurement Policy Act, as amended, 41 USC 403, et seq. The Council consists of a diverse group of acquisition professionals in the Executive Branch established to provide a senior level forum for monitoring and improving the federal acquisition system. The Council promotes effective business practices that ensure the timely delivery of best value products and services to the agencies, achieve public policy objectives, and further integrity, fairness, competition, and openness in the federal acquisition system. For information about the CAO Council, membership and activities, visit <https://cao.gov/about-caoc/>.

The Federal Acquisition Institute (FAI) was established in 1976 under the OFPP Act, and has been charged with fostering and promoting the development of a federal acquisition workforce. FAI facilitates and promotes career development and strategic human capital management for the acquisition workforce. FAI coordinates with organizations such as the OFPP, CAO Council, and the Interagency Acquisition Career Management Council to develop and implement strategies to meet the needs of the current and future acquisition workforce. In conjunction with its partners, FAI seeks to ensure availability of exceptional training, provide compelling research, promote professionalism, and improve acquisition workforce management. For information about contracting training and courses developed for the acquisition workforce, visit <http://www.fai.gov/drupal/about/about-fai>.

#### Article 9 (2) Management of Public Finances

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

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

On behalf of the President, the Office of Management and Budget develops an annual budget for the executive branch based upon input from each department and agency.

OMB provides standardized guidance for the preparation, submission and execution of the budget in the form of Circular A-11. For more information, please see: [https://www.whitehouse.gov/omb/circulars\\_all\\_current\\_year\\_all\\_toc/](https://www.whitehouse.gov/omb/circulars_all_current_year_all_toc/).

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

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

With regard to internal controls, the Office of Management and Budget (OMB), through Circular A-123, (available at [https://www.whitehouse.gov/omb/circulars\\_a123\\_rev/](https://www.whitehouse.gov/omb/circulars_a123_rev/)), defines Federal management's responsibility for internal control in Federal agencies, and is the implementation circular for the Federal Managers Financial Integrity Act (FMFIA) of 1982. This Circular provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on internal control. A-123 requires agencies and Federal managers to take systematic and proactive measures to:

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

FMFIA also requires that federal agency executives periodically review and annually report on agencies' internal control systems. The FMFIA requires the Comptroller General of the U.S.

Government Accountability Office (GAO) (the U.S. equivalent of a supreme audit institution) to prescribe internal control standards. Since 1983, GAO has issued its Standards for Internal Control in the Federal Government and its subsequent revisions, most recently September 2014, effective in fiscal year 2016: <http://www.gao.gov/assets/670/665712.pdf>.

With regard to accounting and auditing, OMB Circular A-136 (available at [https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a136/a136\\_revised\\_2014.pdf](https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a136/a136_revised_2014.pdf)) establishes a central point of reference for all Federal financial reporting guidance for Executive Branch departments, agencies, and entities required to submit annual audited financial statements. It provides agencies instructions on the form and content of agencies audited financial statements, which show how the agencies executed their funds. In addition, it provides guidance on the Government-Wide Financial Report, which presents a view of the Federal Government's finances and discusses important financial issues and significant conditions that may affect future operations.

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

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

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

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

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

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

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

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

Federal agency records management programs must comply with regulations promulgated by both NARA (36 C.F.R. Part 1220, available at <http://www.ecfr.gov/cgi-bin/text-idx?SID=a03a3ca5427d2265a8ad85fcc33354ca&node=pt36.3.1220&rgn=div5>) and GSA's Federal Management Regulations Parts 102-193 (available online at <http://www.gsa.gov/portal/ext/public/site/FMR/file/FMRTOC102-193.html/category/21863/#wp436256>). NARA maintains a General Records Schedule (GRS) for certain broad categories of records. The GRS contain provisions on Financial Management and Reporting Records. GRS 1.1 contains the records schedule for Financial Management and Reporting Records (<http://www.archives.gov/records-mgmt/grs.html>). For records not covered by the GRS, agencies are required by law to develop records ([44 U.S.C. 3303](#)).

Agencies submit the schedules for NARA approval on a specific form which contains descriptions of record series or systems and disposition instructions for each. These instructions specify when the series is to be cut off, when eligible records are to be moved to off-site storage, when eligible temporary records must be destroyed or deleted, and when permanent records are to be transferred to the National Archives. Schedules may not be implemented until NARA has

approved them. Some schedules, especially those containing records relating to financial management, claims, and other related matters, must also be approved by the General Accounting Office (GAO) ([44 U.S.C. 3309](#)) before NARA will approve them. Once approved by NARA, retention periods in the schedules are mandatory and authorize the systematic removal of unneeded records from Federal offices.

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

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

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

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

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

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

### Article 10 Public Reporting

In relation to public reporting, States parties and signatories may wish to cite and describe measures that:

- *Put in place a system of transparency for the public administration including obligation to proactively publish information on the risks of corruption;*

The United States has a long-standing system of transparency. Since 1967, the United States has afforded the public with a statutory right of access to federal government records under the Freedom of Information Act (FOIA). The FOIA is often described as “a means for citizens to know 'what their Government is up to.’” *NARA v. Favish*, 541 U.S. 157, 171-72 (2004) (quoting *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)).

As President Obama has declared, “[a] democracy requires accountability, and accountability requires transparency.” [Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act](#), 74 Fed. Reg. 4683 (Jan. 21, 2009). The FOIA “encourages accountability through transparency.” *Id.*

As Congress, the Supreme Court, and the President have all recognized, the FOIA is a vital part of our United States democracy. The FOIA requires federal agencies to proactively disclose certain categories of records and provides the public the right to request access to records from any federal agency. Federal agencies are required to disclose any information requested under the FOIA unless it falls under one of the statute’s nine exemptions, which protect interests such as personal privacy, national security, and law enforcement. The U.S. Supreme Court has recognized that in enacting the FOIA “Congress sought ‘to reach a workable balance between the right of the public to know and the need of the Government’” to protect certain information. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (quoting H.R. Rep. No. 89-1497, at 6 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2418, 2423)). Even if an exemption applies, however, agencies are encouraged to discretionarily release information when there is no foreseeable harm in doing so and disclosure is not otherwise prohibited by law.

On his first full day in office, January 21, 2009, President Obama issued a [memorandum](#) to the heads of all departments and agencies on the FOIA. The President directed that FOIA “should be administered with a clear presumption: In the face of doubt, openness prevails.” Moreover, the President instructed agencies that information should not be withheld merely because “public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”

Agencies were directed to respond to requests “promptly and in a spirit of cooperation.” The President also called on agencies to “adopt a presumption in favor of disclosure” and to apply that presumption “to all decisions involving [the] FOIA.” This presumption of disclosure includes taking “affirmative steps to make information public,” and using “modern technology to inform citizens about what is known and done by their Government.”

The President directed the Attorney General to issue [FOIA Guidelines](#) for the heads of executive departments and agencies “reaffirming the commitment to accountability and transparency.” On March 19, 2009, Attorney General Eric Holder issued those Guidelines. The Attorney General highlighted that the FOIA “reflects our nation’s fundamental commitment to open government” and that his Guidelines are “meant to underscore that commitment and to ensure that it is realized in practice.”



The FOIA Guidelines stress that the FOIA is to be administered with the presumption of openness called for by the President. This presumption means that information should not be withheld "simply because [an agency] may do so legally." Moreover, the Attorney General has directed that whenever full disclosure of a record is not possible, agencies "must consider whether [they] can make partial disclosure." The Attorney General also "strongly encourage[s] agencies to make discretionary disclosures of information," and to "readily and systematically post information online in advance of any public request."

The U.S. Department of Justice, through its Office of Information Policy (OIP) is responsible for encouraging agency compliance with the FOIA and for ensuring that the [President's FOIA Memorandum](#) and the [Attorney General's FOIA Guidelines](#) are fully implemented across the government. OIP develops and issues [policy guidance](#) to all agencies on proper implementation of the FOIA. OIP also publishes the [United States Department of Justice Guide to the Freedom of Information Act](#), which is a comprehensive legal treatise addressing all aspects of the FOIA. OIP provides individualized guidance to agencies on questions relating to the application of the FOIA, regularly conducts training programs for FOIA personnel across the government, including specialized agency programs, and provides general advice to the public on use of the FOIA.

In addition to its policy functions, OIP oversees agency compliance with the FOIA. All agencies are required by law to [report](#) to the Department of Justice on their FOIA compliance through submission of Annual FOIA Reports and Chief FOIA Officer Reports. These reports, which are posted [online](#), inform the public about agency compliance with the FOIA, President Obama's FOIA Memorandum, and Attorney General Holder's FOIA Guidelines, and they serve as yearly benchmarks for agencies as they continually refine their administration of the FOIA. OIP develops guidelines for those reports, issues guidance and provides training to agencies to help them complete the reports, and reviews and compiles summaries of both agency Annual FOIA Reports and Chief FOIA Officer Reports.

- *Provide for members of the public to have the right and opportunity to access information on the organization, functioning and decision-making processes of the public administration, as well as their decisions and legal acts;*

The FOIA has two distinct provisions that require agencies to "automatically" disclose certain categories of information about their organization, and function, and decision-making. Subsection (a)(1) of the FOIA requires disclosure through publication in the Federal Register of general agency information such as descriptions of agency organization, functions, rules of procedure; substantive agency rules; and statements of general agency policy. Publication of these four categories of information in the Federal Register is intended "to enable the public 'readily to gain access to the information necessary to deal effectively and upon equal footing with the Federal agencies.'" Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act 4 (June 1967) [hereinafter 1967 Attorney General's Memorandum] (quoting S. Rep. No. 1219 at 3 (1964)).

Such publication serves as a "guide [to] the public in determining where and by whom decisions are made, as well as where they may secure information and make submittals and requests." *Id.* at 5.

Subsection (a)(2) of the FOIA requires that certain other types of records—final agency opinions and orders rendered in the adjudication of cases, specific policy statements, certain administrative staff manuals and instructions to staff, and records previously processed for disclosure under the FOIA that are likely to be requested again—be routinely made "available for public inspection and copying." This provision generally requires agencies to post that material publicly on their agency websites. The basic purpose behind the requirement to make this operational information available proactively is "to afford the private citizen the essential information to enable him to deal effectively and knowledgeably with the Federal agencies." 1967 Attorney General's Memorandum 14 (quoting S. Rep. No. 1219 at 12).

- *Facilitate public access to the competent decision-making authorities.*

The United States Supreme Court has explained that "[t]he basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

The FOIA facilitates public access to decision-making authorities in two ways: through proactive disclosures and access requests. The proactive disclosure provisions of the FOIA require agencies to affirmatively post information about their operations on their websites or in the Federal Register. These proactive disclosures allow the public ready access to such information which allows them to deal effectively with agencies. Beyond these required disclosures, the FOIA affords the public, regardless of citizenship, with a statutory right to request access to any agency records. Records can be sought for any reason, and there is no requirement that the requester state why they want access to the records. When an agency receives a proper FOIA request for records, it must make the records "promptly available" unless the records or portions of the records are exempt from mandatory disclosure under the law. The FOIA requires agencies to conduct reasonable searches for requested records and to provide the requester with the requested records in the form or format sought. By affording a statutory right to access records created and held by federal agencies, the FOIA facilitates public engagement with the government and ensures accountability and transparency.

## **II. Article 14 Measures to Prevent Money-Laundering**

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

- *Establish a comprehensive domestic regulatory and oversight regime to deter and detect money-laundering;*
- *Show that, at minimum, banks and non-bank financial institutions ensure effective customer and beneficial owner identification, monitoring of transactions accurate record-keeping, and have in place a reporting mechanism on suspicious transactions;*

- *Extend the requirements mentioned above to other bodies particularly susceptible of money-laundering;*
- *Ensure that agencies involved in anti-money laundering can cooperate and exchange information at national and international levels;*
- *Consider or establish financial intelligence units (FIUs);*
- *Consider or become part of anti-money laundering (AML) networks (such as FATF, FSRBs, Egmont Group);*
- *Require individuals and businesses to declare/disclose cash border transportation and other negotiable instruments;*
- *Require financial institutions, including money remitters to meaningfully identify originator of electronic transfer of funds; maintain such information throughout the payment chain and apply enhanced scrutiny to transfers lacking complete information on originator or beneficiary;*
- *Refer to or use as a guideline regional or multilateral anti-money laundering initiatives;*
- *Demonstrate use of mutual legal assistance, administrative or judicial cooperation in cases of money-laundering among law enforcement, judicial authorities and financial regulatory authorities;*
- *Regulate cooperation and information exchange with relevant agencies (for instance on matters related to asset declarations, real estate transactions, tax matters).*

One of the most important tools in the fight against money laundering in the United States is the Bank Secrecy Act (BSA), enacted in 1970. Since then, numerous other laws have enhanced and amended the BSA to provide law enforcement and regulatory agencies with the most effective tools to combat money laundering. An index of anti-money laundering laws since 1970 with their respective requirements and goals are listed below in chronological order. These laws and their implementation meet the requirements of Article 14 of the UNCAC and address, in a very brief form, the guidance provided for responding to this Note Verbale.

#### Bank Secrecy Act (1970)

- Established requirements for recordkeeping and reporting by private individuals, banks and other financial institutions
- Designed to help identify the source, volume, and movement of currency and other monetary instruments transported or transmitted into or out of the United States or deposited in financial institutions
- Required banks to (1) report cash transactions over \$10,000 using the Currency Transaction Report; (2) properly identify persons conducting transactions; and (3) maintain a paper trail by keeping appropriate records of financial transactions

#### Money Laundering Control Act (1986)

- Established money laundering as a federal crime
- Prohibited structuring transactions to evade CTR filings
- Introduced civil and criminal forfeiture for BSA violations
- Directed banks to establish and maintain procedures to ensure and monitor compliance with the reporting and recordkeeping requirements of the BSA

#### Anti-Drug Abuse Act of 1988

- Expanded the definition of financial institution to include businesses such as car dealers and real estate closing personnel and required them to file reports on large currency transactions
- Required the verification of identity of purchasers of monetary instruments over \$3,000

#### Annunzio-Wylie Anti-Money Laundering Act (1992)

- Strengthened the sanctions for BSA violations
- Required Suspicious Activity Reports and eliminated previously used Criminal Referral Forms
- Required verification and recordkeeping for wire transfers
- Established the Bank Secrecy Act Advisory Group (BSAAG)

#### Money Laundering Suppression Act (1994)

- Required banking agencies to review and enhance training, and develop anti-money laundering examination procedures
- Required banking agencies to review and enhance procedures for referring cases to appropriate law enforcement agencies
- Streamlined CTR exemption process
- Required each Money Services Business (MSB) to be registered by an owner or controlling person of the MSB
- Required every MSB to maintain a list of businesses authorized to act as agents in connection with the financial services offered by the MSB
- Made operating an unregistered MSB a federal crime
- Recommended that states adopt uniform laws applicable to MSBs

#### Money Laundering and Financial Crimes Strategy Act (1998)

- Required banking agencies to develop anti-money laundering training for examiners
- Required the Department of the Treasury and other agencies to develop a National Money Laundering Strategy
- Created the High Intensity Money Laundering and Related Financial Crime Area (HIFCA) Task Forces to concentrate law enforcement efforts at the federal, state and local levels in zones where money laundering is prevalent. HIFCAs may be defined geographically or they can also be created to address money laundering in an industry sector, a financial institution, or group of financial institutions.

#### Uniting and Strengthening America by Providing Appropriate Tools to Restrict, Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act)

[Title III of the USA PATRIOT Act is referred to as the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001]

- Criminalized the financing of terrorism and augmented the existing BSA framework by strengthening customer identification procedures
- Prohibited financial institutions from engaging in business with foreign shell banks
- Required financial institutions to have due diligence procedures (and in some cases enhanced due diligence procedures) for foreign correspondent and private banking accounts

- Improved information sharing between financial institutions and the U.S. government by requiring government-institution information sharing and voluntary information sharing among financial institutions
- Expanded the anti-money laundering program requirements to all financial institutions
- Increased civil and criminal penalties for money laundering
- Provided the Secretary of the Treasury with the authority to impose "special measures" on jurisdictions, institutions, or transactions that are of "primary money laundering concern"
- Facilitated records access and required banks to respond to regulatory requests for information within 120 hours
- Required federal banking agencies to consider a bank's AML record when reviewing bank mergers, acquisitions, and other applications for business combinations

#### Intelligence Reform & Terrorism Prevention Act of 2004

- Amended the BSA to require the Secretary of the Treasury to prescribe regulations requiring certain financial institutions to report cross-border electronic transmittals of funds, if the Secretary determines that such reporting is "reasonably necessary" to aid in the fight against money laundering and terrorist financing.

There are a large number of regulatory authorities that exist for AML/CFT supervision. They exist at the federal, state, and industry level. Some of the more prominent federal supervisors include:

The Board of Governors of the Federal Reserve System (FRB) conducts an AML and Office of Foreign Assets Control (OFAC) compliance program review as part of its regular safety-and-soundness examination. These examinations are an important component in the United States' efforts to detect and deter money laundering and terrorism financing. The FRB monitors its supervised financial institutions' conduct, including domestic supervised organizations, for AML and OFAC compliance. Due to the importance the FRB places on international standards, the FRB's AML experts participate regularly in the U.S. delegation to the FATF and the Basel Committee's AML/CFT expert group. Staff also meets frequently with industry groups and foreign supervisors to communicate U.S. supervisory expectations and support industry best practices in this area.

The U.S. Department of Treasury's Office of the Comptroller of the Currency (OCC) charters, regulates and supervises all national banks and federal savings associations in the U.S. Its goal is to ensure these institutions operate in a safe and sound manner and comply with all consumer protection and AML laws and implementing regulations. OCC officials also meet individually, both in the U.S. and overseas, with representatives from foreign law enforcement authorities, financial intelligence units, and AML/CFT supervisory agencies to discuss the U.S. AML/CFT regime, the agencies' risk-based approach to AML/CFT supervision, examination techniques and procedures, and enforcement actions. The OCC continues its industry outreach efforts to the international banking community by participating with other federal banking agencies in regulator panels at the Association of Certified Anti-Money Laundering Specialists' 12th Annual International Anti-Money Laundering Conference. The focus of the regulator panels was keeping pace with global regulatory changes. In 2013, the OCC also participated in a series of FATF

working group and plenary meetings as well as the Basel Committee on Banking Supervision Anti-Money Laundering Expert Group. On an ad hoc basis, OCC meets with delegations from various countries to discuss the U.S. AML regime and its approach to conducting supervisory examinations.

The Federal Deposit Insurance Corporation (FDIC) is the third of the banking regulators. In addition to these three, the U.S. also has regulators for credit unions, thrift institutions, securities, charities, and all of the obliged entities. At the federal level, other regulators include FinCEN (described more specifically below), the National Credit Union Administration (NCUA), National Indian Gaming Commission, Securities and Exchange Commission (SEC), and Internal Revenue Service (for charities and NPOs, and certain other obliged entities).

The Financial Intelligence Unit (FIU) for the United States is the Financial Crimes Enforcement Network (FinCen), a bureau of the U.S. Department of the Treasury. <http://www.fincen.gov/> FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. FinCEN carries out its mission by receiving and maintaining financial transactions data; analyzing and disseminating that data for law enforcement purposes; and building global cooperation with counterpart organizations in other countries and with international bodies.

FinCEN exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by Title III of the USA PATRIOT Act of 2001 and other legislation, which legislative framework is commonly referred to as the "Bank Secrecy Act" (BSA). (See above) The BSA is the nation's first and most comprehensive Federal anti-money laundering and counter-terrorism financing (AML/CFT) statute. In brief, the BSA authorizes the Secretary of the Treasury to issue regulations requiring banks and other financial institutions to take a number of precautions against financial crime, including the establishment of AML programs and the filing of reports and keeping of records that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings, and certain intelligence and counter-terrorism matters. The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.

Congress has given FinCEN certain duties and responsibilities for the central collection, analysis, and dissemination of data reported under FinCEN's regulations and other related data in support of government and financial industry partners at the Federal, State, local, and international levels. To fulfill its responsibilities toward the detection and deterrence of financial crime, FinCEN:

- Issues and interprets regulations;
- Supports and enforces compliance with those regulations;
- Supports, coordinates, and analyzes data regarding compliance examination functions delegated to other Federal regulators;
- Manages the collection, processing, storage, dissemination, and protection of data filed under FinCEN's reporting requirements;
- Maintains a government-wide access service to FinCEN's data, and networks users with overlapping interests;

- Supports law enforcement investigations and prosecutions;
- Synthesizes data to recommend internal and external allocation of resources to areas of greatest financial crime risk;
- Shares information and coordinates with foreign financial intelligence unit (FIU) counterparts on AML/CFT efforts; and
- Conducts analysis to support policymakers; law enforcement, regulatory, and intelligence agencies; FIUs; and the financial industry.

In addition to these federal regulators, much of the regulation and supervision is also done at the state level, especially for some financial services, corporate registries, and gaming. These are just a sampling of the state supervisory authorities (with 50 states, the list can be much longer):

- Arizona Department of Financial Institutions
- California Department of Insurance
- Delaware Department of Finance
- Delaware Secretary of State, Division of Corporations
- Delaware State Bank Commission
- Florida State Office of Financial Regulation, Financial Services Commission
- Gila River Indian Community Gaming Commission
- Nevada Gaming Commission
- Nevada Secretary of State, Corporations Division
- New Jersey State Gaming Commission
- New York Charities Board (Attorney General's Office)
- New York State Banking Department

And finally, the U.S. also has self-regulatory organizations for some industries. Some, such as FINRA and the NFA, overlay and act in concert with federal and state regulators. In addition, the U.S. also has other regulatory bodies, such as state bar associations, that regulate professionals (e.g., attorneys).

- Conference of State Bank Supervisors (CSBS)
- Financial Industry Regulatory Authority (FINRA)
- Jewelers Vigilance Committee (JVC)
- Money Transmitters Regulators Association (MTRA)
- National Association of Insurance Commissioners
- National Money Transmitters Association (NMTA)
- National Futures Association (NFA)
- State bar associations

With regard to U.S. participation in international networks, FinCEN is one of almost 150 FIUs making up the Egmont Group, an international entity focused on information sharing and cooperation among FIUs since 1995. As a founding member of the Egmont Group and one of the world's leading FIUs, FinCEN exchanges financial information with FIU counterparts around the world in support of U.S. and foreign financial efforts to combat money laundering, associated predicate crimes and terrorist financing.

The United States has been a member of the FATF since 1990. It is also one of the Co-operating and Supporting Nations (COSUNs) of the Caribbean FATF (CFATF) and is an observer to the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG), Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), FATF of Latin America (GAFILAT), Council of Europe Committee of Experts on the Evaluation of Anti-Money-Laundering Measures and the Financing of Terrorism (MONEYVAL), and Middle East and North Africa FATF (MENAFATF). The United States is also a member of the Asia-Pacific Group on Money Laundering (APG).

The most recent evaluation of the U.S. by FATF was in 2006. The Executive Summary can be found at:

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20ES.pdf>.

The full text is available at:

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf>

The 4<sup>th</sup> Round evaluation of the United States is scheduled to begin in mid-2016 with an onsite visit and a plenary discussion thereafter.