

Annex I

Guidance Note for the provision of information by States parties for the ninth intersessional meeting of the Working Group on Prevention from 6 to 7 September 2018

1. The Secretariat has produced this Guidance Note to assist States parties in providing information as to initiatives and practices they have implemented regarding the topics under consideration at the ninth intersessional meeting of the Working Group on Prevention taking place from 6 to 7 of September 2018.
2. The Secretariat wishes to recall paragraph 12 of the report of the Working Group on Prevention on its second intersessional meeting, in which the Group recommended that States parties should be invited to share their experiences of implementing the provisions of the Convention under consideration in advance of each meeting, preferably by using the self-assessment checklist.
3. In furtherance of this, the Secretariat outlines below a selection of issues based on the questions from the self-assessment checklist that States parties may wish to use as a guide when providing information regarding the two topics under consideration. States parties are encouraged to view the information below only as guidance and remain free to provide any information believed to be relevant to the topics under consideration.

I - Information requested from States parties in relation to preventing and managing conflicts of interest (art. 7, para. 4)

1. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention, and in particular to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Information sought may include:

- Description of specific conflict of interest standard(s), indicating if these standards:
 - Are publicized widely;
 - Regulate the outside activities of public officials;
 - Prohibit the holding by public officials of certain types of assets or positions in legal entities that are incompatible with their primary functions, such as an individual sitting on the board of a company;
 - Limit the official actions a public official may take because of a conflict of interest;
 - Apply criminal, administrative or other sanctions where public officials do not comply with applicable conflicts of interest regulations;

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- Description of training or advisory services to public officials regarding relevant conflicts of interest regulations;
- Description of public access to information on government processes in which there is a higher risk of conflict of interest between the interests and activities of a public official and the particular type of government process;
- Description of the specific duties and responsibilities of the specialized staff or bodies given responsibility to strengthen transparency and prevent conflicts of interest in government;
- Description of the institutional structure and procedures to oversee the compliance with conflict of interest legislation and apply respective sanctions.
- Description of the measures aimed at preventing conflicts of interest concerning former public officials in private entities, such as:
 - Restrictions, for a reasonable period of time, on the professional activities of former public officials;
 - Restrictions, for a reasonable period of time, on the employment of former public officials by the private sector after resignation or retirement;

2. Please outline the actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties may face include:

- Challenges in developing the proper legislative or regulatory framework for managing or preventing conflicts of interest;
- Challenges in administering conflict of interest systems;
- Challenges in relation to specific recruitment, selection or training requirements for categories of positions considered especially vulnerable to corruption, including possible early identification of potential conflicts of interest;
- Challenges in providing ethical guidance or advice to public officials; and
- Challenges in communication, and in particular in raising awareness and disseminating information about new standards of conflict of interest or in developing training manuals, courses, curricula or other related material, including online initiatives, used in training programmes for public officials.

3. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

- **Legislative assistance:** Please describe the type of assistance
- **Institution-building:** Please describe the type of assistance
- **Policymaking:** Please describe the type of assistance
- **Capacity-building:** Please describe the type of assistance
- **Research/data-gathering and analysis:** Please describe the type of assistance

- **Facilitation of international cooperation with other countries:** Please describe the type of assistance
- **Others:** Please specify

States parties are also encouraged to provide a description of any such assistance already being provided, including donor information.

II - Information requested from States parties in relation to asset and interest disclosure (art. 8, para. 5)

1. Please describe (cite and summarize) the measures your country has taken, if any, (or is planning to take, together with the related envisaged time frame) to ensure full compliance with article 8 (5) of the Convention, and in particular to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

Information sought may include:

- Description of the objectives of the declaration system applicable to public officials (prevention of conflict of interest, illicit enrichment, or both [dual system]).
- Where such a declaration system is in place, you may wish to provide information on the following:
 - Types (categories) of public officials required to make declarations and approximate total number of persons submitting declarations;
 - Information that must be declared (assets, outside activities and employments, positions in companies, other associations, gifts and other benefits, liabilities, etc.);
 - Frequency of declarations required;
 - How declarations are submitted (in paper format, electronically, in person) and the entities to which they are submitted;
 - Availability of tools and advisory services that officials can use in order to comply with their disclosure-related obligations (guidelines for filling out forms, resources for learning about conflict of interest issues, resources for receiving tailored advice on specific conflict of interest situations, etc.);
 - Whether information is declared on assets of public officials' family members or members of public officials' households and under which circumstances such information is provided;
 - What mechanisms are in place for ensuring compliance with the obligation to disclose;
 - Whether there is public access to any of this information;
- Any mechanism in place to carry out the verification/monitoring of the content of declarations; including information on the verification mechanism, such as:

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- How many disclosures are verified (all, a certain percentage, etc.);
- What triggers verification (complaints, routine verification/ex-officio, notifications from other institutions, random selection, etc.);
- What processes are involved in the verification/review process (checks for internal consistency, cross-checks with external databases, comparisons across years, identification of potential conflicts of interest, etc.);
- What information can be accessed during the verification/review process (from public officials or public and private sector entities);
- What happens once irregularities are identified (potential conflicts of interest, unjustified variations of wealth, inaccurate information, etc.);
- Whether and to what extent the content of disclosures (in summary form or all information disclosed) or names of persons submitting declarations are made available to the public and other public sector entities and, moreover, how the information is made available (upon individual request, on-line, etc.);
- Number of trained staff dedicated to collection, compliance, providing advisory services to officials, making disclosures publicly available, verification, sending referrals to other entities; what types of sanctions are available in the declaration system (for non-submission, actual conflict of interest, false statement, illicit enrichment, etc.).

2. Please outline the actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties may face include:

- Challenges related to developing and adoption of the legal framework of the assets and interest disclosure system;
- Challenges related to the functioning of the asset and interest disclosure system and in particular:
 - Challenges related to submission of the declarations;
 - Challenges related to verification of the declarations;
 - Challenges related to the follow up and to imposing sanctions;
 - Challenges related to the transparency of the regime; and
- Challenges related to resources limitations, lack of capacity, etc.

3. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

- **Legislative assistance:** Please describe the type of assistance
- **Institution-building:** Please describe the type of assistance
- **Policymaking:** Please describe the type of assistance
- **Capacity-building:** Please describe the type of assistance
- **Research/data-gathering and analysis:** Please describe the type of assistance
- **Facilitation of international cooperation with other countries:** Please describe the type of assistance

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- **Others:** Please specify

States parties are also encouraged to provide a description of any such assistance already being provided, including donor information.

**Response of the United States of America to the
Collection of Information prior to the 9th Intersessional meeting of the
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 CU 2018/65/DTA/CEB, the United States is pleased to provide the following response.

I - Information requested from States parties in relation to preventing and managing conflicts of interest (art. 7, para. 4)

States parties and signatories may wish to cite and summarize the measures that ensure full compliance with these provisions of the Convention, and in particular, to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Information sought may include:

- Description of specific conflicts of interest standard(s), indicating if these standards:
 - Are publicized widely;
 - Regulate the outside activities of public officials;
 - Prohibit the holding by public officials of certain types of assets or positions in legal entities that are incompatible with their primary functions, such as an individual sitting on the board of a company;
 - Limit the official actions a public official may take because of a conflict of interest;
 - Apply criminal, administrative, or other sanctions where public officials do not comply with applicable conflicts of interest regulations;
 - Description of training or advisory services to public officials regarding relevant conflicts of interest regulations;
 - Description of public access to information on government processes in which there is a higher risk of conflict of interest between the interests and activities of a public official and the particular type of government process;
 - Description of the specific duties and responsibilities of the specialized staff or bodies given responsibility to strengthen transparency and prevent conflicts of interest in government;
 - Description of the institutional structure and procedures to oversee the compliance with conflict of interest legislation and apply respective sanctions;
 - Description of the measures aimed at preventing conflicts of interest concerning former public officials in private entities, such as:
 - Restrictions, for a reasonable period of time, on the professional activities of former public officials;
 - Restrictions, for a reasonable period of time, on the employment of former public officials by the private sector after resignation or retirement.

The U.S. Constitution created a federal system of government in which power is shared between the federal government and the state governments. Due to this system, both the federal government and each of the state governments have their own systems to manage conflicts of interest and to declare assets. This response is specific to the Executive Branch of the federal system established under Article III of the U.S. Constitution, but does not include systems established under any other branch of government. The legislative and judicial branches of the federal government have separate ethics programs that address similar ethics and financial disclosure issues for public officials in those branches. In particular, high-level officials in all three branches, including the President, Vice President, Members of Congress, and Judges, are required to file public financial disclosure reports under the Ethics in Government Act.

Conflicts of Interest:

All employees of the executive branch are subject to various conflict of interest rules.¹ These include statutory criminal and civil conflict of interest prohibitions as well as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), which include the Fourteen Principles of Ethical Conduct. All full-time, non-career political appointees in the executive branch are also subject to the Ethics Pledge, which includes additional recusal obligations, post-employment restrictions, and a ban on accepting gifts from lobbyists or lobbying organizations.² Senior politically appointed officials are also subject to civil outside activity and employment restrictions.³ All statutory conflict of interest laws are published in the United States Code and the Standards of Conduct are published in the Code of Federal Regulations. The texts of these laws and regulations are also available through the website of the U.S. Office of Government Ethics (OGE).⁴ OGE also publishes a *Compilation of Federal Ethics Laws* that includes various ethics and good governance related statutes, including the conflict of interest statutes.⁵ OGE's website also provides plain-text explanations of the conflict of interest statutes and the Standards of Conduct by topic⁶ and interpretive legal advisories issued from 1979 through the present.⁷

The U.S. Congress has criminalized various conflict of interest prohibitions through statute. For example, criminal statutes prohibit bribery⁸ and the acceptance and payment of salary or salary supplementation for official duties.⁹ Employees are also prohibited from taking an official action

¹ These include the criminal conflict of interest statutes (18 U.S.C. § 201, et seq.), Executive Order 12674 on Principles of Ethical Conduct as amended by Executive Order 12731, the uniform Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. Part 2635, and the Ethics Pledge as set forth in Executive Order 13770.

² Executive Order 13770.

³ 5 U.S.C. app §§ 501-505 and implemented, in part, in 5 C.F.R. § 2636.

⁴ <https://www.oge.gov/web/oge.nsf>

⁵ <https://www.oge.gov/Web/oge.nsf/Resources/Compilation+of+Federal+Ethics+Laws>. Many of the laws contained in this compilation are not implemented by OGE.

⁶ <https://www.oge.gov/web/oge.nsf/Topics>

⁷ <https://www.oge.gov/web/oge.nsf/Legal%20Advisories>

⁸ 18 U.S.C. § 201.

⁹ 18 U.S.C. § 209.

in which they have a direct or imputed financial interest.¹⁰ Further, employees are prohibited from engaging in unofficial representations of outside parties in matters against the United States, whether for compensation or not.¹¹ In addition, all government employees are subject to post-employment prohibitions, with additional prohibitions applying to senior- and very senior-level officials.¹²

Further, each employee must comply with the Standards of Conduct. The Standards of Conduct prohibit employees from soliciting or accepting gifts from prohibited sources or gifts given because of their official position.¹³ A prohibited source includes anyone seeking business with or official action by an employee's agency and anyone substantially affected by the performance of the employee's duties. There are limited exceptions to this prohibition. The Standards of Conduct also require that employees act impartially,¹⁴ and implement the criminal prohibition on employees participating in an official government capacity in a matter where the employee, spouse, minor child, or other specified persons has a financial interest.¹⁵ Employees are prohibited from participating in matters that have a direct effect on the financial interests of prospective employers and may not misuse their official position for private gain. Employees are also not permitted to participate in a government capacity in certain matters involving members of their household and others with whom they have a "covered relationship," such as any former employer from the past year, if it is determined that a reasonable person would question their impartiality.¹⁶ Employees may not misuse their government position for personal gain¹⁷ and may not use or allow the use of nonpublic Government information to further their own private interests or the private interests of others,¹⁸ and are not exempt from insider trading laws.¹⁹

The Standards of Conduct also place limitations on employees' outside employment and outside activities likely to raise a potential conflict of interest, or the appearance thereof.²⁰ For example, employees may not engage in outside activities that conflict with their official duties,²¹ may not receive compensation for teaching, speaking, or writing related to their official duties,²² and must satisfy their just financial obligations.²³ Employees also face limitations on fundraising in a personal capacity.²⁴ Many federal agencies also have a system in place requiring employees to obtain approval before engaging in outside activities and some have limitations on certain types of outside activities. Senior government employees holding certain non-career positions, to include Presidential appointees, are also subject to more stringent restrictions on their outside

¹⁰ 18 U.S.C. § 208.

¹¹ See 18 U.S.C. §§ 203, 205.

¹² 18 U.S.C. § 207.

¹³ 5 C.F.R. § 2635.201, et seq.

¹⁴ 5 C.F.R. § 2635.101(b)(8); 5 C.F.R. § 2635.502.

¹⁵ 5 C.F.R. § 2635.402.

¹⁶ 5 C.F.R. § 2635.502.

¹⁷ 5 C.F.R. § 2635.703.

¹⁸ 5 C.F.R. § 2635.702.

¹⁹ Stop Trading on Congressional Knowledge (STOCK) Act of 2012, Pub. L. 112-105.

²⁰ 5 C.F.R. § 2635.801, et seq.

²¹ 5 C.F.R. § 2635.802.

²² 5 C.F.R. § 2635.807.

²³ 5 C.F.R. § 2635.809.

²⁴ 5 C.F.R. § 2635.808.

activities and limitations on earned income.²⁵ Senior officials are subject to limitations on the amount of outside earned income they can receive while in office, and Presidential appointees are fully banned from receiving any outside income.

Pursuant to Executive Order, political appointees are subject to additional limitations.²⁶ For example, all political appointees are prohibited from receiving gifts from registered lobbyists and registered lobbying organizations, except when one of a very limited number of exemptions applies. In addition, political appointees are barred from participating in a government capacity in certain particular matters in which their former employer or former clients are a party or represent a party for two years from the date of their appointment.

Training:

Even prior to coming on board, prospective employees must be alerted to the fact that they will be subject to the Standards of Conduct and the criminal conflict of interest laws, as well as their agencies' commitment to government ethics. As part of executive branch-wide requirements, all agencies must issue notices to prospective employees in written offers of employment regarding the agencies' commitment to ethics and the applicable ethics requirements.²⁷ In addition, any employee entering into supervisory positions must also be made aware of their heightened responsibilities for advancing government ethics and modeling ethical behavior.²⁸

The ethics notices to prospective employees and new supervisors are complemented by initial ethics training requirements. Within three months from the time any employee begins work for a federal agency, the agency must provide the employee with initial ethics training.²⁹ The initial ethics training must focus on ethics laws and regulations that the Designated Agency Ethics Official (DAEO) deems appropriate for the audience and must address concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts. Agencies must also provide the employee a summary of the Standards of Ethical Conduct for Executive Branch Employees, relevant agency supplemental standards; and instructions for how to contact the DAEO.³⁰ In 2016, over 350,000 executive branch employees received initial ethics training.

Senior agency officials who are serving in presidentially appointed, Senate-confirmed (PAS) positions also receive substantial counselling with regard to the application of the federal conflict of interest laws prior to appointment and in conjunction with their preparation and submission of their first public financial disclosure report for purposes of their nomination and appointment. These agency leaders must also receive an ethics briefing within 15 days appointment.³¹ During this individualized briefing, the agency ethics official discusses the appointee's basic recusal obligation, the mechanisms for recusal, the commitments made in the appointee's ethics agreement, and the potential for conflicts of interest arising from any financial interests acquired

²⁵ 5 U.S.C. app § 501, et seq.

²⁶ Executive Order 13770, § 1.

²⁷ 5 C.F.R. § 2638.303.

²⁸ 5 C.F.R. § 2638.103; § 2638.306.

²⁹ 5 C.F.R. § 2638.304.

³⁰ 5 C.F.R. § 2638.304.

³¹ 5 C.F.R. § 2638.305. Extensions may be granted for up to 30 days after the date of appointment or longer in extraordinary circumstances. *Id.*

after the nominee financial disclosure report was filed. This ethics briefing is in addition to, and does not supplant, the initial ethics training required for all employees.

Executive branch employees are required to complete additional training requirements, determined by the type of position held, on an annual basis. This includes interactive ethics training presentations on topics that the Designated Agency Ethics Official (DAEO) deems appropriate but must touch on financial conflicts of interest, impartiality, misuse of position, and gifts. In 2016, over 460,000 executive branch employees received required annual ethics training. Moreover, agencies are authorized to provide for additional ethics education requirements, as they see fit and in accordance with their agency-specific risk-assessment.³² In 2016, 79% of agencies reported providing ethics training to persons who were not required to receive training by regulation, and 66% of agencies reported providing additional, specialized training.

In addition to formal ethics training, each agency must maintain a program for providing advice and counseling to prospective, current, and former employees regarding the government ethics laws and regulations and their application to specific activities. Employees are encouraged to seek advice from agency ethics officials, and in some instances are required to receive prior authorization from an agency designee prior to engaging in certain activities.

Post-Employment Restrictions:

Employees who are leaving federal agencies are subject to limitations on actions they can take both before and after they leave government. While employees are generally free to seek post-government employment, they are required to recuse from any matters that might affect the financial interests of a prospective employer with whom they are seeking, negotiating, or have an arrangement for future government employment. In addition, high-level officials must file a notification statement of negotiation and recusal within three days of beginning to negotiate for future employment. In 2016, over 3,500 such statements were filed.

Executive branch officials are also subject to limitations on undertaking certain activities after they leave government. These post-employment restrictions generally do not prohibit an employee from taking a position with any given private sector employer, but rather, limit the types of actions an employee can take after leaving government.

All executive branch employees are covered by a lifetime ban on “switching sides” and representing an outside party back to the government on any particular matter involving specific parties (such as an investigation, lawsuit, contract, grant, or application) he or she worked on while in the government. Supervisors are restricted for two years after leaving the government from communicating with the government on behalf of another entity on a particular matter involving specific parties that was pending under his or her official responsibility within a year before termination of employment. Senior employees are prohibited for one year after leaving any senior position from representing any person back to any government agency where they worked in the past year on any and all matters, regardless of whether they worked on the matter

³² 5 C.F.R. § 2638.309.

before, it was pending before the government agency when they were in the government, or it is a new issue. Very senior employees are prohibited for two years after leaving a very senior position from representing any person back to any government agency where they were a very senior employee on any and all matters, regardless of whether they worked on the matter before, it was pending before the government agency when they were in the government, or it is a new issue. They are also barred from contacting other high-level officials at other agencies, such as Cabinet Secretaries and agency heads.

Political appointees are further prohibited from engaging in certain post-employment activities. Former political appointees may not engage in lobbying activities with respect to their former agency for five years after terminating employment as an appointee. Former political appointees are also prohibited from engaging in lobbying activities with a covered executive branch official or other senior political appointee for the remainder of the Administration. In addition, former political appointees are prohibited from engaging in any activity on behalf of any foreign government or foreign political party which would require the appointee to register as a “foreign agent” under U.S. law.³³

Oversight:

The U.S. Office of Government Ethics (OGE) provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest.³⁴ OGE oversees the executive branch ethics program and works with a community of ethics practitioners from more than 130 agencies to implement the program. OGE provides expert guidance to stakeholders, holds the executive branch accountable for the ethics program through monitoring compliance, and provides assistance to the President and the Senate in the Presidential appointment process. OGE engages the public in overseeing government activities by informing the public about the ethics program and by making ethics information publicly available. OGE also monitors congressional activity for ethics-related legislation that affects the executive branch ethics program and shares its expertise with Congress.

Because of the breadth of the executive branch, the executive branch ethics program is a shared responsibility. As the supervising ethics office, OGE sets policy for the entire executive branch ethics program. The head of each agency is statutorily responsible for leading the program in his or her agency. This includes creating an ethical culture by demonstrating a personal commitment to ethics and providing the necessary resources to implement a strong and effective agency ethics program. The agency head is also responsible for selecting a Designated Agency Ethics Official (DAEO), the employee with primary responsibility for directing the daily activities of an agency's ethics program and coordinating with OGE. Often, additional professional ethics staff is necessary to effectively carry out important ethics program responsibilities. As of 2016, there were approximately 6,800 officials assisting the ethics programs of over 130 agencies. Each agency's employees, supervisors, human resources officials, and Inspectors General also play a significant role in maintaining the integrity of government programs and operations.

³³ Executive Order 13770, § 1.

³⁴ The U.S. Office of Government Ethics was established by the Ethics in Government Act of 1978. 5 U.S.C. app. § 401.



The focus of the executive branch ethics program is principally on preventing violations from occurring in the first instance. Potential violations of legal authorities established under this framework, including government ethics authorities, are primarily investigated by the thousands of Inspectors General staff members across the executive branch. In addition, the Department of Justice has enforcement authority that includes both civil and criminal penalties.



Enforcement:

When executive branch agency ethics officials find evidence that an employee may have violated a criminal statute or Standards of Conduct regulation, they are to refer the evidence to the appropriate authority for action. Ethics counselors who become aware of a potential violation

will normally send that information to their agency's independent Inspector General to investigate. Where there is a possible violation of a criminal statute, the Inspector General or similar investigative unit will refer the matter to the Department of Justice. The Department of Justice may decide to pursue the violation with criminal charges or pursue civil penalties, depending on the offense.

Enforcement mechanisms differ depending on whether the action is regulation or statutory in nature. An employee who violates the Standards of Conduct has engaged in a regulatory violation, which can be the basis of corrective action or discipline, up to and including removal. Agencies reported around 1,400 disciplinary actions taken in whole or in part as a result of violations of the Standards of Conduct in 2016. Violations of the bribery and conflict of interest statutes can lead to criminal prosecution and/or civil enforcement. For violations of the bribery laws, employees may be subject to a criminal fine, incarceration of up to 15 years, and/or disqualified from holding any office of honor, trust, or profit.³⁵ Violations of the conflict of interest laws can result in imprisonment of up to a year (or up to five years if done willfully), criminal fines, civil penalties, or injunctive action.³⁶ In addition, the U.S. may void and rescind any government transaction (such as a contract, or grant) on the basis of a final conviction for any conflict of interest or bribery offense.³⁷ The U.S. may also bring suit against any person who enters into a conspiracy to violate the criminal conflict of interest or bribery laws³⁸ or who aids and abets an employee in the violation of such laws.³⁹

Please outline the actions required to ensure or improve implementation of the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties and signatories may face include:

- Challenges in developing the proper legislative or regulatory framework for managing or preventing conflicts of interest;
- Challenges in administering conflict of interest systems;
- Challenges in relation to specific recruitment, selection or training requirements for categories of positions considered especially vulnerable to corruption, including possible early identification of potential conflicts of interest;
- Challenges in providing ethical guidance or advice to public officials; and
- Challenges in communication, and in particular in raising awareness and disseminating information about new standards of conflict of interest or in developing training manuals, courses, curricula or other related material, including online initiatives, used in training programs for public officials.

³⁵ 18 U.S.C. § 201.

³⁶ 18 U.S.C. § 216.

³⁷ 18 U.S.C. § 218.

³⁸ 18 U.S.C. § 371.

³⁹ 18 U.S.C. § 2.

The United States does not have any challenges to report at this time.

Do you consider any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

- **Legislative assistance:** Please describe the type of assistance
- **Institution-building:** Please describe the type of assistance
- **Policymaking:** Please describe the type of assistance
- **Capacity-building:** Please describe the type of assistance
- **Research/data-gathering and analysis:** Please describe the type of assistance
- **Facilitation of international cooperation with other countries:** Please describe the type of assistance
- **Others:** Please specify

The United States does not require technical assistance with regard to implementation of this provision.

II - Information requested from States parties in relation to asset and interest disclosure (art. 8, para. 5)

Please describe the measures your country has taken, if any, to ensure full compliance with article 8(5) of the Convention, and in particular to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

Information sought may include:

- Description of the objectives of the declaration system applicable to public officials (prevention of conflict of interest, illicit enrichment, or both [dual system]).
- Where such a declaration system is in place, you may wish to provide information on the following:
 - Types (categories) of public officials required to make declarations and approximate total number of persons submitting declarations;
 - Information that must be declared (assets, outside activities and employments, positions in companies, other associations, gifts and other benefits, liabilities, etc.);
 - Frequency of declarations required;
 - How declarations are submitted (in paper format, electronically, in person) and the entities to which they are submitted;
 - Availability of tools and advisory services that officials can use in order to comply with their disclosure-related obligations (guidelines for filling out forms, resources for learning about conflict of interest issues, resources for receiving tailored advice on specific conflict of interest situations, etc.);

- Whether information is declared on assets of public officials' family members or members of public officials' households and under which circumstances such information is provided;
- What mechanisms are in place for ensuring compliance with the obligation to disclose;
- Whether there is public access to any of this information;
- Any mechanism in place to carry out the verification/monitoring of the content of declarations; including information on the verification mechanism, such as:
 - How many disclosures are verified;
 - What triggers verification (complaints, routine verification/ex-officio, notifications from other institutions, random selection, etc.);
 - What processes are involved in the verification/review process (checks for internal consistency, cross-checks with external databases, comparisons across years, identification of potential conflicts of interest, etc.);
 - What information can be accessed during the verification/review process (from public officials or public and private sector entities);
 - What happens once irregularities are identified (potential conflicts of interest, unjustified variations of wealth, inaccurate information, etc.);
- Whether and to what extent the content of disclosures or names of persons submitting declarations are made available to the public and other public sector entities and, moreover, how the information is made available (upon individual request, online, etc.);
- Number of trained staff dedicated to collection, compliance, providing advisory services to officials making disclosures publically available, verification, sending referrals to other entities; what types of sanctions are available in the declaration system (for non-submission, actual conflict of interest, false statement, illicit enrichment, etc.).

The United States has a comprehensive system of financial disclosure laws and regulations. In the executive branch, there are two systems: a public financial disclosure system for high-level officials, and a confidential financial disclosure system for lower-level officials who occupy positions with higher risk of conflicts of interest. The objective of both financial disclosure systems is the identification and prevention of conflicts of interest. Although a financial disclosure may reveal a violation of law or regulation, the primary purpose of disclosure is to assist agencies in identifying potential conflicts of interest between a filer's official duties and their private financial interests and affiliations. In 2016, there were over 25,800 public financial disclosure reports filed. In 2016, there were almost 370,000 confidential financial disclosure reports filed.

Public Financial Disclosure Reports:

The Ethics in Government Act of 1978 requires senior government employees, including the President, Vice President, heads of agencies, and others, to file public financial disclosure reports.⁴⁰ Individuals in positions that require public financial disclosure must file their

⁴⁰ 5 U.S.C. app. § 101, et seq.

disclosures upon entry into the position, annually, and then upon leaving the position. Certain individuals, such as candidates for nomination or election to the office of the President or Vice President, and certain Presidential nominees requiring Senate confirmation must file their disclosure within a period of time, but no later than 30 days before an election or within five days after nomination to a position. New entrants must file a report within 30 days of assuming office, if not earlier. Individuals must thereafter file an annual report every year by May 15, and again within 30 days of terminating their position.

New entrant, annual, and termination reports must include the following information (once threshold amounts are met):

- Each individual asset held for the production of income and an indication of its value by category of amount
- Each source of investment income and the type and amount of income by category of amount
- Each source of earned income and the exact amount
- Each liability (by creditor) and the amount owed by category of amount
- Gifts and reimbursements for travel by source, including value or amount (annual and termination reports only)
- Purchases, sales, and exchanges of certain assets by date of transaction and category of amount (annual and termination reports only)
- Each position held outside of government (officer, director, trustee, partner, employee, etc.) and dates held
- Any continuing arrangement with a former or current employer or agreement for future employment, and the terms of that agreement or arrangement
- For individuals filing for the first time, the name of each major client for whom the individual has provided personal services

For most of these requirements, the individual must provide the same or similar information for a spouse and dependent children. Filers are also required to disclose their beneficial interests in trusts and other financial arrangements, such as private equity funds, unless an exemption applies. Individuals must report the value of their assets held for production of income by selecting an appropriate category or range of values. For example, valuation of asset categories begin with “None or less than \$1,001,” “\$1,001 to \$15,000,” “\$15,001 to \$50,000,” “\$50,001 to \$100,000,” and so on up to the last category of “over \$50,000,000.” The amounts specified within the categories for reporting the value of assets, investment income, and transactions all differ.

Additionally, employees in positions requiring public financial disclosures must file periodic transaction reports of certain personal financial transactions in stocks, bonds, and other securities.⁴¹ These transaction reports are due within 45 days of the transaction or within 30 days of notification of the transaction. They are reviewed using similar criteria as other public

⁴¹ 5 U.S.C. app. § 103(l).

financial disclosure reports and are made available to the public in the same way as other public financial disclosure reports. In 2016, over 12,000 transaction reports were filed.

OGE has created an executive branch-wide electronic filing system for the filing of public reports. This filing system, known as *Integrity*, is a web-based system developed and administered through OGE. *Integrity* was designed to help produce quality reports, enhance oversight, and promote transparency. As a result, *Integrity* incorporates a combination of data entry grids and context-dependent questions to help filers identify all of their reportable interests and to report those interests correctly. For example, first-time filers are routed through a series of questions that vary based on their entries in prior grids as well as their answers to prior questions. Thus, they help filers identify related financial investments that they may have overlooked. Although a large portion of reports are submitted using *Integrity*, some agencies also allow filers to use other electronic filing systems for public filing. Confidential filing is done either through individual agencies' electronic filing systems or by using standard forms which are available on OGE's website. A process exists that allows agencies to seek permission from OGE to use a more tailored, alternative confidential form.⁴²

To assist those who file or review public financial disclosure reports, OGE has created an interactive online Public Financial Disclosure Guide.⁴³ This tool provides public filers and reviewers with helpful information, illustrations of sample language, definitions, and answers to frequently asked questions in plain language. The guide provides step-by-step instructions on how to fill out the public financial disclosure form and how to report specific types of financial holdings. The guide is an evolving document and easily updated since it is an online tool. OGE also provides tools for helping agencies identify who should file confidential financial disclosure reports⁴⁴ as well as a comprehensive Confidential Financial Disclosure Guide.⁴⁵

Availability of Public Reports:

Reports submitted by the President, Vice President, and for filers at the top two pay levels, such as Cabinet Secretaries, are posted online through the OGE website, and can be accessed without need for a request.⁴⁶ All other public financial disclosure reports are available to the public upon request.⁴⁷ Aside from those officials whose reports are posted on OGE's website, the public financial disclosure for officials requiring Senate confirmation, certain White House appointees, and the most senior ethics official at each agency (approximately 1,000 of the 25,800 reports filed) are available from OGE and can be requested electronically through submission of an online request form.⁴⁸ The remaining public financial disclosure reports filed by executive branch employees are available from the employee's agency and can be obtained by completing

⁴² 5 C.F.R. 2634.905.

⁴³ Public Financial Disclosure Guide:

<https://www.oge.gov/web/oge.nsf/Public%20Financial%20Disclosure/EA3E32C7B5CA940E85257EF100778644?opendocument>

⁴⁴ <https://www.oge.gov/Web/OGE.nsf/Resources/Form+450+Job+Aid>

⁴⁵ [https://www.oge.gov/Web/OGE.nsf/Resources/Confidential+Financial+Disclosure+Guide+\(2016\)](https://www.oge.gov/Web/OGE.nsf/Resources/Confidential+Financial+Disclosure+Guide+(2016))

⁴⁶ President and Vice President:

<https://extapps2.oge.gov/201/Presiden.nsf/President%20and%20Vice%20President%20Index?OpenView&ExpandView>; Cabinet officials and others: <https://extapps2.oge.gov/201/Presiden.nsf/PAS%20Index?OpenView>

⁴⁷ 5 U.S.C. app. § 105(b)(1).

⁴⁸ <https://www.oge.gov/web/oge.nsf/Presidential+Appointee+&+Nominee+Records>

a request form with the appropriate agency.⁴⁹ To request a public financial disclosure report, a member of the public must submit an application with that person's name, occupation, and address, as well as any person who they are acting on behalf of, and must certify that they are aware of certain prohibitions on the use of these reports.⁵⁰ These prohibitions include that financial disclosure forms cannot be used for unlawful purposes, for commercial purposes (other than by news and communication media for dissemination to the general public), for determining or establishing a credit rating, or for use in the solicitation of money for any purpose.⁵¹

Confidential Reports:

Certain employees who are less senior but whose positions pose a risk of potential conflicts of interest file new entrant and annual confidential financial disclosure reports. Employees required to file these reports exercise discretion in sensitive areas such as contracting, procurement, the administration of grants and licenses, and regulating or auditing non-federal entities. Once it is determined that an employee is in a position requiring confidential reporting, the employee must file within 30 days upon entering into the position and must file a new report annually thereafter by February 15th each year. Confidential filers are not required to submit termination reports. Confidential financial disclosure reports require similar information as the public financial disclosure reports, including information on a spousal and dependent child assets, but do not require the listing of the values of assets, income, liabilities, and gifts, or the listing of certain interests such as cash bank accounts and diversified mutual funds that are unlikely to give rise to a conflict of interest. Confidential reports are not available to the public, but are reviewed and certified by agency ethics officials in the same way that public financial disclosure reports are. While not publicly available, these reports can also be obtained by an appropriate investigative or prosecutorial authority if needed.

Verification:

The primary purpose of the financial disclosure system in the executive branch is to proactively identify and prevent conflicts of interest. Public and confidential reports are therefore structured to facilitate a conflict of interest review. These reports are not net worth statements and they are not audited. Every financial disclosure report is subject to both a technical review to ensure that the financial disclosure is in compliance with the disclosure laws and a conflict of interest review for compliance with the ethics laws and to identify potential conflicts of interest and establish a mitigation strategy.

The review of financial disclosure reports is primarily conducted by the agency ethics officials in the agency where the employee is located. The review is to be conducted within 60 days of the date of filing.⁵² For high-level officials, such as the President, Vice President, agency heads, certain White House Officials, and DAEOs, reports are secondarily reviewed by OGE. Once OGE receives the report from the agency, OGE has 60 days to review it.⁵³ Importantly, the

⁴⁹ OGE Form 201:

<https://www.oge.gov/web/OGE.nsf/OGE%20Forms/CFB7B3F7AB6CCFFF85257EA7004DD17F?opendocument>

⁵⁰ 5 U.S.C. app. § 105(b)(2).

⁵¹ 5 U.S.C. app. § 105(c).

⁵² 5 C.F.R. § 2634.605.

⁵³ 5 C.F.R. § 2634.605.

financial disclosure reports of individuals who are nominated to positions requiring Presidential appointment and Senate confirmation (PAS) are reviewed by the agency, OGE, and the White House prior to the individual's appointment.

As technical review of reports sets the stage for the conflicts review, it is imperative to ensure that the filer has correctly reported all relevant information so that a full conflicts review can take place. Although disclosures are to be taken at "face value" unless there is a patent omission or ambiguity, or the reviewer has independent knowledge that something is incorrect, in practice reviewers are generally proactive in engaging with filers to ensure that all disclosures have been accurately made. This is particularly true for the review of reports under OGE jurisdiction. During the technical review, typically the agency (and if applicable, OGE) works with the individual filer, asking the individual a variety of questions to clarify the entries on the report and helping the individual to ensure that all required information is properly disclosed. This process is often iterative and can take multiple rounds. The agency will also consult publicly-available resources such as finance websites, search engines, and government websites. The goal is to understand the nature of the individual's financial holdings because different assets have different disclosure requirements. This information also informs the conflicts review. Likewise, publicly-available background information about the individual might trigger the reviewer to ask additional questions of the individual. If inaccuracies are found, the agency and OGE are authorized to require additional information be made by the filer, which becomes part of the report.

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

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

Nominees who are under consideration for PAS positions are also required to reduce to writing all commitments that they will take to avoid potential conflicts of interest in an "ethics agreement." Once the individual is appointed, OGE, along with the agency in which the person has been appointed, monitors this agreement to ensure that the steps agreed upon have been taken by the individual. Usually those steps are required to be completed within 90 days of appointment.

OGE ensures compliance with the commitments made in an individual's ethics agreement by requiring the individual to provide a written certification of their compliance to their agency and to OGE.⁵⁴ This written certification of ethics agreement compliance is then posted on OGE's website. If an individual fails to timely file a certificate of compliance, OGE will note that the individual has not filed his or her certificate on OGE's website. An employee who has made a material misrepresentation or omission on the certification form may be subject to disciplinary action or criminal prosecution for making a false certification or writing.⁵⁵ Employees other than those in PAS positions may also be required to enter into an oral or written ethics agreement with their agency, and those commitments are monitored by their agency.⁵⁶

Once the review is complete, reviewing officials within each agency (and if applicable, OGE) certify and maintain these reports for a period of six years.⁵⁷

Enforcement:

Failing to file a public or confidential financial disclosure report, making false statements or omissions on a financial disclosure report, and falsifying information on a financial disclosure report are punishable as criminal offenses.⁵⁸ The Department of Justice can also seek a civil penalty for an individual who has knowingly and willfully falsified or failed to file or report information required on a public financial disclosure report.⁵⁹ An individual who files a public financial disclosure report late can also be subject to a \$200 late fee.⁶⁰ In addition, failure to file, filing reports late, or falsifying or failing to report information may result in other corrective action or discipline, up to and including termination.⁶¹

Please outline the actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties may face include:

- Challenges related to developing and adoption of the legal framework of assets and interest disclosure system;
- Challenges related to the functioning of the asset and interest disclosure system and in particular:
 - Challenges related to submission of the declarations;
 - Challenges related to verification of the declarations;
 - Challenges related to the follow up and to imposing sanctions;

⁵⁴[https://www.oge.gov/Web/OGE.nsf/Program%20Management%20Advisories/FE2806B77B2B5AA68525811D007051D3/\\$FILE/PROGRAM%20ADVISORY%20AND%20EA%20CERTIFICATION%20\(May%202017\).pdf?open](https://www.oge.gov/Web/OGE.nsf/Program%20Management%20Advisories/FE2806B77B2B5AA68525811D007051D3/$FILE/PROGRAM%20ADVISORY%20AND%20EA%20CERTIFICATION%20(May%202017).pdf?open)

⁵⁵ 18 U.S.C. § 1001.

⁵⁶ 5 C.F.R. § 2634.801, et seq.

⁵⁷ 5 U.S.C. app. § 105(d).

⁵⁸ 18 U.S.C. § 1001; 5 U.S.C. app. § 104 (applicable to public financial disclosure reports only).

⁵⁹ 5 U.S.C. app. § 104.

⁶⁰ 5 U.S.C. app. § 104.

⁶¹ 5 C.F.R. § 2634.701

- Challenges related to the transparency of the regime; and
- Challenges related to resource limitations, lack of capacity, etc.

The United States does not have any challenges to report at this time.

Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

- **Legislative assistance:** Please describe the type of assistance
- **Institution-building:** Please describe the type of assistance
- **Policymaking:** Please describe the type of assistance
- **Capacity-building:** Please describe the type of assistance
- **Research/data-gathering and analysis:** Please describe the type of assistance
- **Facilitation of international cooperation with other countries:** Please describe the type of assistance
- **Others:** Please specify

States parties are also encouraged to provide a description of any such assistance already being provided, including donor information.

The United States does not require technical assistance with regard to implementation of this provision.