

## **USA Response: Collection of information prior to the tenth 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 2019/84/DTA/CEB, the United States is pleased to provide the following response.

### **I - Information requested from States parties in relation to lessons learned in the development, evaluation, and impact of anticorruption strategies (art. 5)**

- 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 this provision of the Convention, and in particular to develop, implement, monitor, and evaluate the impact of the country's anticorruption policies.**

The United States implements and enforces a comprehensive framework of laws, policies, and regulations that promote accountability, transparency, and integrity within the public sector. While the United States does not have a single anticorruption law or strategy, this framework ensures full compliance with provisions of the Convention. It is important to highlight in this context that article 5 of the UNCAC does not address the issue of anticorruption strategies, but rather focuses on "preventive anticorruption policies and practices." As such, the request for information from States Parties on the matter of strategies may be of value for the purpose of discussion within the PWG but does not correspond directly to an obligation or commitment of States Parties under the Convention.

The United States would highlight several examples of U.S. efforts to implement article 5 of the Convention that may be relevant to this discussion. For example:

To promote public sector transparency, the Freedom of Information Act (FOIA)<sup>1</sup> provides the public the right to request access to records from any federal agency. Generally any person – United States citizen or not – can make a FOIA request. In addition to responding to specific FOIA requests, agencies are also required to automatically disclose certain information, including frequently requested records. The Office of Information Policy at the Department of Justice is responsible for issuing government-wide guidance on the FOIA as part of its responsibilities to encourage all agencies to fully comply with both the letter and the spirit of the FOIA. The U.S. Department of Justice's Public Integrity Section is responsible for enforcing laws pertaining to public sector corruption. The Section also has exclusive jurisdiction over allegations of criminal misconduct on the part of federal judges and also monitors the investigation and prosecution of election and conflict of interest crimes. In addition to those handled by the Public Integrity Section, prosecutions are undertaken at the federal level by individual U.S. Attorney's Offices, each of which is assigned a jurisdiction within the United States and which in total cover the entire country.

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<sup>1</sup> Freedom of Information Act Statute, Public Law No. 114-85. See <https://www.foia.gov/foia-statute.html>.

The United States has several monitoring mechanisms in place that ensure compliance with article 5.

Regarding public sector integrity, the core statutory bribery and conflicts of interest laws for the Executive branch were enacted in 1962. The Ethics in Government Act (EIGA),<sup>2</sup> which established the Office of Government Ethics (OGE) in the executive branch and created the public financial disclosure program for the Federal government, was enacted in 1978. Over the course of the past fifty years, these laws have been reviewed, amended, and augmented by Congress on a number of occasions. Important amendments occurred as part of the Ethics Reform Act of 1989,<sup>3</sup> which made comprehensive changes to EIGA and post-employment laws, and the Honest Leadership and Open Government Act of 2007<sup>4</sup>. Amongst more recent legislative changes include the passage of the Stop Trading on Congressional Knowledge (STOCK) Act of 2012<sup>5</sup>, which established periodic financial disclosure reporting of securities for high-level Executive branch officials, prohibited high-level Executive branch employees from participating in initial public offerings of securities, and established additional restrictions on the use of non-public information. In addition, Congress is currently considering a number of bills that would update and enhance the public integrity framework in the Federal government.

Federal executive branch ethics policies are established through legislation, regulation, and policy implementation. As the supervising ethics office for the executive branch, OGE is tasked with providing overall leadership and oversight of the executive branch ethics program, designed to prevent and resolve conflicts of interest. To this end, OGE has taken a number of steps to increase transparency and accountability of executive branch officials. For example, OGE as has developed a single, comprehensive, and clear set of standards of conduct for all executive branch employees; operates an advisory program service to provide guidance on the application and meaning of the ethics laws and regulations; and maintains an effective system for public and confidential financial disclosure. Because the day-to-day implementation of ethics programs falls to the 130 plus individual departments and agencies, which receive support and guidance from OGE. OGE works closely with these agencies to ensure uniform understanding and application of the government-wide ethics laws, and to identify areas of specific risk to particular agencies that is appropriate for further regulation through supplemental standards of ethical conduct. OGE also oversees agency programs through programmatic reviews and through requests for data.

In addition to developing ethics policies for the executive branch, OGE also routinely undertakes a number of initiatives to monitor the effectiveness of the laws, regulations, and policies regarding public sector ethics. First, OGE is charged by the EIGA with periodically evaluating the effectiveness of legislation and regulations related to conflicts of interest and ethics in the Executive branch, and proposing necessary

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<sup>2</sup> S. 555 – Ethics in Government Act, 95<sup>th</sup> Congress (1977-1978), <https://www.congress.gov/bill/95th-congress/senate-bill/555?q=%7B%22search%22%3A%5B%22%5C%22ethics+in+government+act%5C%22%22%5D%7D&r=6>

<sup>3</sup> H.R. 3660 – Ethics Reform Act of 1989, 101<sup>st</sup> Congress (1989-1990) <https://www.congress.gov/bill/101st-congress/house-bill/3660>

<sup>4</sup> H.R. 2316 – Honest Leadership and Open Government Act of 2007, 110<sup>th</sup> Congress (2007-2008) <https://www.congress.gov/bill/110th-congress/house-bill/2316>

<sup>5</sup> S. 206 – STOCK Act, 112<sup>th</sup> Congress (2011-2012), <https://www.congress.gov/bill/112th-congress/senate-bill/2038>

amendments to those laws to ensure they continue to adequately prevent corruption in the Executive branch.<sup>6</sup> In this regard, OGE submits to Congress potential revisions of EIGA for consideration and provides technical assistance to Congress in regards to potential ethics legislation on request. OGE has also submitted several reports to Congress that contain legislative recommendations regarding ethics laws, including a comprehensive report prepared with input from good government groups and the public in 2006.<sup>7</sup> OGE also engages in routine review of ethics regulations, and has issued a number of comprehensive regulatory updates within the past two years, including significant revisions of the ethics program management regulations<sup>8</sup>, regulations implementing the financial disclosure program<sup>9</sup>, and regulations governing Executive branch employees' acceptance of gifts from outside sources.<sup>10</sup> These regulation initiatives were undertaken with input from the Department of Justice, Office of Personnel Management, other effected Federal agencies, and the public.

Second, OGE issues a number of legal, program, and educational advisory documents each year aimed at increasing uniformity of legal guidance, promoting good program practices, and increasing programmatic effectiveness. For example, in April 2019, OGE issued a program advisory discussing ways that agency programs can assess ethics risks and education needs, identify appropriate content of ethics education training, and engage in continuous process improvement in their programs.<sup>11</sup> Third, OGE's Compliance Division is responsible for monitoring and reviewing agency ethics programs to ensure compliance with applicable ethics requirements established by statutes, rules, regulations, and Executive Orders. To do so, the Compliance Division, through the Program Review Branch, conducts periodic ethics program reviews ("program reviews") of agencies' ethics programs. The purpose of a program review is to identify and report on the strengths and weaknesses of an agency's ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program. These reviews are a vital means by which OGE can assess the ability of an ethics program to engender faith and confidence in the work of an agency. OGE also conducts an Annual Agency Ethics Program Questionnaire of all executive branch agencies. The Questionnaire asks for extensive information about agency ethics programs, including core elements of the ethics program that assist in the identification and resolution of potential conflicts of interest. In this way, OGE can identify both agency-specific and executive branch-wide trends in ethics program management, allowing OGE the potential to make evidence-based decisions regarding program risks and good practices.

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<sup>6</sup> 5 U.S.C. app. § 402(b)(11)-(12).

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[https://www.oge.gov/Web/oge.nsf/0/2992B018CA57C5B985257E96006A91E8/\\$FILE/Report%20to%20the%20President%20and%20Congress%20on%20Ethics.pdf](https://www.oge.gov/Web/oge.nsf/0/2992B018CA57C5B985257E96006A91E8/$FILE/Report%20to%20the%20President%20and%20Congress%20on%20Ethics.pdf)

<sup>8</sup> 5 C.F.R. part 2638.

<sup>9</sup> 5 C.F.R. part 2634

<sup>10</sup> 5 C.F.R. part 2635.

<sup>11</sup> Ethics Education: Using the Regulation to Maximize Effectiveness, OGE PA-19-05 (April 2019), available at [https://www.oge.gov/web/OGEnsf/Program%20Management%20Advisories/818F648FBD1C11A6852583D3004658A9/\\$FILE/PA-19-05.pdf?open](https://www.oge.gov/web/OGEnsf/Program%20Management%20Advisories/818F648FBD1C11A6852583D3004658A9/$FILE/PA-19-05.pdf?open).

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

The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress. Often called the "congressional watchdog," GAO investigates how the federal government spends taxpayer dollars. The head of GAO, the Comptroller General of the United States, is appointed to a 15-year term by the President from a slate of candidates Congress proposes. GAO's mission is to support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. GAO provides Congress with timely information that is objective, fact-based, nonpartisan, nonideological, fair and balanced.

GAO's work is done at the request of congressional committees or subcommittees or is mandated by public laws or committee reports. GAO also undertakes research under the authority of the Comptroller General. They support congressional oversight by:

- Auditing agency operations to determine whether federal funds are being spent efficiently and effectively;
- Investigating allegations of illegal and improper activities;
- Reporting on how well government programs and policies are meeting their objectives;
- Performing policy analyses and outlining options for congressional consideration; and
- Issuing legal decisions and opinions, such as bid protest rulings and reports on agency rules.

GAO advises Congress and the heads of executive agencies about ways to make government more efficient, effective, ethical, equitable, and responsive.

The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is an independent entity established within the executive branch to address integrity, economy and effectiveness issues that transcend individual Government agencies and aid in the establishment of a professional, well-trained and highly skilled workforce in the Offices of Inspectors General. The concept of a statutory Inspector General (IG) was broadly introduced to the civilian side of the Federal government by the Inspector General Act of 1978<sup>12</sup>. The original Inspectors General

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<sup>12</sup> H.R. 8588 – An Act to reorganize the executive branch of the Government and increase its economy and efficiency by establishing Offices of Inspector General within Departments of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation, and within the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, and the Veterans' Administration, and for other purposes – 95<sup>th</sup>

(IGs) were established in 12 Federal agencies. The concept has proved so successful that today, there are 73 statutory IGs across the Federal government.

In addition to domestic implementation of laws, policies, and regulations in place to prevent and combat corruption, the United States has also incorporated anticorruption into its national security and foreign policies. In December 2017, the White House released a new National Security Strategy<sup>13</sup>. As required by law, this strategy outlines the worldwide interests, goals, and objectives vital to the national security of the United States. It was presented to Congress and is publically available online. The current National Security Strategy includes countering foreign corruption as one of the priority actions. Based on this strategy, the United States will use economic and diplomatic tools to target corrupt foreign officials and work with countries to improve their ability to fight corruption.

**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.**

The United States has several measures that ensure or improve the implementation of its anticorruption and integrity framework. These include measures that oblige public organizations to implement standardized anticorruption policies.

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

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

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

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Congress (1977-1978), <https://www.congress.gov/bill/95th-congress/house-bill/8588?q=%7B%22search%22%3A%5B%22%5C%22Inspector+General+Act%5C%22%22%5D%7D&r=1>

<sup>13</sup> National Security Strategy of the United States of America, <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905-2.pdf>

To ensure that both executive branch employees and the public are aware of the scope and interpretation of the ethics laws and regulations, OGE shares all legal and program management advisories that it issues through its public-facing website at the time they are published.

Pursuant to OGE regulations, all prospective employees must be alerted that they will be subject to the Standards of Conduct and the criminal conflict of interest laws, as well as their agencies' commitment to government ethics. As part of Executive branch-wide requirements, all agencies must issue notices to prospective employees in written offers of employment regarding the agencies' commitment to ethics and the applicable ethics requirements.<sup>14</sup>

Under the ethics program regulations, supervisory officials are seen as having additional obligations to the ethics program, including modeling good behavior and assisting subordinates to adhere to the ethics laws.<sup>15</sup> As a result, employees entering supervisory positions are required to be notified of their heightened responsibilities for advancing government ethics and modeling ethical behavior.<sup>16</sup>

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

High-level officials who are appointed by the President with advice and consent of the Senate (PAS) are also required to receive a "live" personal ethics briefing within 15

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<sup>14</sup> [5 C.F.R. § 2635.303.](#)

<sup>15</sup> [5 C.F.R. § 2635.103.](#)

<sup>16</sup> [5 C.F.R. § 2638.306.](#)



days of entering government service.<sup>17</sup> A training is considered live if done in-person or through electronic means, such as by video conferencing or telephone. Agencies must track how many PAS were required to receive the ethics briefing, whether they received the training, and whether they received the training within the required time period. During this individualized briefing, the agency ethics official discusses the appointee’s basic recusal obligations, the mechanisms for recusal, the commitments made in the appointee’s ethics agreement, and the potential for conflicts of interest arising from any financial interests acquired after the nominee’s financial disclosure report is filed. This ethics briefing is in addition to, and does not supplant, the initial ethics training required for all employees.

In addition to initial ethics training, all officials who are required to file financial disclosure reports or are in other positions that have a higher potential for conflicts of interest must also receive annual training.<sup>18</sup> In 2017, over 470,000 officials were required to receive annual ethics training. In addition to those individuals who are required to receive annual training, agencies are authorized to and encouraged to extend additional tailored annual ethics training to specific groups of employees.

In 2017, agencies reported providing additional annual training to all agency employees (47 agencies); human resources personnel (18 agencies); information technology personnel (11 agencies); procurement personnel (34 agencies); supervisors (32 agencies); and other select groups such as bank examiners and grant managers.

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Number of Employees Required to Receive Initial Ethics Training (in thousands) <sup>19</sup>	289	267	229	189	278	353	390	404	356	337

The number of officials requiring annual ethics training tends to be more static than the number of officials requiring initial ethics orientation. Between 2008 and 2017, there was an average of slightly less than 483,000 officials (including PAS and DAEOs) required to receive annual ethics training per year. Since 2013, the yearly average of employees required to receive annual ethics training and who did receive that training was 98.6%. In 2017, agencies had a 97% (460,501 out of 475,970) compliance rate for annual

<sup>17</sup> An exception exists for PAS who are nominated to a position as an officer in the uniformed services or a Foreign Service officer. These excluded officials are generally career officials who are receiving PAS appointments as a result of advancement within the civil service. [5 C.F.R. § 2638.305\(a\)](#); [5 C.F.R. § 2634.201\(c\)\(2\)](#). In addition, time extensions may be provided to covered PAS in individual circumstances. [5 C.F.R. § 2638.305\(b\)\(2\)](#).

<sup>18</sup> [5 C.F.R. §§ 2638.307, .308](#).

ethics training. Importantly, 96% (131 of 136) of agency heads (who are PAS) completed either initial ethics training or annual ethics training or were not required to receive such training. Agencies also went above and beyond minimally required training. In 2017, 76% of agencies provided annual training to persons not required by the regulation to receive training.

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Number of Employees Required to Receive Annual Ethics Training (in thousands) <sup>20</sup>	437	515	574	564	430	432	462	463	475	476

Each year CIGIE reports its results to the President and the Congress in a public report. In the most recent publically available report for Fiscal Year 2016 CIGIE reported the following outcomes:

- 5,019 audit, inspection, and evaluation reports issued (many of them publically available)
- 24,870 investigations closed;
- 538,124 hotline complaints processed;
- 5,120 indictment and criminal informations;
- 4,894 successful prosecutions;
- 1,580 successful civil actions;
- 6,448 suspensions or debarrements from activity in federal programs; and
- 4,315 personnel actions.

Cumulatively, the results of audit and inspections work conducted by OIG’s identified \$25.2 billion in potential savings from report recommendations agreed by agency management. In addition, as a result of criminal and other investigative actions an additional \$19.2 billion was ordered or recovered. Each individual OIG reports its activity to Congress every 6 months in a public report that highlights its activities and the more significant investigations results.

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



**3. Please describe any lessons learned in the development, evaluation and impact of anticorruption policies or strategies.**

The United States continues to learn important lessons through sustained participation in multilateral review mechanisms. These mechanisms help ensure the United States is effectively implementing its anticorruption commitments, and through their recommendations, help identify where the United States can improve. Review by peer countries exposes member states to alternative legal mechanisms, and provides regular opportunities to share best practices. Additionally, the United States routinely involves civil society in these reviews, ensuring non-government stakeholders have the opportunity to provide input on how and where the United States can strengthen its anticorruption efforts. When reports are made public, something the United States does as a matter of policy, this allows even more transparency and opportunities to ensure commitments and recommendations are implemented.

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

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

The United States published its first [Open Government Partnership National Action Plan](#) in September 2011, pledging commitments to promote transparency, empower citizens, fight corruption, and harness the power of new technologies. The action plan contains detailed commitments in a wide variety of areas, developed by governments in consultation with citizens. The United States published its fourth National Action Plan in February 2019.

The evaluations and reviews of the United States conducted by the review bodies of these conventions and instruments can be found at the following links:

- Council of Europe's Group of States against Corruption (GRECO): <http://www.coe.int/en/web/greco/evaluations/usa>
- Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC): <http://www.oas.org/juridico/english/usa.htm>

- [OECD Working Group on Bribery: http://www.oecd.org/daf/anti-bribery/unitedstates-oecdanti-briberyconvention.htm](http://www.oecd.org/daf/anti-bribery/unitedstates-oecdanti-briberyconvention.htm)

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

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