

**THE RESPONSE OF THE UNITED STATES TO THE  
QUESTIONNAIRE  
REGARDING THE PROVISION OF THE INTER-AMERICAN CONVENTION AGAINST  
CORRUPTION SELECTED FOR REVIEW IN THE FOURTH ROUND AND FOR  
FOLLOW-UP OF THE RECOMMENDATIONS FORMULATED IN THE FIRST ROUND\***

**SECTION I**

**QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISION SELECTED  
FOR REVIEW IN THE FOURTH ROUND**

**OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS  
FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING CORRUPT ACTS  
(ARTICLE III, PARAGRAPH 9, OF THE CONVENTION)**

A) *Indicate the oversight bodies in your country that would be relevant for preventing, detecting, punishing, and eradicating corrupt acts, and briefly state the assigned purpose of each.*

There are a broad array of agencies whose activities help support the prevention, detection and investigation and prosecution of corruption, particularly the prevention and detection of corruption. The following list is limited to major agencies only, focusing on the topics covered by the Inter-American Convention Against Corruption. The four underlined bodies are those that the United States has selected to discuss more in depth in the remainder of this questionnaire. These four entities conduct significant activities designed to prevent, detect, investigate and prosecute corruption at the Federal level. For the following list, however, each entity's primary relevance to provisions within the Convention (although not always its primary responsibility) is noted along with a link to the entity's website.

U.S. Office of Government Ethics – promulgates and maintains the Standards of Ethical Conduct for Employees of the Executive Branch, oversees the executive branch financial disclosure system, and provides ethics education and training. (<http://www.oge.gov/>)

Offices of Inspectors General – detects and investigates misconduct within Federal agencies. See the website of the Council of the Inspectors General on Integrity and Efficiency for links to each Office of Inspector General web address: [www.ignet.gov/igs/homepage1.html](http://www.ignet.gov/igs/homepage1.html).

Office of Special Counsel – administers whistleblower disclosure and protection programs. (<https://www.osc.gov/>)

U.S. Department of Justice – Prosecutes all Federal crimes. (<http://www.justice.gov/>)

Criminal Division (<http://www.justice.gov/criminal/>)

Public Integrity Section – prosecutes public corruption.  
(<http://www.justice.gov/criminal/pin/>)

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\* This Questionnaire includes an Annex I that contains an individualized format for the United States to present progress and new information on developments related to the implementation of the recommendations formulated in the country report in the First Round of Review.

Fraud Section – prosecutes bribery of foreign public officials.  
(<http://www.justice.gov/criminal/fraud/>)

Office of International Affairs – handles extradition and mutual legal assistance requests. (<http://www.justice.gov/criminal/about/oia.html>)

Offices of the United States Attorneys – serve as the chief Federal law enforcement offices in 94 districts nationwide. (<http://www.justice.gov/usao/>)

Federal Bureau of Investigation – investigates Federal crimes including corruption. (<http://www.fbi.gov/>)

Office of Information Policy – develops and issues policies regarding and encourages agency compliance with the Freedom of Information Act. (<http://www.justice.gov/oip/>)

U.S. Office of Personnel Management – establishes human resource policy for the Federal Government (<http://www.opm.gov/>)

U.S. Office of Federal Procurement Policy – shapes Federal Government procurement policies and practices ([http://www.whitehouse.gov/omb/procurement\\_default](http://www.whitehouse.gov/omb/procurement_default))

U.S. Securities Exchange Commission – oversees publicly held companies' books and records requirements and private sector whistleblower disclosures. (<http://www.sec.gov/>)

U.S. Department of the Treasury (<http://www.treasury.gov/>)

Internal Revenue Service – implements and enforces tax policy. (<http://www.irs.gov/>)

Financial Crimes Enforcement Network (FinCen) – serves as the United States' Financial Intelligence Unit. (<http://www.fincen.gov/>)

General Services Administration – implements the Federal Advisory Committee Act (public participation). (<http://www.gsa.gov/>)

United States House Committee on Ethics – develops and administers the Code of Official Conduct and financial disclosure for Members of the House of Representatives and staff (<http://ethics.house.gov/>)

United States Senate Select Committee on Ethics – develops and administers the Senate Code of Official Conduct and financial disclosure for Senators and staff (<http://www.ethics.senate.gov/public/>)

Judicial Conference of the U.S. Courts – oversees the Codes of Conduct and financial disclosure of Federal judges and staff (<http://www.uscourts.gov/FederalCourts/JudicialConference.aspx>)

*B) Then select 4 or 5 of these oversight bodies, bearing in mind their institutional importance and that the functions they are assigned should cover one or more of the objectives of preventing, detecting, punishing, and eradicating corrupt acts that trigger disciplinary; administrative; financial or civil; and criminal responsibility.*

The United States Office of Government Ethics (OGE)

The Council of the Inspectors General on Integrity and Efficiency (CIGIE)

The Public Integrity Section of the Criminal Division, U.S. Department of Justice (PIN)

The Office of Special Counsel (OSC)

*C) For each of the oversight bodies selected in the response to question B), to the extent that is possible, address the issues such as those indicated below, attaching copies of the norms or measures on which the answers are based or indicating links to the web pages where they may be consulted:*

NOTE: The information requested by each of the paragraphs under this subsection as well as for subsections D, E and F, will be provided one entity at a time.

## UNITED STATES OFFICE OF GOVERNMENT ETHICS

- i. *Their objectives and functions; their autonomy for pursuing them; and when applicable, the exercise of their functions in conjunction or concert with other agencies or authorities; and the mechanisms for resolving any conflicts of jurisdiction that may arise.*

### ***Objectives and Functions***

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

The Ethics in Government Act of 1978, as amended, is available at the following link: <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title5/html/USCODE-2009-title5-app-ethicsing-titleIV.htm>.

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

OGE has three primary objectives:

- 1) Advance a strong, uniform executive branch ethics program by interpreting and advising on ethics laws, policies, and program management; holding executive branch agencies accountable for carrying out an effective ethics program; contributing to the professional development of ethics officials; and modernizing and implementing the ethics rules and regulations.
- 2) Contribute to the continuity of senior leadership in the executive branch by providing assistance to the President and the Senate in the Senate confirmation process, promoting leadership support of the executive branch ethics program, and supporting succession planning in the executive branch ethics program.
- 3) Promote transparency of the executive branch ethics program by raising the visibility of both the executive branch ethics program and OGE and by ensuring that ethics information is publicly available.

OGE's functions include:

- Promulgating and maintaining enforceable standards of ethical conduct for over four million civilian employees and uniformed service members in over 130 executive branch agencies.
- Overseeing a financial disclosure system that reaches more than 28,000 public filers and over 325,000 confidential filers.
- Ensuring that executive branch ethics programs are in compliance with laws and regulations.
- Providing education and training to approximately 5,600 ethics officials, as well as executive branch employees.
- Conducting outreach to the general public, the private sector, and civil society.
- Sharing model practices with, and providing technical assistance to, state, local, and foreign governments and international organizations.

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

<http://www.oge.gov/About/Organization/>.

OGE publishes its own chapter of regulations in the Code of Federal Regulations. See 5 C.F.R. Chapter XVI. These regulations are divided into two subchapters. The regulations in subchapter A concern the internal organization and operation of OGE. The regulations in subchapter B are broader in scope and are central to the executive branch ethics program; they include the standards of conduct for employees of the executive branch, rules governing the administration of the financial disclosure program, and implementation of certain criminal conflict of interest statutes. In particular, Part 2638 describes the responsibilities of OGE and executive branch agency ethics programs. OGE's authority to issue regulations comes from the Ethics in Government Act. See 5 U.S.C. app. § 404. OGE's ethics regulations are available at the following link: [http://www.ecfr.gov/cgi-bin/text-idx?SID=9fa8226bd637f046c978572a6a4e685d&c=ecfr&tpl=/ecfrbrowse/Title05/5cfrv3\\_02.tpl#2600](http://www.ecfr.gov/cgi-bin/text-idx?SID=9fa8226bd637f046c978572a6a4e685d&c=ecfr&tpl=/ecfrbrowse/Title05/5cfrv3_02.tpl#2600).

### ***Autonomy***

OGE is a stand-alone agency and is not part of any other department or entity. As noted above, OGE's Director is appointed by the President after receiving Senate confirmation and serves a five-year term. With the exception of the Director's special assistant, all other OGE employees are career civil servants. Congress appropriates money to OGE in a public budgeting process and can provide more or

less than the President has requested for OGE in his annual budget. These features help ensure the independence and political neutrality of OGE.

### ***Exercise of Functions in Conjunction with Other Agencies***

Although OGE is a stand-alone agency, OGE consults, as required by law, with the U.S. Department of Justice (DOJ) in seeking any statutory changes to the criminal conflict of interest statutes. As further required by law, OGE consults with DOJ and the U.S. Office of Personnel Management (OPM) in a variety of ways, including but not limited to the development of rules and regulations to be promulgated by the President or OGE's Director pertaining to conflicts of interest and ethics in the executive branch. See 5 U.S.C. § 402. In addition, OGE often consults with DOJ before issuing legal advisories that interpret the criminal conflict of interest statutes and U.S. Supreme Court decisions.

In addition, OGE and DOJ have a standing memorandum of agreement, signed May 19, 1980, which gives OGE the authority to render formal written advisory opinions on matters of general applicability and important matters of first impression that involve the interpretation or application of the laws embodied in the criminal conflict of interest statutes in 18 U.S.C. §§ 202-209. Title 18 of the U.S. Code is available at the following link: <http://www.gpo.gov/fdsys/pkg/USCODE-2012-title18/html/USCODE-2012-title18-partI-chap11.htm>.

As noted above, agencies have primary responsibility to ensure individual compliance with the ethics laws and regulations. Many agencies have independent Inspectors General (IGs) who are responsible for conducting investigations, audits, and inspections to prevent and detect fraud, waste, and abuse within their agency. IGs derive their authority from the Inspector General Act of 1978, as amended. See 5 U.S.C. app. §§ 1-13. If an IG has reasonable grounds to believe that there has been a violation of Federal criminal law, the IG must report the matter to the Attorney General expeditiously. Agencies and IGs are statutorily required to notify OGE whenever they refer an alleged criminal conflict of interest violation for prosecution. Findings of administrative misconduct are referred to agency management, who determines whether to impose disciplinary action.

While OGE does not investigate, discipline, or prosecute individual misconduct, OGE works closely with DOJ and the network of IGs across the executive branch to support their efforts in detection, investigation, discipline, and prosecution. The goal of these interactions is to assist IGs and prosecutors in understanding the complexities of the ethics laws and regulations as they relate to ethics-related investigations and how effective ethics programs can support enforcement. OGE also collaborates more generally with these groups in order to share ethics-related information of mutual interest. Examples of OGE's work with IGs and prosecutors include:

- Direct support to IG investigators and Federal prosecutors on the interpretation and application of the conflict of interest laws and ethics rules.
- Publication of OGE's annual summary of conflict of interest prosecutions by DOJ. OGE surveys the U.S. Attorneys' Offices to identify cases involving the conflict of interest statutes. OGE then summarizes those cases and disseminates the summary to ethics officials in the executive branch. These summaries are available at the following link:  
<http://www.oge.gov/Topics/Enforcement/Conflict-of-Interest-Prosecution-Surveys/>.
- Participation on the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Integrity Committee, which examines allegations of misconduct against IGs and their direct reports.
- Training support to the IG community through the CIGIE's IG Training Institute (TI) and the Council of Counsels to Inspectors General. For example, OGE instructors regularly provide training at the TI on tools and resources available to investigate ethics-related matters, including how to effectively work with ethics officials. This training has become a standard part of the curriculum of TI's IG Criminal Investigator Academy and complements a web-based training module that OGE developed for IG investigators. The module is available at the following link:  
<http://www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2147484391>.

### ***Jurisdictional Conflicts***

Because OGE and the other agencies and entities responsible for preventing, detecting, punishing, and eradicating corrupt acts have clearly defined and distinct functions, conflicts of jurisdiction have not arisen.

- ii. *The scope of their functions, indicating whether any exceptions to it exist.*

OGE has no role in the ethics programs of the legislative or judicial branches of the U.S. Government. Similarly, OGE has no jurisdiction over state or local government ethics programs.

- iii. *The manner in which they adopt their decisions, indicating whether there are various agencies with jurisdiction to do so and whether they are collegiate or single-person agencies; review remedies that can be brought against the decisions adopted, both internally and with other external agencies or authorities; and the actions needed to implement or enforce those decisions.*

OGE does not issue legally binding decisions adjudicating allegations of misconduct. Rather, OGE provides guidance on substantive ethics issues through formal and informal legal advisories. OGE's legal advisories are available on its website at the

following link: <http://www.oge.gov/OGE-Advisories/Legal-Advisories/Legal-Advisories/>. Agencies use these advisories to inform their guidance to employees on specific ethics issues. IGs and DOJ also draw on these advisories as guidance in the course of investigating violations of the criminal conflict of interest statutes and the standards of conduct for employees of the executive branch.

In addition, OGE regularly conducts on-site reviews of agency ethics programs, which are an important component of OGE's statutorily-mandated oversight activities. The primary objective of reviews is to identify the strengths and vulnerabilities of an agency's program by evaluating agency compliance with ethics requirements and analyzing ethics-related systems, processes, and procedures. Program review reports are available at the following link: <http://www.oge.gov/Program-Management/Program-Review/Program-Review-Reports/Program-Review-Reports/>.

When an agency's ethics program does not comply with applicable requirements, OGE will recommend that the agency take action to bring the program into compliance. If an agency fails to adequately address its deficiencies, the Director of OGE can order corrective action, based on authority provided in the Ethics in Government Act and the implementing regulations at 5 C.F.R. §§ 2638.401-404.

This process begins when the Director of OGE issues a Notice of Deficiency. The agency responds by submitting a written report which may contain: (1) information establishing that there is no deficiency; (2) an explanation of how any deficiency is being corrected; or (3) a plan for correcting any deficiency within a reasonable period of time. If the Director determines that a deficiency is not being corrected, he issues an order to the head of the agency which specifies the deficiency, the basis for the Director's determination, the corrective action that is required, and any reporting requirements. In response to the order, the agency head files with the Director a report that details the corrective action taken, or a plan of corrective action. If the agency fails to comply with the order, the Director may ultimately report the agency's noncompliance to the President and to the Congress.

- iv. *The manner in which their senior officers are selected, indicating whether they serve fixed terms or are freely appointed and removable, and the agencies authorized to hold them responsible for their actions and deciding on their continued tenure in those positions.*

For an overview of the hiring system in the executive branch, please consult the U.S. response to the questionnaire from the First Round.

As noted above, OGE's Director is appointed by the President after receiving Senate confirmation and serves a five-year term.

The following positions form OGE's senior staff: General Counsel, Program Counsel, Deputy Director for Compliance, and Assistant Director for Compliance. These positions are occupied by individuals from the career Senior Executive Service (SES). The SES is designed to be a corps of executives selected for their leadership qualifications. Members of the SES serve in the key positions just below the top Presidential appointees. SES members are the major link between these appointees and the rest of the Federal work force.

Initial career appointments to the SES must be based on merit competition. SES appointees are appraised on their performance annually and can be removed for poor performance or misconduct. Disciplinary removal procedures and rights are similar to those for competitive service employees, except that the standard for action is "misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function." *See* 5 C.F.R. § 359.403.

The legal authority for the SES system is found at 5 U.S.C. § 3132, which is available at the following link:

<http://www.gpo.gov/fdsys/pkg/USCODE-2012-title5/html/USCODE-2012-title5-partIII-subpartB-chap31-subchapII.htm>.

The regulations governing the SES are found at 5 C.F.R. pt. 214, which is available at the following link: <http://www.gpo.gov/fdsys/pkg/CFR-2014-title5-vol1/pdf/CFR-2014-title5-vol1-part214.pdf>.

Summaries of the SES system are found on OPM's website, which is available at the following link: <https://www.opm.gov/policy-data-oversight/senior-executive-service/>.

- v. *The manner in which the human resources needed for their operations are identified and how their personnel are selected, indicating whether they are freely appointed and removable or whether they are selected by means of merit-based competition; if certain requirements have to be met to hold such positions; and whether their personnel are subject to a regime of disqualifications and incompatibilities and of responsibility for their actions.*

OGE identifies the human resources needed for its operations in its annual budget request to Congress, based on the long-term strategic goals set forth in OGE's strategic plan. OGE's fiscal year 2014-2018 strategic plan is available at the following link: [http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/OGE-Strategic-Plans-\(FY-2014-2018\)/](http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/OGE-Strategic-Plans-(FY-2014-2018)/). OGE's fiscal year 2015 budget request is available at the following link: <http://www.oge.gov/About/Legislative-Affairs-and-Budget/Budget-and-Appropriations/Annual-Performance-Plan-FY15/>.

As employees of the executive branch of the U.S. Government, OGE personnel are selected, appointed, and removed according to the system of laws and regulations governing employment in the executive branch that were described in the response to the Second Round questionnaire in Section I, Chapter One. This system of laws and regulations also sets forth the requirements executive branch employees must meet to hold their positions.

All employees of OGE are subject to the executive branch standards of conduct; applicable supplemental agency regulations; the criminal conflict of interest laws; and, depending upon the type and level of their positions, the civil ethics statutes and financial disclosure requirements. Further information relating to these issues may be found in the United States' First Round

([http://www.oas.org/juridico/english/mec\\_rep\\_usa.pdf](http://www.oas.org/juridico/english/mec_rep_usa.pdf)) and Second Round ([http://www.oas.org/juridico/english/mesicic2\\_usa.htm](http://www.oas.org/juridico/english/mesicic2_usa.htm)) reports.

- vi. *The existence of manuals or other documents that describe the functions of their personnel, and also indicating whether regular training is given in connection with those functions.*

Each employee at OGE has a written position description of the functions and duties applicable to that employee's position. Each employee also has a written performance plan establishing the critical elements of the employee's position and performance standards for each critical element. The regulations governing employee performance plans are found at 5 C.F.R. § 430.204, which is available at the following link: <http://www.gpo.gov/fdsys/pkg/CFR-2014-title5-vol1/xml/CFR-2014-title5-vol1-sec430-204.xml>.

OGE has an employee development program, which provides time, resources, and organizational support to enhance the professional development and expertise of OGE personnel. Each employee has a tailored employee development plan that identifies objectives for developing the employee's knowledge, skills, and abilities and establishes a training plan to achieve those objectives. OGE documents the training completed by each employee in the employee's individual training file.

- vii. *The existence of documented procedures for performing their tasks, or of manuals or guides dealing with those duties; institutional strengthening or quality improvement actions implemented; and the implementation of systems or modern technologies to facilitate their work.*

OGE has formally committed in its strategic plan to strengthen its processes and procedures for programs that support both the ethics community and OGE's internal operations. See OGE Management Objective 4.2, which is available at the following link: [http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/OGE-Strategic-Plans-\(FY-2014-2018\)/](http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/OGE-Strategic-Plans-(FY-2014-2018)/). As part of this process, OGE is formalizing its policies and procedures in writing. Last year, for example,

OGE developed new standard operating procedures for its on-site reviews of agency ethics programs, which are referenced in OGE's response to question C) iii. This was done to improve the efficiency and effectiveness of both the reviews and the review selection process.

OGE develops written guides that assist agency ethics officials and OGE staff in performing their duties. For example, OGE is responsible for implementing the public and confidential financial disclosure systems for the executive branch. The purpose of both systems is to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective employees, as well as the financial interests of nominees to Presidentially appointed, Senate-confirmed positions. OGE has developed the following guides to facilitate the review of financial disclosure reports and related documents:

- *Nominee and New Entrant 278 Guide*. This resource is a web-based, plain-language guide to educate and assist senior officials required to complete public financial disclosure reports. This user-friendly tool helps both filers and reviewers reduce or eliminate the most common errors found in financial disclosure reports. It is available at the following link: <http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Nominee-and-New-Entrant-278-Guide/Nominee---New-Entrant-278-Guide/>.
- *Public Financial Disclosure: A Reviewer's Reference* (2004). This resource helps ensure the consistent, comprehensive, and accurate review of public financial disclosure reports (OGE Form 278). It is available at the following link: <http://www.oge.gov/Financial-Disclosure/Docs/Financial-Disclosure-Guide/>.
- *Guide to Reporting Selected Financial Instruments*. This resource helps ensure the consistent and accurate reporting and review of less common financial instruments. It is available at the following link: <http://www.oge.gov/Financial-Disclosure/Docs/Guide-to-Reporting-Selected-Financial-Instruments/>.
- *PAS Nominee Ethics Agreement Guide*. This resource comprises a manual and templates used in drafting ethics agreements for nominees to Presidentially appointed, Senate-confirmed positions. It is available at the following link: [http://www.oge.gov/financial-disclosure/docs/pas-nominee-ethics-agreement-guide-\(MS-Word\)/](http://www.oge.gov/financial-disclosure/docs/pas-nominee-ethics-agreement-guide-(MS-Word)/).
- *Guidance for Reviewers of the OGE Form 450, Part I*. The resource provides guidance on analyzing entries for conflicts and other concerns, as well as determining whether entries meet technical reporting requirements. It is available at the following link: <http://www.oge.gov/Financial-Disclosure/Docs/Guidance-for-Reviewers-of-the-OGE-Form-450,-Part-I/>.

OGE continually implements new technological solutions for facilitating and managing its work. For example, OGE developed and launched two new electronic information management systems in fiscal year 2013: the Agency Information Management System (AIMS) and the Financial Disclosure Tracking System (FDTS). AIMS tracks and manages OGE interactions, such as incoming requests for guidance and interpretation, from more than 130 executive branch agencies, Congress, the media, and the public. The system also provides OGE officials instant access to ethics program-related information about all executive branch agencies. FDTS tracks the collection, review, and final action on financial disclosure reports, ethics agreements, certificates of divestiture, and trust documents for Presidential nominees, appointees, and DAEOs. This web-based system provides OGE the ability to follow the progress of financial disclosure-related work throughout the agency and to promptly determine the status of financial disclosure reports.

viii. *The manner in which the general public is provided with information about their objectives and functions, is informed of the procedures established for the performance of their functions, and is given guidance about how to carry out proceedings before them.*

OGE's website is one of the single most significant methods of outreach to and communication with the general public. Three years ago, OGE completely redesigned its website to increase transparency and improve public access to thousands of ethics documents. These changes included reorganizing the site's content, significantly improving the search and filter capabilities, and developing a new aesthetic appearance. OGE's website is available at the following link: [www.oge.gov](http://www.oge.gov).

Committed to the principle of transparency in Government, OGE makes a variety of data sets and other information available online. These include:

- Records pertaining to individuals who have been nominated or appointed by President Obama with the advice and consent of the Senate to positions in his Administration. These include public financial disclosure reports, certificates of divestiture, and ethics pledge waivers. These are available at the following link: <http://www.oge.gov/Open-Government/Presidential-Appointee---Nominee-Records/>.
- Legal advisories that provide written guidance on substantive ethics laws, rules, and policies to promote consistent interpretation and application across the executive branch. Legal advisories are available at the following link: <http://www.oge.gov/OGE-Advisories/Legal-Advisories/Legal-Advisories/>.

- Education resources for Federal employees and executive branch agency ethics officials. Education resources are available at the following link: <http://www.oge.gov/Education/Education/>.
- Reports issued pursuant to reviews of agency ethics programs, which are described in the response to question C) iii. These are available at the following link: <http://www.oge.gov/Program-Management/Program-Review/Program-Review-Reports/Program-Review-Reports/>.
- Semiannual reports of payments for travel, subsistence, and related expenses received by agencies from non-Federal sources in connection with the attendance of employees at certain meetings or similar functions. These are available at the following link: <http://www.oge.gov/Open-Government/Travel-Reports/Travel-Reports/>.
- OGE's annual budget requests to Congress. These are available at the following link: <http://www.oge.gov/About/Legislative-Affairs-and-Budget/Budget-and-Appropriations/Budget-Submissions-to-Congress/>.
- OGE's correspondence to Congress. This is available at the following link: <http://www.oge.gov/About/Legislative-Affairs-and-Budget/Congressional-Correspondence/>.
- OGE's reports and testimony to Congress. These are available at the following link: <http://www.oge.gov/About/Legislative-Affairs-and-Budget/Reports-and-Testimony-to-Congress/>.
- Compliance reports issued by OGE to Congress, the Office of Management and Budget (OMB), and other Federal entities. These are available at the following link: <http://www.oge.gov/About/Management-Reports-and-Policies/Compliance-Reports/Compliance-Reports/>.

Last year, OGE substantially increased its efforts to reach audiences outside of the Federal Government. These audiences include members of the general public, state and local governments, private sector organizations, professional associations, government watchdog groups, the media, and foreign delegations. For example, OGE launched an official Twitter account (@OfficeGovEthics) to increase the visibility of the executive branch ethics program by sharing information about it with the public and media. Tweets issued from OGE's Twitter account are available at the following link: <https://twitter.com/OfficeGovEthics>.

Additionally, many of the procedures established for the performance of OGE's functions, as well as those of the executive branch ethics program, are published in the Code of Federal Regulations in 5 C.F.R. Chapter XVI. See OGE's response to question C) i., above, for more information on OGE's regulations.

- ix. *The mechanisms for internal control and for dealing with claims, complaints, or allegations related to the pursuit of their objectives and to the performance of their personnel.*

Like all executive branch agencies, OGE is subject to myriad internal controls that focus on the prevention of fraud, waste, and mismanagement at the individual level as well as the systemic, agency level. The U.S. Government's network of laws and regulations designed to minimize the potential for fraud, waste, and mismanagement are described further in the response to the First Round questionnaire in Chapter One, Section 3. In addition, OGE maintains an administrative manual, which covers rules and procedures related to internal control matters such as financial management, procurement, property management, records management, and travel.

Further, OGE's five-year strategic plan serves as a mechanism for internal control by describing the strategies OGE will use to achieve its mission and documenting how OGE will measure whether those strategies are successful. The requirements governing the development of strategic plans are found at 5 U.S.C. § 306. OGE is also required to conduct quarterly performance reviews to measure progress towards its goals and to develop strategies to improve performance, as needed. See 5 U.S.C. § 306 and the GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011), which are available at the following respective links:

<http://www.gpo.gov/fdsys/pkg/USCODE-2012-title5/html/USCODE-2012-title5-partI-chap3-sec306.htm>

<http://www.gpo.gov/fdsys/pkg/PLAW-111publ352/html/PLAW-111publ352.htm>.

With regard to mechanisms for dealing with claims, complaints, or allegations related to OGE's pursuit of its objectives or the performance of its personnel, all executive branch employees have a responsibility to report fraud, waste, abuse, and corruption to appropriate authorities. See the U.S. response to the First Round questionnaire, Chapter One, Section 4. With regard to OGE, such complaints or allegations can be made to OGE managers, the U.S. Office of Special Counsel at

<https://www.osc.gov/wbdisc.htm#>, the U.S. Government Accountability Office's FraudNet at <http://www.gao.gov/fraudnet/fraudnet.htm>, and OGE's congressional oversight committees.

OGE is subject to oversight by the following congressional committees:

- U.S. House of Representatives Committee on Oversight and Government Reform. The website for this Committee is available at the following link: <http://oversight.house.gov/>.
- U.S. House of Representatives Judiciary Committee's Subcommittee on the Constitution and Civil Justice. The website for this Subcommittee is available

at the following link: <http://judiciary.house.gov/index.cfm/subcommittee-on-the-constitution-and-civil-justice>.

- U.S. Senate Committee on Homeland Security and Government Affairs. The website for this Committee is available at the following link: <http://www.hsgac.senate.gov/>.
- U.S. House Appropriations Subcommittee on Financial Services and General Government. The website for this Committee is available at the following link: <http://appropriations.house.gov/Subcommittees/Subcommittee/?IssueID=34780>.
- U.S. Senate Appropriations Subcommittee on Financial Services and General Government. The website for this Committee is available at the following link: <http://www.appropriations.senate.gov/sc-financial.cfm>.

- x. *The manner in which the budgetary resources needed for their operations are ensured.*

As it does for all parts of the U.S. Government, the Congress appropriates the funds for OGE each year. As part of this process, OGE first submits a request and justification for its yearly appropriation to OMB. OMB then reviews OGE's request and modifies as necessary to balance all executive agency requests into one target spending goal. OGE's budget request then becomes part of the President's annual budget recommendation to Congress. OGE concurrently submits a budget justification explaining how the requested appropriation will be spent in support of the agency's mission. OGE's most recent Congressional Budget Justifications are available at the following link: <http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/Performance---Strategic-Documents/>.

Congress ultimately appropriates funds to executive branch agencies for their programs, including OGE. Congress can provide more or less money to OGE than the President has requested for the agency in his annual budget. OGE's current annual budget is approximately \$15 million. Information on OGE's appropriations, as well as requests, notices, and reports that OGE has been required to submit to Congress, are available at the following link: <http://www.oge.gov/About/Legislative-Affairs-and-Budget/Budget-and-Appropriations/Appropriations/>.

- xi. *As appropriate, the coordination mechanisms for harmonizing their functions with those of other oversight agencies or public authorities and for securing the support of other authorities and the public for full compliance with their duties.*

See response to question C) i.

- xii. *Accountability mechanisms applicable to the performance of their duties; the way in which the information needed for that is gathered and processed; and the*

*information issued for that purpose, and the way in which it is made public and how members of the public may access it.*

One of the main mechanisms for accountability is through the fulfillment of annual reporting requirements. As with all Federal agencies, OGE reports progress toward established performance goals in its Annual Performance Report, formerly called the Performance Accountability Report (PAR). Copies of OGE's most recent PARs are available at the following link: <http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/Performance---Strategic-Documents/>.

Historically, OGE has collected and reviewed information from executive branch agency ethics officials and other audiences to draft the PAR and to inform program decisions. Current accountability mechanisms include:

- Surveying ethics officials annually to assess their satisfaction with OGE's guidance, training, and overall efforts.
- Evaluating agency ethics program compliance by gathering information from each agency, such as the number of financial disclosure reports filed at an agency, the number of DOJ prosecutions or IG referrals made on ethics-related issues, and the number of disciplinary actions taken on ethics-related charges.
- Collecting and reviewing evaluations from participants in OGE's training events to ensure that training is effective and useful.
- Utilizing agency ethics program reviews to evaluate agency ethics programs and to obtain valuable feedback from agency ethics officials about OGE's programs and support.
- Analyzing information collected through OGE's Agency Information Management System to identify areas on which to focus its resources, such as particular ethics issues where additional training or other guidance is needed.

*D) For each of the oversight bodies selected in the response to question B), summarize the results obtained in the performance of their duties, providing the relevant information available to your country and making reference, to the extent that is possible, to issues such as the following:*

- i. If the oversight body in question is tasked with the prevention of corrupt acts, list the actions taken in the past five years to prevent those acts, such as: campaigns to publicize their consequences; probity programs or awareness-raising on the duty of respecting and protecting public property and general interests; production of manuals or guides to orient public servants and private citizens regarding ethical behavior in their dealings with the State; alerts about corruption risks in specific areas of the State's operations and proposals for preventing them; attention to inquiries, issuing of opinions, or advisory actions or preventive auditing related to*

*the State's actions; attention paid to corruption prevention studies in the areas of their jurisdiction and to related suggestions made by civil society.*

Set forth below are highlights of key results from the past five years. As noted above, OGE enumerates accomplishments in its PARs, which are available at the following link: <http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/Performance---Strategic-Documents/>.

### ***Overview of Actions Taken by OGE in the Past Five Years***

During the last five years, OGE continued to exercise leadership in the executive branch to prevent conflicts of interest by accomplishing the following:

- OGE set forth executive branch-wide policy and interpretive guidance of the executive branch ethics laws and regulations. To promote consistent interpretation and application of the ethics laws, regulations, and policy guidance across the entire executive branch, OGE published written guidance in the form of legal advisories, more than 50 of which were issued between 2009 and 2013. Copies of OGE's legal advisories are available at the following link: <http://www.oge.gov/OGE-Advisories/Legal-Advisories/Legal-Advisories/>.
- OGE provided vital services and support to agency ethics officials throughout the executive branch. Through its Desk Officer program, OGE provided timely and accurate advice to ethics officials in response to questions regarding unique or emerging ethics-related issues. In addition to responding to requests for advice, Desk Officers actively reached out to the ethics community to address issues and challenges that are of common interest in order to arrive at and share collaborative solutions. During fiscal year 2013 alone, OGE responded to approximately 2,700 requests for guidance from agency ethics officials.
- OGE developed and provided substantive training to agency ethics officials to help them attain the knowledge and skills necessary to carry out the duties of their positions. In fiscal year 2013 for example, OGE delivered 41 instructor-led classroom and web-based training courses to 3,059 ethics officials.
- OGE exercised oversight of the executive branch ethics program through onsite monitoring of agency ethics programs. Its oversight activities are designed to mitigate program vulnerabilities and disseminate model practices. Between fiscal years 2009 and 2013, OGE issued more than 130 ethics program review reports, as well as 52 follow-up reports detailing the actions agencies took to comply with OGE's recommendations. These reviews are discussed further in OGE's response to question C) iii. Copies of program review reports are available at the following link: <http://www.oge.gov/Program-Management/Program-Review/Program-Review-Reports/Program-Review-Reports/>.

### *Actions Taken by OGE with Respect to Executive Branch Leadership*

OGE also plays an important role in preventing conflicts of interest among officials filling positions that require Presidential appointment with Senate confirmation. In the period following a Presidential election, substantial changes in senior leadership within agencies occur regardless of the outcome of an election. During the last five years, such changes occurred in 2009 and 2013.

OGE undertook several initiatives in fiscal year 2012 to help agencies prepare for the nominations that occurred in 2013. OGE assisted by:

- Providing increased training to help agency ethics officials deal effectively with legal and programmatic issues related to appointees leaving Government, including rules governing seeking employment and limits on post-Government employment activities.
- Providing training to selected agencies focusing on the unique role that leadership plays in establishing and maintaining an ethical organizational culture and in promoting professional integrity among employees. The training facilitated a dialogue about the importance of promoting the obligations of public service and of having those obligations inform the day-to-day processes and decision-making of the agencies.
- Providing intensive election-year focused nominee financial disclosure training to nearly 300 ethics officials across the executive branch.
- Conducting focused ethics program reviews of agencies to ensure their readiness for the post-election period.
- Creating a web-based, plain-English resource that takes new entrant and nominee public financial disclosure filers through the complex financial disclosure process. This resource is discussed further in OGE's response to question C) vii. It is available at the following link:  
<http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Nominee-and-New-Entrant-278-Guide/Nominee---New-Entrant-278-Guide/>.

Highlights of OGE's facilitation of the Presidential transition in 2009 included:

- Hosting in-person meetings with representatives of both major Presidential candidates' campaign teams prior to the election, and providing those representatives with training on the legal requirements imposed by the executive branch ethics program and on the development of effective ethics programs.
- Producing and posting guidance on OGE's website directed at Senate-confirmed, Presidential appointees, including a video message from OGE's

Director stressing the importance of ethics and financial disclosure and a Presidential Transition Guide. A copy of the Presidential Transition Guide is available at the following link: [http://www.oge.gov/Open-Government/Presidential-Transition-Guide-\(2009\)/](http://www.oge.gov/Open-Government/Presidential-Transition-Guide-(2009)/).

- Producing posters that creatively and succinctly conveyed key ethics concepts, which the Transition Team displayed in its headquarters.
- Issuing substantive policy memoranda that implement the Ethics Pledge contained in Executive Order 13490, which is discussed below.
- Providing training to ethics officials on financial disclosure and providing specific agency guidance regarding new lobbyist rules.
- Providing guidance to departing Administration personnel on issues such as seeking employment and post-Government employment.

OGE works closely with the White House and agency ethics officials to help prospective Presidential nominees to Senate-confirmed positions comply with the extensive financial disclosure requirements of the Ethics in Government Act. As a result of the 2012 Presidential election, OGE reviewed 68 percent more public financial disclosure reports of individuals in Presidentially appointed, Senate-confirmed positions in fiscal year 2013 than it reviewed in fiscal year 2012. Copies of these records are available at the following link: <http://www.oge.gov/Open-Government/Access-Records/Current-Executive-Branch-Nominations-and-Appointments/>.

OGE also works with agency ethics officials to prepare individualized ethics agreements to avoid and resolve potential conflicts of interest before a Presidential nominee enters Government service. OGE monitors the timeliness of compliance with these ethics agreements through the collection and review of documentation received by agency ethics officials. In fiscal year 2013 for example, 45 Presidentially appointed, Senate-confirmed officials entered into ethics agreements that required compliance documentation. Agency ethics officials reported that 96 percent of these individuals complied with their ethics agreements within the established timeframes. Copies of these records are available at the following link: <http://www.oge.gov/Open-Government/Access-Records/Current-Executive-Branch-Nominations-and-Appointments/>.

Further, OGE is responsible for the implementation of Executive Order 13490, which was issued by President Obama in 2009. The Order requires that full-time, non-career Presidential appointees sign an “Ethics Pledge” relating to lobbyist gifts, the “revolving-door,” and hiring employees based on merit. Pursuant to the Order, OGE must provide an annual public report on administration of the Ethics Pledge and the Order. Copies of these reports are available at the following link: <http://www.oge.gov/Open-Government/Presidential-Appointee---Nominee-Records/>.

To ensure Presidentially appointed, Senate-confirmed officials remain free of conflicts of interest after taking office, OGE reviews their annual and termination public financial disclosure reports. In fiscal year 2013, OGE reviewed 1,383 new entrant, annual, and termination public financial disclosure reports required to be submitted to OGE, as well as 392 periodic transaction reports. Copies of these records are available at the following link: <http://www.oge.gov/Open-Government/Access-Records/Current-Executive-Branch-Nominations-and-Appointments/>.

- E. For each of the oversight bodies selected in the response to question B), briefly report on difficulties encountered in preventing, detecting, and punishing corrupt acts of relevance in consideration of their functions and, if applicable, identify specific technical cooperation needs.*

Like many other agencies in the U.S. Federal government, OGE faces challenges created by the current austere budget environment. A recent revision of the Ethics in Government Act, which has increased the agency's workload, has compounded these challenges. In fiscal year 2013, Federal agencies experienced an across-the-board reduction in budgetary resources in all budget accounts not exempted by statute. To minimize operational risks and the impact on OGE's core mission, OGE significantly curtailed all discretionary spending in fiscal year 2013. These actions enabled OGE to avoid furloughing its employees, unlike many other agencies in the executive branch. Despite this achievement in fiscal year 2013, all Federal government employees not exempted by law were furloughed at the beginning of fiscal year 2014 until Congress enacted legislation providing appropriations for agency operations. Despite these recent challenges and ongoing budget constraints, OGE continues to carry out its leadership and oversight responsibilities and advance its strategic goals as described above.

- F. If so desired, report on no more than one best practice developed in connection with the duties of each of the oversight bodies selected in the response to question B) that you wish to share with the other MESICIC member countries, . . .*

OGE provides assistance to the President and the Senate in the Presidential appointment process. Working with the White House and executive branch agencies, OGE provides assistance by reviewing the financial interests of Presidentially-appointed, Senate-confirmed nominees for possible conflicts of interest with their prospective duties. OGE carefully evaluates each nominee financial disclosure report and works with agency ethics officials to prepare an individualized ethics agreement to avoid and resolve potential conflicts of interest before a nominee enters Government service.

This review of nominee financial disclosure reports is a model practice for several reasons:

- This process ensures that the future, most senior officials in the executive branch have a personal and direct understanding of how the conflict of interest requirements affect them.

- The process serves as a nominee's personal and positive introduction to the agency ethics official and to the existence of the ethics program in the department or agency in which the individual may serve.
- Through this process, the ethics program gains continued support from the leadership of the department or agency.

## THE COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY (CIGIE)

**Introduction:** The Council of the Inspectors General on Integrity and Efficiency (CIGIE or Council) is comprised of all Federal Inspectors General (IGs) whose offices are established under section 2 or section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) (IG Act) (<https://www.ignet.gov/pande/leg/igactasof1010.pdf>). These IGs are appointed by the President after Senate confirmation or are appointed by agency heads (designated Federal entities). In addition to these Inspectors General, the Council consists of the Deputy Director for Management of the Office of Management and Budget, who is the Executive Chair of the Council; the Inspectors General of the Intelligence Community and the Central Intelligence Agency; the Controller of the Office of Federal Financial Management, a senior level official of the Federal Bureau of Investigation designated by the Director of the Federal Bureau of Investigation; Director of the Office of Government Ethics; Special Counsel of the Office of Special Counsel; the Deputy Director of the Office of Personnel Management; and the Inspectors General of the Library of Congress, Capitol Police, Government Printing Office, Government Accountability Office, and the Architect of the Capitol.

The IG Act statutorily established the Offices of Inspector General (OIG) as independent and objective units within each agency whose duty it is to combat waste, fraud, and abuse in the programs and operations of that agency. The purpose of an IG is to conduct audits and investigations; provide leadership and coordination to promote economy, efficiency, and effectiveness and prevent fraud in an agency's programs and operations; and keep the head of the agency and the Congress informed as to deficiencies in such programs and operations.

It is important to note that there are two distinct types of IGs under the IG Act: those in “establishment” agencies (establishment IGs) and those in “designated Federal entities” (DFE) (DFE IGs). For both types of IGs, the IG Act specifically provides for the organizational independence of the OIG. This important organizational independence helps to limit the potential for conflicts of interest that exist when an audit or investigative function is placed under the authority of the official whose particular programs are being scrutinized. This insulates IGs against reprisal and promotes independent and objective reporting.

*Establishment IGs [IG Act, § 3(a)]:* The Act specifies that each IG “shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment.” Except under narrow circumstances discussed below, even the head of the establishment may not prevent or

prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

DFE IGs [IG Act, § 8G(d)]: Similarly, each DFE IG “shall report to and be under the general supervision of the head of the [DFE], but shall not report to, or be subject to supervision by, any other officer or employee of such [DFE].” Again, except in narrow circumstances discussed below, even the head of the DFE may not prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

The Council is a coordinating body for issues that transcend those individual Government agencies, and serves to increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the Offices of IGs (OIGs).

- i. *Their objectives and functions; their autonomy for pursuing them; and when applicable, the exercise of their functions in conjunction or concert with other agencies or authorities; and the mechanisms for resolving any conflicts of jurisdiction that may arise.*

The IG Act statutorily established the Federal IGs as independent and objective units within most agencies whose duties are to combat waste, fraud, and abuse in the programs and operations of their respective agencies. To this end, each IG is responsible for conducting audits and investigations relating to the programs and operations of its agency. Additionally, IGs provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness, and prevent and detect fraud and abuse, in agency programs and operations.

In their responsibilities towards meeting their mission, the IGs are involved in several activities, in accordance with the IG Act § 4. These include: 1) providing policy direction for, and conducting, supervising, and coordinating audits and investigations relating to the programs and operations of their agency; 2) reviewing existing and proposed legislation and regulations relating to programs and operations of their agency and making recommendations in semiannual reports to Congress concerning the impact of such legislation on the economy and efficiency in the administration of programs and operations or the prevention and detection of fraud and abuse in such programs and operations; 3) recommending policies for, and conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of the program or preventing and detecting fraud and abuse in the agency’s programs and operations; 4)

recommending policies for, and conducting, supervising, or coordinating relationships between such agency and other Federal agencies, State and local government agencies, and nongovernmental entities with respect to matters relating to the promotion of economy and efficiency, or the identification and prosecution of participants in such fraud or abuse of agency programs or operations; and 5) keeping the head of the agency and Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the agency, recommending corrective action concerning such problems, abuses, and deficiencies, and reporting on the progress made in implementing such corrective action.

The IGs report to and are under the general supervision of the head of the agency or to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by any other officer of the agency. Neither the head of the agency nor the officer next in rank below such head shall prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation [IG Act § 3(a)]. There is no statutory definition of “general supervision.” However, the IG Act is clear that this supervision is limited and may not be exercised in a way that would inhibit an IG’s full discretion to undertake an audit or investigation, issue subpoenas, and see these matters through to conclusion. Additionally, although only a few court decisions have analyzed the “general supervision” language of the IG Act, one case in particular, *United States Nuclear Regulatory Commission v. Federal Labor Relations Authority*, 25 F.3d 229, 235 (4th Cir. 1994), reviewed the legislative history of the “general supervision” language and described the agency head’s supervisory authority over the IG as “nominal.”

Additionally, the IG Act creates a rare dual reporting obligation for IGs to keep both the head of the agency and the Congress “fully and currently informed” about deficiencies in agency programs and operations, and progress in correcting those deficiencies [IG Act § 4(a)(5)].

Inspector General offices occasionally will enter into Memoranda of Understanding and Agreement with other OIGs, as well as other Federal offices, to conduct audit or investigative work jointly. Instances such as these may involve overlapping jurisdiction of the entities and/or convey jurisdictional authority to the other entity to assist in an audit or investigation. This mechanism is also used to address potential jurisdictional matters that could arise if such agreements were not in place.

Also, OIGs often work directly with Federal and State prosecutors when conducting an investigation involving violations of law. Upon completion of the investigation OIGs will provide their reports of investigation (findings) to applicable prosecutors for potential legal action. Further, in instances where an administrative investigation is conducted by an OIG, the OIGs will share the results of the investigation with

appropriate officials for consideration of any corrective or disciplinary action deemed appropriate.

Further, in carrying out their duties and responsibilities established under the IG Act, each IG is to give regard to the activities of the Government Accountability Office with a view toward avoiding duplication and ensuring effective coordination and cooperation [IG Act § 4(c)]. Also, IGs are to report expeditiously to the Department of Justice whenever the IG has reasonable grounds to believe there has been a violation of Federal criminal law.

ii. *The scope of their functions, indicating whether any exceptions to it exist.*

Each OIG has a broad statutory mandate to “conduct . . . audits and investigations relating to the programs and operations” of the agency and to “conduct . . . other activities . . . for the purpose of promoting economy and efficiency in the administration of . . .” the agency [IG Act, §§ 4(a)(1), (a)(3)]. Within this broad mandate, the IG is given full discretion to undertake those investigations and reports that are, in the judgment of the IG, “necessary or desirable” [IG Act, § 6(a)(2)]. Although the IG reports to the agency head, even that official may not compromise the initiation or conduct of an OIG audit or investigation [IG Act, §§ 3; 8G(d)].

OIG audits are conducted in accordance with Government Auditing Standards (<http://www.gao.gov/yellowbook>) established by the Comptroller General of the United States [IG Act, § 4(b)(1)(A)]. In addition, OIGs coordinate with the Comptroller General to avoid duplication in Federal audits [IG Act, § 4(c)]. OIGs also establish criteria for using non-Federal auditors (typically, Certified Public Accountant firms) and ensure that such auditors comply with Government Auditing Standards.

OIGs are charged with not only investigating or auditing fraud, waste, and abuse after they have occurred, but also identifying vulnerabilities and recommending programmatic changes that would, when enacted or implemented, strengthen controls or mitigate risk. Additionally, OIGs may investigate allegations of mismanagement. To this end, some OIGs, but not all, have separate offices devoted to conducting program inspections and evaluations. Others fulfill this responsibility through their audit and investigative offices. Where an OIG does conduct program evaluations and inspections, the IG is charged with tracking and reporting these recommendations in its semiannual report to the Congress, just as an OIG reports its audit findings and recommendations. CIGIE’s Quality Standards for Inspection and Evaluation (<https://www.ignet.gov/pande/standards/iestds12.pdf>) provides a solid framework for the work of OIG inspectors and evaluators.

The objectivity of these fact-finding efforts is enhanced by the considerable independence given the IGs, which is discussed above. This independence enables IGs to fulfill a fundamental responsibility to keep the agency head and the Congress informed about problems and deficiencies in agency programs and operations.

However, the statutory requirement for operational independence with respect to IG audits and investigations does not foreclose coordination and cooperation between the IG and agency management. For example, OIGs generally invite agency management to comment on the IG's annual work plan; in this way, managers can offer suggestions on risk areas they perceive in their day-to-day operations of agency programs. Consultation with subject matter experts in the agency's program offices also can enhance OIG work products.

OIG investigations are conducted in accordance with the CIGIE Quality Standards for Investigations (<https://www.ignet.gov/pande/standards/invstds2011.pdf>) and Federal law. In conducting investigations, whenever the IG has "reasonable grounds to believe there has been a violation of Federal criminal law," the IG must promptly report the matter to the Attorney General [IG Act, § 4(d)]. These reports are to be made directly to the Attorney General, without prior clearance by agency officials outside OIG.

The IG Act authorizes criminal investigators in the offices of 24 Presidentially-appointed IGs to exercise law enforcement powers while conducting official duties.<sup>2</sup> More specifically, these law enforcement powers include the authority to (1) carry a firearm while engaged in official duties; (2) make an arrest without a warrant for any Federal offense committed in the presence of the agent, or when the agent has reasonable grounds to believe that the person to be arrested has committed or is committing a Federal felony; and (3) seek and execute Federal warrants for arrest, search of premises, or seizure of evidence under the authority of the United States. The Act also provides a mechanism whereby the Attorney General may, after an initial determination of need, confer law enforcement powers on investigative personnel of other OIGs, including those in DFE OIGs [IG Act § 6(e)]. Those OIGs with law enforcement authority conferred directly by statute or designated by the Attorney General must exercise those powers in accordance with guidelines promulgated by the Attorney General. Each OIG also undergoes periodic peer review of its exercise of law enforcement powers.

Note that the IG Act, at section 8, sets out unique authorities or responsibilities for certain OIGs. Other statutes may also enlarge or change an IG's authorities within a particular agency. For information on these OIG-specific authorities, it may be helpful to consult the website for the particular OIG. These may be accessed via the CIGIE website at <http://www.ignet.gov/igs/homepage1.html>.

There is an exception to the prohibition on agency interference with IG audits, investigations, and subpoenas. Under the IG Act, the heads of seven agencies (the Departments of Defense, Homeland Security, Justice, Treasury, plus the Federal Reserve Board, the Consumer Financial Protection Bureau, and the Postal Service)

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<sup>2</sup> There are four OIGs (Department of Agriculture, Department of Defense, U.S. Postal Service, and Treasury IG for Tax Administration) that derive their law enforcement authority from legislation other than the IG Act of 1978, as amended.

may prevent their respective IGs from initiating or completing an investigation or audit, or issuing a subpoena, but only for reasons specified in the IG Act [*see, e.g., IG Act, § 8*]. These reasons include, among others, preserving national security interests, protecting ongoing criminal prosecutions, or limiting the disclosure of information that could significantly influence the economy or market behavior [*see, e.g., IG Act, § 8D*]. If an agency head invokes this power, he or she must send an explanatory statement to certain Congressional Committees within 30 days. Other Federal statutes may provide heads of agencies with similar powers over IG audits, investigations, and subpoenas.

- iii. *The manner in which they adopt their decisions, indicating whether there are various agencies with jurisdiction to do so and whether they are collegiate or single-person agencies; review remedies that can be brought against the decisions adopted, both internally and with other external agencies or authorities; and the actions need to implement or enforce those decisions.*

As mentioned above, an OIG's work either culminates in recommendations for programmatic changes, or in criminal, civil, or administrative findings referred to authorities for any action deemed appropriate. In instances where recommendations for programmatic changes are referred to Federal agency officials, these officials may determine to adopt such recommendations, adopt portions of the recommendations, or choose not to accept the recommendations. The OIGs do not have any enforcement authority with respect to such recommendations. However, once the recommendations are made, an agency is ultimately accountable for how it did or why it did not implement any recommendation.

In instances where an OIG conducts investigations that culminate in a criminal, civil, or administrative finding, those matters are referred to authorities with appropriate jurisdiction to act upon the findings. Such action may be to prosecute an alleged criminal violation; file a civil action; or take appropriate administrative action.

- iv. *The manner in which their senior officers are selected, indicating whether they serve fixed terms or are freely appointed and removable, and the agencies authorized to hold them responsible for their actions and deciding on their continued tenure in those positions.*

Selection and Appointment:

Under the IG Act, all IGs must be selected without regard to political affiliation and based solely on "integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations" [IG Act, §§ 3(a); 8G(c)].

*Establishment IGs [IG Act, § 3(a)]:* Establishment IGs are appointed by the President after confirmation by the Senate.

DFE IGs [IG Act, § 8G(c)]: DFE IGs are appointed by the head of the entity. In DFE agencies with a board or commission, that board or commission is considered the entity head.

All of the IGs appointed, except two IGs, serve on an indefinite appointment. The two IGs that do not serve on an indefinite appointment, serve either a term of seven years (United States Postal Service Inspector General) or five years (United States Capitol Police).

Removal or Transfer:

Although IGs generally serve at the pleasure of the President or DFE head, the IG Act contains procedural safeguards to help ensure the independence of IGs and to ensure that Congress is informed of the reasons for their removal or transfer before such action takes place. These safeguards are meant to prevent IGs from being removed for political reasons or simply because they are doing an effective job of identifying fraud, waste, and abuse.

Specifically:

Establishment IGs [IG Act, § 3(b)]: An establishment IG may be removed from office or transferred to another position within the agency by the President; however, the President must communicate the reasons for the action in writing to both Houses of Congress at least 30 days before the removal or transfer.

DFE IGs [IG Act, § 8G(e)]: Likewise, a DFE IG may be removed from office or transferred to another position within the agency by the entity head; however, the entity head must communicate the reasons for the action in writing to both Houses of Congress at least 30 days before the removal or transfer. In a DFE agency with a board or commission, removal or transfer of a DFE IG requires the written concurrence of two-thirds of the members of the board or commission.

In both cases, Congressional notification letters must be sent by the President (for establishment IGs) or the entity head (for DFE IGs) to “both Houses of Congress.”

- v. *The manner in which the human resources needed for their operations are identified and how their personnel are selected, indicating whether they are freely appointed and removable or whether they are selected by means of merit-based completion; if certain requirements have to be met to hold such positions; and whether their personnel are subject to a regime of disqualifications and incompatibilities and of responsibility for their actions.*

The U.S. Congress provided the IG with broad administrative authorities to ensure that each IG would be able to secure the resources necessary to carry out his or her duties. These include the authority to select, appoint, and employ such officers as may be necessary for carrying out the functions, powers, and duties of the OIG [IG Act, §§ 6(a)(7); 8G(g)(2)], and to be considered head of the agency with respect to authorities related to separation, retirement, and reemployment of OIG employees [IG Act, § 6(d)]. Also, IGs are considered agency heads with respect to Senior Executive Service officials in their offices.

Using this authority, OIGs recruit openly for positions within their organization. Although, OIGs have differing legal and regulatory authorities for personnel appointment, all use a competitive merit based approach for selection. For example, many of the OIGs' appointing authorities flow from Title 5 of the U.S. Code, Part III, Subpart B, and are further governed by the Office of Personnel Management's regulations at Title 5 Code of Federal Regulations, Chapter I.

Positions that comprise most of the OIGs' workforce have certain requirements for an individual to be appointed to the position, as well as maintain the position. These positions include Auditors, Criminal Investigators, and Attorneys.

- Auditors – Auditors are required to have a minimum of 24 collegiate credit hours in accounting to qualify for the position. Further, per the Government Auditing Standards, auditors have a requirement to obtain 80 hours of continuing professional education every two years.
- Criminal Investigators - Entry level OIG criminal investigators, per CIGIE's Quality Standards for Investigations, are required to complete a formal basic training course, such as the Criminal Investigator Training Program at the Federal Law Enforcement Training Center (<http://www.fletc.gov/training/training-management-division/center-basic-programs-branch/criminal-investigator-training-program-citp/>). Additionally, criminal investigators are required to meet quarterly firearms familiarization and qualification requirements and use of force policy familiarization. Further, criminal investigators are to periodically receive the following training: Legal Update (Criminal and Civil), Arrest Techniques, Defensive Tactics, Intermediate Weapons, Cardiopulmonary Resuscitation, Lifestyle Management/Stress, Victim/Witness Awareness, and Blood Borne Pathogens.
- Attorneys – Attorneys must be currently admitted to the bar of one or more Federal or State jurisdictions authorizing the individual to practice law before the State or Federal courts. Attorneys are subject to continuing professional education requirements of the jurisdiction where they are licensed.

All employees of the OIGs are subject to the executive branch standards of conduct or, for those OIGs from entities in other branches, the code of conduct of their respective branch of Government; applicable supplemental agency regulations; the

criminal conflict of interest laws; and, depending upon the type and level of their positions, the civil ethics statutes and financial disclosure requirements. Further information relating to these issues may be found in the United States' First Round ([http://www.oas.org/juridico/english/mec\\_rep\\_usa.pdf](http://www.oas.org/juridico/english/mec_rep_usa.pdf)) and Second Round ([http://www.oas.org/juridico/english/mesicic2\\_usa.htm](http://www.oas.org/juridico/english/mesicic2_usa.htm)) reports.

- vi. *The existence of manuals or other documents that describe the functions of their personnel, and also indicating whether regular training is given in connection with those functions.*

Section 6(a)(7) of the IG Act authorizes the IGs “to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office...” This provision has been used by various OIGs to hire statisticians, physicians, economists, etc., depending upon the nature of the OIGs work. Further, the IG Act provides certain requirements with respect to OIG staffing.

Assistant Inspectors General [IG Act, § 3(d)]: Establishment IGs are required to appoint two officials—an Assistant Inspector General for Auditing, who is responsible for supervising the performance of audits relating to programs and operations of that agency, and an Assistant Inspector General for Investigations, who is similarly responsible for supervising investigations of those programs and operations. There is no corresponding requirement that IGs in DFE agencies appoint these officials; in practice, however, this is the model followed by many DFE IGs.

Legal Counsel [IG Act, §§ 3(g); 8G(g)(4)]: IGs are required by law to obtain legal counsel independent of the agency counsel. Specifically, the IG Act requires an IG to obtain legal advice from a counsel who reports directly to the IG or to another IG. Alternatively, DFE IGs may obtain services of appropriate staff of CIGIE on a reimbursable basis.

Evaluations and Inspections. Many IGs have offices that perform inspections or evaluations of their agency's programs and operations. Where an IG does perform inspections or evaluations, it must conduct them in accordance with CIGIE Quality Standards for Inspection and Evaluation [IG Act, § 11(c)(2)(A)]. In addition, the IG must include a list of any inspection or evaluation reports and their results in its semiannual report [IG Act, § 5].

Also, CIGIE's Quality Standards provide information relating to the functions of the OIG positions and training associated with certain positions, as does the Government Auditing Standards:

- Quality Standards for Federal Offices of Inspector General (<https://www.ignet.gov/pande/standards/Silver%20Book%20Revision%20-%208-20-12r.pdf>)

- Quality Standards for Inspection and Evaluation (<https://www.ignet.gov/pande/standards/iestds12.pdf>)
- Quality Standards for Investigations (<https://www.ignet.gov/pande/standards/invstds2011.pdf>)
- Quality Standards for Digital Forensics (<https://www.ignet.gov/pande/standards/quality-standards-digital-forensics-approved-20-nov-12.pdf>)
- Government Auditing Standards (<http://www.gao.gov/yellowbook/overview>)

In addition to the above broad descriptions, the Office of Personnel Management provides general guidance on various positions within the Federal Government including positions within the OIGs. Also, each of the OIGs develops more specific position descriptions for the positions within their office and the individuals in those positions have annual performance criteria and annual performance evaluations. OIGs may also develop further training requirements for various positions within their offices.

As described in the response to question C) v. above, several of the OIG professions have specific training requirements. To assist OIGs in meeting many of their training needs, CIGIE has developed a Training Institute that offers a variety of training to its OIG member office personnel. Further information on training offered by the Training Institute can be located on CIGIE's website at <https://www.ignet.gov/pande/training1.html>. Also, it is the responsibility of the individual OIGs to arrange for training of their employees.

- vii. *The existence of documented procedures for performing their tasks, or of manuals or guides dealing with those duties; institutional strengthening or quality improvement actions implemented; and the implementation of systems or modern technologies to facilitate their work.*

As mentioned previously, CIGIE's Quality Standards and the Government Auditing Standards provide broad guidance relating to the performance of duties for various positions within the OIGs. The individual OIGs also maintain internal OIG policy and directives to assist in further guiding their work.

Additionally, for quality control purposes, OIG offices conducting audits and investigations are reviewed by another OIG office every three years in accordance with policy and guidance issued by CIGIE, specifically, the Guide for Conducting External Peer Reviews of the Audit Organizations of Federal Offices of Inspector General (<https://www.ignet.gov/pande/audit/2012%20CIGIE%20Audit%20Quality%20Control%20and%20Assurance%20Policy%20and%20Guidelines%20March2009,%20Updated%20Nov%202012.pdf>) and the Qualitative Assessment Review Guidelines for Investigative Operations of Federal Offices of Inspector General

(<https://www.ignet.gov/pande/standards/invprg1211.pdf>) (peer review guides). The purpose of the reviews is to ensure the reviewed OIG's system of quality control is suitably designed and to determine whether the organization is complying with its quality control system in order to provide the OIG with reasonable assurance of conforming to applicable professional standards. These reviews are intended to be positive and constructive; when appropriate, they can also provide suggestions to the reviewed OIG to further strengthen its programs.

Many of the OIGs have employed automated systems to assist in their work. Systems include information management systems, case management systems, audit management systems, and legal research tools, among other administrative systems (i.e., financial management, human resources, and payroll systems).

- viii. *The manner in which the general public is provided with information about their objectives and functions, is informed of the procedures established for the performance of their functions, and is given guidance about how to carry out proceedings before them.*

The IG Act requires that CIGIE maintain a website for the benefit of the IGs [IG Act, §11(c)(1)(D)]. This public website offers information to the general public regarding the objectives and functions of the Council and its member OIGs ([www.ignet.gov](http://www.ignet.gov)). The CIGIE website houses information relating to the established procedures and various reports of the Council, and provides links to each of the individual OIG websites (<https://www.ignet.gov/igs/homepage1.html>).

The general public is given guidance about how to report fraud, waste, and abuse in Federal programs to the OIGs, via the individual OIGs' websites, including the use of a hotline discussed more in depth in the answer to question D) ii. Additionally, each Federal agency's website homepage must contain a direct link to the website of the agency's OIG [IG Act, § 8M] to assist in the facilitation of reporting fraud, waste, and abuse. It is also important to note that the IG Act requires OIGs to post public reports (or portions) and final audit reports on the OIG website. Under this requirement, reports must be posted not later than three days after being made publicly available [IG Act, § 8M(b)(1)].

Additionally, some OIGs are using social media (i.e., Twitter, Facebook, LinkedIn) to convey to the public information relating to their organizations and their work. Other avenues used periodically by OIGs in conveying information to the public include testifying at Congressional hearings, issuing press releases, participating in press conferences, and speaking at professional conferences.

- ix. *The mechanisms for internal control and for dealing with claims, complaints, or allegations related to the pursuit of their objectives and to the performance of their personnel.*

As noted above in the response to question C) vii., CIGIE's Quality Standards, the Government Auditing Standards, and CIGIE's peer review guides set out general standards for OIG operations and a review process to analyze the quality of controls being used by the OIGs. Additionally, individual OIGs establish internal policies and procedures for their operations. Many of the OIGs have also established internal control review processes to periodically assess their own operations.

When complaints and allegations arise associated with the work of an OIG, depending upon the nature of the complaints or allegations, the OIG can conduct an internal review to determine if such allegations are found to have merit. In instances where an OIG deems the allegations to have merit, the OIG moves forward in taking any necessary corrective action.

In instances where allegations and complaints are brought with respect to the performance or actions of individual personnel, the OIGs will assess those complaints and determine if further inquiry or investigation into the matter is needed based on the evidentiary information provided. The process followed when it is determined that further action is necessary, is in accord with the Office of Personnel Management's Federal regulations set out at 5 C.F.R. part 752, Adverse Actions (<http://www.gpo.gov/fdsys/pkg/CFR-2014-title5-vol2/pdf/CFR-2014-title5-vol2-chapI.pdf>), or 5 C.F.R. part 432, Performance Based Reduction in Grade and Removal actions (<http://www.gpo.gov/fdsys/pkg/CFR-2014-title5-vol1/pdf/CFR-2014-title5-vol1-chapI.pdf>)<sup>3</sup>.

Further, each IG is authorized to receive complaints from agency employees and the public. These complaints are often received through the OIG's Hotline. The OIG Hotlines exist to elicit information from Federal employees, contractors, and the general public that furthers an OIG's mission (1) to promote effectiveness, efficiency, and economy in its organization's programs and operations, and (2) to prevent and detect fraud, waste, and abuse in such programs and operations.

When an allegation of wrongdoing is lodged against an IG or a member of his/her senior staff, the Integrity Committee of CIGIE serves as an independent reviewer and investigative mechanism for those allegations [IG Act, §§ 11(d)(1) and (4)]. An official of the Federal Bureau of Investigation serves as Chairperson of the Integrity Committee. [IG Act, § 11(d)(2)(A)]. The Integrity Committee's policies and procedures set out how the Committee receives and processes these complaints (<https://www.ignet.gov/pande/icpolicyandprocedure2009.pdf>).

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<sup>3</sup> Note that several OIGs do not fall under the Office of Personnel Management authorities. In those cases, the OIGs will follow the appropriate personnel authorities.

- x. *The manner in which the budgetary resources needed for their operations are ensured.*

The IG Act further promotes IG independence through individual reporting of OIG budgets. Section 6(f) of the IG Act specifically requires that each IG's requested budget amounts be separately identified within their agency budgets when submitted to the Office of Management and Budget (OMB), and subsequently by OMB to the Congress. Also, section 6(f)(3) of the IG Act authorizes IGs to comment to Congress on the sufficiency of their budgets if the amount proposed in the President's budget would "substantially inhibit the [IG] from performing the duties of the office." Additional details with respect to this reporting requirement are set forth in Appendix 1.

Under Federal law, agency budget requests must be submitted by the individual agency head to OMB. This includes the budgets of the respective OIGs. However, it is important to note that while each agency head is responsible for budget formulation and execution decisions affecting the entire agency (including the OIG), in practice, the OIG may also have an ongoing dialogue with the OMB budget examiner about the OIG's operational plans, activities, and accomplishments.<sup>4</sup>

Ultimately, the amount each agency and OIG receives each fiscal year is determined by the Congress.

- xi. *As appropriate, the coordination mechanisms for harmonizing their functions with those of other oversight agencies or public authorities and for securing the support of other authorities and the public for full compliance with their duties.*

The IG Act provides the authority for the OIGs "...to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse..." [IG Act, § 4(a)(4)]. Through this authority, the OIGs often establish relationships with various governmental entities and, as discussed in the response to question C) i. above, enter into Memoranda of Agreements or Understanding, with those other oversight agencies. These agreements set out the authorities and responsibilities of each party as they work in partnership with one another.

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<sup>4</sup> Out of concern that intelligence agencies may consider reducing the budgets and workforce of their IGs, separate legislation was enacted in 2013 designating the OIG of an intelligence agency as a congressional special interest item [Intelligence Authorization Act for Fiscal Year 2013, Classified Annex]. In addition, some IGs for non-appropriated agencies do not submit budget requests to OMB.

The OIGs have primary responsibility for the prevention and detection of waste and abuse, and concurrent responsibility for the prevention and detection of fraud and other criminal activity within their agencies' programs and operations. The Federal Bureau of Investigation (FBI) is charged with investigating violations of Federal laws. Because the FBI and the OIGs have concurrent jurisdiction over many matters, there are times that the OIGs will work jointly with the FBI. These efforts are often coordinated through a Memorandum of Understanding that provides for the sharing of information and a joint investigative effort between the OIG and the FBI.

Additionally, the Department of Justice (DOJ) has primary responsibility for the enforcement of violations of Federal laws through prosecution in the United States Federal courts. Therefore, OIGs work closely with DOJ in their criminal and civil investigative efforts. Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority (<https://www.ignet.gov/pande/standards/leamemo.pdf>) require that these OIGs consult with a DOJ prosecutor at an early stage of a criminal investigation. This consultation is to ensure that allegations, if proven, would be prosecuted, as well as to ensure the coordination of investigative methods.

- xii. *Accountability mechanisms applicable to the performance of their duties; the way in which the information needed for that is gathered and processed; and the information issued for that purpose, and the way in which it is made public and how members of the public may access it.*

The IG Act has several mechanisms for IG accountability. First, all OIG reports (excluding those containing classified or other information that may not be released) are published on the particular OIG's website and are open to public scrutiny [IG Act, § 8M(b)(1)]. The OIG semiannual reports are also, by law, publicly available. These reports, together with the companion agency reports, reveal important information on the acceptance and implementation of OIG recommendations. Moreover, OIG Audit Offices are subject to external peer review for compliance with Government Auditing Standards, established by GAO, at least once every three years.<sup>5</sup> OIGs that exercise statutory law enforcement authorities (discussed above) under the IG Act are also subject to mandatory peer review of their Office of Investigations every three years.<sup>6</sup> OIG evaluations and inspections professionals are currently pilot testing peer reviews for that function as well. Information regarding all peer reviews is made public in the OIGs' semiannual reports [IG Act, § 5].

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<sup>5</sup> Frequency of audit peer review is set by GAO in its Government Auditing Standards, which IGs are obligated to follow [IG Act, § 4(b)(1)(A)].

<sup>6</sup> There are four OIGs (Department of Agriculture, Department of Defense, U.S. Postal Service, and Treasury IG for Tax Administration) that derive their law enforcement authority from legislation other than the IG Act of 1978, as amended, and voluntarily submit to such peer review processes.

Another form of OIG oversight is CIGIE's role in ensuring OIG professionalism. For example, CIGIE sets Government-wide quality standards that form the basis for the professional peer reviews described above [IG Act, § 11(c)(2)]. OIG staff must adhere to these professional standards, so long as they are not inconsistent with Government Auditing Standards. CIGIE also coordinates cross-agency work and provides professional training opportunities for IGs across Government.

Under applicable standards, another aspect of professionalism is the need for OIGs to have qualified personnel. For many OIG positions, OIG personnel must also meet continuing education requirements to maintain professional competency for their positions, which is further discussed in the responses to questions C) v. and vi. above. The importance of training for OIG personnel is reflected in the IG Act, which requires all IGs to include training information in their annual budget requests [IG Act, § 6(f)(1)].

*D. For each of the oversight bodies selected in the response to question B), summarize the results obtained in the performance of their duties, providing the relevant information available to your country and making reference, to the extent that is possible, to issues such as the following:*

- i. If the oversight body in question is tasked with the prevention of corrupt acts, list the actions taken in the past five years to prevent those acts...*

As discussed above, each of the OIGs publish a semiannual report to Congress, and in these reports the OIGs include the results of their activities for the prior six month period. These reports can be found on each of the OIG's websites. This is a prominent reporting mechanism for an IG. These reports summarize the activities of the OIG, specifically describing significant problems, abuses, and deficiencies relating to the administration of programs and operations of the agency disclosed by the OIGs activities during the reporting period. Further, the reports include the recommendations for corrective action made by the OIG, and a discussion of significant activities and results during the period. This includes reporting investigative activities, such as the number of cases opened; number of cases closed; number of indictments; number of convictions; monetary recoveries; number of audit inspection and evaluation reports; and total dollar value of questioned costs [IG Act § 5(a)].

As mentioned previously, OIGs also maintain websites, and some use various social media, to provide the public with information on their activities. The information shared highlights their responsibilities and their work, which potentially may deter individuals from committing fraudulent or criminal activities. It also provides members of the public with information on how to report alleged criminal activities. Further, several OIGs issue press releases that share information regarding the results of their various work (e.g., U.S. Department of Labor's OIG -

<http://www.oig.dol.gov/newsroomcurrent.htm>; Department of the Interior's OIG - <http://www.doi.gov/oig/news/external/index.cfm>; and National Aeronautics and Space Administration's OIG - <http://oig.nasa.gov/investigations/pressRelease.html>). Links to the various OIG websites can be located at <https://www.ignet.gov/igs/homepage1.html>.

Further, many OIGs participate in speaking at various public conferences regarding their responsibilities and activities. Also, many of the IGs are often called to provide testimony at Congressional public hearings regarding specific work. See the following webpages for examples of these activities:

- Department of Health and Human Services' OIG - <http://oig.hhs.gov/newsroom/testimony-and-speeches/index.asp>;
- U.S. Agency for International Development's OIG - <http://oig.usaid.gov/testimony>; and
- Department of Agriculture's OIG - <http://www.usda.gov/oig/rptsigtranscripts.htm>.

- ii. *If the oversight body in question is tasked with detecting corrupt acts that trigger disciplinary; administrative; financial or civil; or criminal responsibility for persons involved therein, indicate as appropriate [individual statistics for investigations].*

The OIGs are tasked with detecting corrupt acts and do so through their audit and investigative work described above. Because CIGIE acts as a coordinating body in reporting the results of the OIGs' work, CIGIE does not collect certain information, such as that information outlined under this question.

Each IG is authorized to receive complaints from agency employees and the public. These complaints are often received through the OIG's Hotline. The OIG Hotlines exist to elicit information from Federal employees, contractors, and the general public that furthers an OIG's mission (1) to promote effectiveness, efficiency, and economy in its organization's programs and operations, and (2) to prevent and detect fraud, waste, and abuse in such programs and operations. The OIGs are required to maintain a direct link on their website for individuals to make such reports, which may be anonymous. The OIGs are prohibited from disclosing the identity of anyone making a complaint through its website without their consent, except where disclosure is "unavoidable during the course of the investigation [IG Act, § 8M(b)(2)]. The OIGs semiannual reports to Congress also provide information relating to the OIG's hotline activities.

- iii. *If the oversight body in question is tasked with punishing corrupt acts that trigger disciplinary; administrative, financial or civil; or criminal responsibility for persons involved therein...*

The OIGs investigative work often results in disciplinary, administrative, financial, civil, or criminal outcomes. As described above, CIGIE each year compiles an Annual Report to the President that provides the cumulative results of the work of the OIGs. These reports capture the following information for the community: potential savings from audit recommendations; investigative receivables and recoveries; number of audit, inspection and evaluation reports issued; number of investigations closed; number of hotline complaints received; number of indictments and criminal informations resulting from investigations; number of successfully prosecuted criminal and civil cases from OIG investigations; number of organizations/companies suspended or debarred from working with the Federal Government; and the number of personnel actions resulting from investigations. These reports also provide information relating to the work of the Council during the year. These reports can be found on CIGIE's website at <https://www.ignet.gov/randp/arpt1.html>.

- iv. *If the oversight body in question is tasked with punishing corrupt acts that trigger disciplinary; administrative, financial or civil; or criminal responsibility for persons involved therein...*

As mentioned in the response to question D) iii. above, CIGIE's Annual Reports to the President collectively capture the monetary sanctions imposed as a result of the OIGs' investigations, among other results.

- E. *For each of the oversight bodies selected in the response to question B), briefly report on difficulties encountered in preventing, detecting, and punishing corrupt acts of relevance in consideration of their functions and, if applicable, identify specific technical cooperation needs.*

The IG Act generally provides the OIGs with the tools and flexibilities needed to work towards preventing, detecting, and punishing corrupt acts. On occasion, however, other legislation may create a difficulty in a specific area for OIGs. In such instances, the Council works with the Administration and the Congress to provide its legislative proposals that will assist in overcoming these difficulties and enhance the work of the OIGs. Examples of communicating such legislative proposals from the Council can be found on CIGIE's website at <https://www.ignet.gov/pande/leg1.html#oi>, under the sub-heading of "Letters to the 113<sup>th</sup> Congress." Additionally, these legislative proposals have been communicated through Congressional testimony by various Council officials. Such testimony can also be found on the above webpage at the above address, under the sub-heading "Other Items of Interest."

- F. *If so desired, report on no more than one best practice developed in connection with the duties of each of the oversight bodies selected in the response to question B) that you wish to share with the other MESICIC member countries, using, to the extent deemed appropriate, the suggested standard form offered as a guideline for presenting that information and attached to this questionnaire (Annex II).*

1. The name of the institution: Council of the Inspectors General on Integrity and Efficiency
2. Title: Don't Let the Toolbox Rust: Observations on Suspension and Debarment, Debunking Myths, and Suggested Practices for Offices of Inspectors General (<https://www.ignet.gov/randp/sandwgrpt092011.pdf>)
3. Practice Description: Actively promote the use of Suspension and Debarment (S&D) in an effort to protect taxpayer funds by ensuring that the Government only does business with responsible parties.
4. Reasons/Importance: Suspensions and debarments are administrative remedies that Federal agencies may take in order to protect Government programs from potential or identified fraud, waste, abuse, poor performance, and noncompliance with contract provisions or applicable law. Government-wide debarment ensures that for a defined period of time (often three years), the entire Federal Government will not conduct additional business with individuals and organizations that are not "presently responsible" -- i.e., those that have engaged in criminal or other improper conduct of such a compelling and serious nature that it would lead one to question the parties' honesty, ethics, or competence. Suspension is an interim action taken where there is an immediate need to act to protect the integrity of a Federal procurement or non-procurement process before there is enough evidence to support a debarment proceeding. The evidentiary standard for a suspension is "adequate evidence", and the standard for a debarment is "preponderance of the evidence" (or 51%).
5. Approach: The approach was to gather basic information on suspension and debarment use and practices within the various OIGs with an eye toward identifying the extent to which these tools are used across the OIG community, as well existing practices that agencies new to the process could emulate. The survey highlighted a need for all relevant communities involved in suspension and debarment -- the Suspension and Debarment Officials (SDOs), OIG staff (who provide information to support these actions), and DOJ attorneys (who may be involved in proceedings running parallel to the proposed action) -- to communicate and collaborate. The survey also highlighted the potential benefits from enhanced training and more effective referral practices in the IG community.
6. Implementation: Based on the responses from the survey, a report was developed featuring three sections. The first section provides basic background information about these remedies. The second section addresses certain misconceptions about suspension and debarment that may limit use of these actions: (1) that pursuing these actions necessarily jeopardizes contemporaneous judicial proceedings; (2) that they require a predicate judicial finding; and (3) that successful OIG referrals can only be based upon investigative action, not audit or inspection activities. The third and final

section identifies a number of suggested practices aimed at enhancing the use of these tools in the IG community, such as those pertaining to referral processes at certain OIGs, outreach and communication between relevant communities, and training.

The suggested practices from the report were conveyed to OIGs and Federal agency personnel. Subsequently, training was developed and provided to personnel involved in the S&D process.

7. Challenges: In 2012 a second survey was conducted to update the information from the earlier survey. The survey yielded a snapshot of information about S&D from the OIG perspective, which revealed some continuing challenges. A lack of agency resources was cited as the primary barrier standing in the way of greater S&D use. Some OIGs also noted that their agencies either chose not to use S&D or were hesitant to do so. Several indicated that S&D use could be bolstered through referrals originating outside of OIG (e.g., from contracting officers who may identify a present responsibility issue in their work).
8. Outcome: This 2012 survey also reflected that there was greater S&D knowledge and noticeable improvement in the utilization of these remedies within the IG community since 2010. Among the ingredients for expanded and more effective S&D use identified in the 2012 results are: 1) use of a dedicated staff member to make S&D referrals and to develop a good working relationship with the SDO; 2) ample S&D training, including “in-house” instruction; and 3) strong lines of communication between OIGs, SDOs, and DOJ attorneys.
9. Follow-Up: In 2010, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) formed a Suspension and Debarment (S&D) Working Group, as a component of the CIGIE Investigations Committee. The purpose of the S&D Working Group was to actively promote the use of S&D -- in an effort to protect taxpayer funds -- by ensuring that the Government only does business with responsible parties. This Working Group continues to operate and follow-up on S&D activities.
10. Lessons: The S&D remedies might be used more frequently if the relevant Federal communities understood them better -- an understanding that could be fostered through continuing dialogue and training. All relevant communities should actively communicate and collaborate to avoid misunderstandings and to work through areas of concern, such as those involving information sharing. For its part, the Working Group will continue to explore ways to raise the knowledge base and overall profile of suspension and debarment through targeted outreach and training within the IG and other relevant communities.
11. Documentation: Don't Let the Toolbox Rust: Observations on Suspension and Debarment, Debunking Myths, and Suggested Practices for Offices of Inspectors

General (<https://www.ignet.gov/randp/sandwgrpt092011.pdf>); and Looking Inside the Accountability Toolbox: An Update from the CIGIE Suspension and Debarment Working Group (<https://www.ignet.gov/randp/Suspension%20and%20Debarment%20Working%20Group%20Report%20-%202011-19-13.pdf>).

12. **Contact:** Working Group Chairs Allison Lerner, Inspector General, National Science Foundation, and Steve Linick, Inspector General, U.S. Department of State.

**PUBLIC INTEGRITY SECTION, CRIMINAL DIVISION  
U.S. DEPARTMENT OF JUSTICE**

- i. *Their objectives and functions; their autonomy for pursuing them; and when applicable, the exercise of their functions in conjunction or concert with other agencies or authorities; and the mechanisms for resolving any conflicts of jurisdiction that may arise.*

The Public Integrity Section (PIN) was created in 1976 in the wake of the Watergate scandal to oversee the United States Justice Department's national effort to combat public corruption. PIN is a collection of experienced, specialized, public corruption prosecutors who investigate and prosecute public officials for breaches of the public trust. PIN provides expertise, guidance, and training to law enforcement agents and Federal prosecutors from the 93 United States Attorneys' Offices across the United States who bring the majority of public corruption cases. PIN works to ensure that sensitive public corruption and election crime investigations and prosecutions are handled in a uniform, consistent, and appropriate manner nationwide. While only the Department of Justice may prosecute Federal crimes, PIN also coordinates with other Federal Government agencies who have complementary civil and administrative responsibilities, including the Offices of Inspector General for various Federal departments and agencies, the Federal Election Commission <http://www.fec.gov/>, the Office of Special Counsel, <https://www.osc.gov/>, and the Office of Government Ethics <http://www.oge.gov/>.

Under the Ethics in Government Act, 28 U.S.C. §529, PIN is required to submit an Annual Report to Congress describing the Section's activities, and those reports are Posted on the Department of Justice website. <http://www.justice.gov/criminal/pin/>. The Annual Report also includes district-by-district statistics regarding the nationwide effort to prosecute public corruption over the past 20 years.

- ii. *The scope of their functions, indicating whether any exceptions to it exist.*

PIN's jurisdiction covers the investigation and prosecution of Federal *criminal* offenses, and does not cover any civil or administrative remedies for official misconduct. PIN is able to handle criminal cases in which a United States Attorney's Office for a particular district (94 districts nationwide) is recused due to a potential conflict of interest. For example, based upon recusals, PIN handles investigations of Federal judges, Federal prosecutors, and law enforcement agents who work with the United States Attorneys' Office in a particular district.

PIN's jurisdiction is nationwide, and PIN can handle cases that may involve more than one state or Federal district. PIN handles cases involving public officials at all levels of state, local, and Federal Government, including officials in the executive,

judicial, and legislative branches of government. PIN brings cases against corrupt public officials, and against those private citizens and businesses that corrupt them.

PIN provides advice, guidance, and samples of pleadings, legal research, and charging documents to Federal prosecutors from the 93 U.S. Attorneys' Offices. This advice and guidance is provided based upon voluntary consultations, and Federal prosecutors from across the United States are *required* to consult with PIN on certain matters, such as the initiation of investigations regarding campaign financing crimes and election crimes, and plea agreements with Federal judges and members of Congress.

PIN also reviews all wiretap applications nationwide that involve public corruption offenses, and all major FBI undercover operations involving public corruption. PIN works very closely with the FBI in carrying out its responsibilities. In particular, PIN regularly consults with and coordinates with the Public Corruption Unit in FBI Headquarters, which monitors public corruption investigations by the FBI nationwide.

- iii. *The manner in which they adopt their decisions, indicating whether there are various agencies with jurisdiction to do so and whether they are collegiate or single-person agencies; review remedies that can be brought against the decisions adopted, both internally and with other external agencies or authorities; and the actions needed to implement or enforce those decisions.*

Decisions by all Department of Justice prosecutors, including PIN, are governed by the United States Attorneys' Manual (USAM), which is a comprehensive document setting standards, policies, and procedures for all Department functions.

([http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/](http://www.justice.gov/usao/eousa/foia_reading_room/usam/)) Among other things, the USAM includes the Principles of Federal Prosecution, which contain the standards for bringing or declining criminal charges.

([http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/27mcrm.htm](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/27mcrm.htm))

PIN is managed by a Chief, Principal Deputy Chief, and three Deputy Chiefs. The Chief approves all decisions to open an investigation. Once an investigation has been opened, the Deputy Chiefs and the Chief approve all decisions to close the investigation if there will be no charges. Consistent with the Principles of Federal Prosecution, the Chief approves all decisions to charge a defendant with a crime, whether by grand jury Indictment, Information, arrest, or complaint. Before bringing any indictment, PIN Trial Attorneys must write a detailed prosecution memorandum outlining the evidence, the law, and the potential defenses. An indictment review meeting is required, which includes the Chief, Deputy Chiefs, and experienced Trial Attorneys. The Chief and/or Deputy Chiefs approve all plea agreements with defendants. The FBI and other law enforcement agencies with whom PIN works

have input into the decision whether to bring charges or close an investigation without charges.

- iv. *The manner in which their senior officers are selected, indicating whether they serve fixed terms or are freely appointed and removable, and the agencies authorized to hold them responsible for their actions and deciding on their continued tenure in those positions.*

The Chief, Principal Deputy Chief, and Deputy Chiefs of PIN are experienced Federal prosecutors, and they are non-political, career civil servants. The Chief and Principal Deputy Chief are classified as in the Senior Executive Service (SES), a Government-wide classification and pay system for the most senior executives below those appointed by the President. The majority of SES positions in the Government are career positions. When a vacancy occurs in an SES position an individual who is already in the SES may be transferred to that position or the position is advertised and candidates must meet the qualifications established first for members of the SES (executive core qualifications) and then meet the specific technical qualifications for the specific positions. Those applicants that meet both are then ranked by a committee and their names are submitted to the selection official. These appointments are not for any fixed term (although an individual who newly enters the SES can have a one-year probationary period for the SES). Individuals who hold SES positions have the standard rights regarding such actions as performance reviews, bonuses, transfer and removal as are accorded to all members of the SES.

The Chief and Principal Deputy Chief are selected through this process by the Assistant Attorney General in charge of the Justice Department's Criminal Division, who is a political appointee. The three remaining Deputy Chiefs are selected by the Chief of PIN, following a public vacancy announcement. The non-SES Deputy Chiefs are subject to standard Government procedures and policies applicable to Excepted Service appointments, as described below.

- v. *The manner in which the human resources needed for their operations are identified and how their personnel are selected, indicating whether they are freely appointed and removable or whether they are selected by means of merit-based competition; if certain requirements have to be met to hold such positions; and whether their personnel are subject to a regime of disqualifications and incompatibilities and of responsibility for their actions.*

Within the Department of Justice, there is an overall staffing plan for the number and level of positions. Those positions are allotted based on senior managers' internal discussions of needs. PIN has approximately 30 lawyers, consisting of the Chief, Principal Deputy Chief, three Deputy Chiefs, a Director of Election Crimes, and

approximately 24 Trial Attorneys. PIN employs five paralegals, an office manager, three secretaries, and one specialist who enters case-related data in PIN's computer database.

Attorneys who are not in the SES, are selected following the standard Government procedures for Excepted Service appointments. They are career appointments not for a fixed term. These individuals enjoy the same standard rights and benefits of all Excepted Service appointments including rights to challenge personnel actions, if necessary. As in the rest of the career service in the executive branch, decisions on performance reviews, promotions, reassignments, bonuses, discipline and other administrative actions are initially made by supervisors, following standard personnel procedures which include rights of appeal.

Employees who are not serving in attorney positions are all career employees who have been hired following the Government-wide procedures for positions in the Competitive Service. That typically involves announcement of vacancies, an application process, rating and ranking of applicants and then selection. These are not term appointments. These positions also have written job descriptions, and individuals in them have annual performance plans and receive written annual performance reviews. They have standard rights to appeal personnel actions afforded those in Competitive Service positions.

As employees of the executive branch of the U.S. Government, PIN personnel are selected, appointed, and removed according to the system of laws and regulations governing employment in the executive branch that were described in the response to the Second Round questionnaire in Section I, Chapter One. This system of laws and regulations also sets forth the requirements executive branch employees must meet to hold their positions.

All employees of PIN are subject to the executive branch standards of conduct; applicable supplemental agency regulations; the criminal conflict of interest laws; and, depending upon the type and level of their positions, the civil ethics statutes and financial disclosure requirements. Further information relating to these issues may be found in the United States' First Round ([http://www.oas.org/juridico/english/mec\\_rep\\_usa.pdf](http://www.oas.org/juridico/english/mec_rep_usa.pdf)) and Second Round ([http://www.oas.org/juridico/english/mesicic2\\_usa.htm](http://www.oas.org/juridico/english/mesicic2_usa.htm)) reports.

In addition, each attorney in PIN must be an active member of the bar for at least one state, and must comply with the rules of professional responsibility (disciplinary rules) for that state bar as well as any states in which the PIN attorney handles cases. PIN attorneys must also comply with all of the requirements set forth in the United States Attorneys' Manual (USAM), the comprehensive policy and practice document described above.

- vi. *The existence of manuals or other documents that describe the functions of their personnel, and also indicating whether regular training is given in connection with those functions.*

Trial attorneys within the Department of Justice share a general job description. However, each PIN attorney is given a written Performance Work Plan (PWP) which describes the attorney's general duties and responsibilities and each receives an annual written performance evaluation

Each year, PIN employees are required to complete one hour of ethics training, two hours of training regarding discovery practices in criminal cases, one hour of training regarding the rights of victims and witnesses, and one hour of training regarding the prevention of sexual harassment in the workplace. In addition, PIN attorneys routinely attend training sessions provided by the Department's Office of Legal Education at the Department's National Advocacy Center, in Columbia, South Carolina. (<http://www.justice.gov/usao/training/>) The courses include instruction on grand jury practice, trial practice, evidentiary issues, and complex financial investigations.

Approximately once every one to two years, PIN also conducts training at the National Advocacy Center regarding public corruption cases for prosecutors and law enforcement agents from across the country. The topics include legal developments, law enforcement techniques, and trial issues in public corruption cases.

In addition, PIN's Annual Reports to Congress provide details regarding the operations and activities of PIN. (<http://www.justice.gov/criminal/pin/>)

- vii. *The existence of documented procedures for performing their tasks, or of manuals or guides dealing with those duties; institutional strengthening or quality improvement actions implemented; and the implementation of systems or modern technologies to facilitate their work.*

The policies and procedures followed by all Department of Justice prosecutors, including PIN, are set forth in the United States Attorneys' Manual (USAM). ([http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/](http://www.justice.gov/usao/eousa/foia_reading_room/usam/))

PIN uses several electronic systems to improve the efficiency of its operations and improve its record-keeping. First, PIN uses the Automated Case Tracking System (ACTS) to record the opening and closing of investigations and prosecutions, the nature of the allegations or offenses, and the names of the attorneys assigned. The ACTS system is also used to record all major events that take place in a case, and to store electronic copies of court filings, such as indictments and plea agreements.

In addition, PIN uses electronic systems to track the approval of plea agreements, the decision to decline prosecutions, and certifications that must be signed by each attorney that they do not have a conflict of interest in handling a particular case.

- viii. *The manner in which the general public is provided with information about their objectives and functions, is informed of the procedures established for the performance of their functions, and is given guidance about how to carry out proceedings before them.*

PIN's Annual Reports to Congress provide details regarding the operations and activities of PIN. (<http://www.justice.gov/criminal/pin/>) The Annual Report also includes district-by-district statistics regarding the nationwide effort to prosecute public corruption over the past 20 years.

PIN's public website not only provides access to PIN's Annual Reports, but also contains contact information that the general public routinely uses to contact PIN with information regarding allegations of public corruption.

- ix. *The mechanisms for internal control and for dealing with claims, complaints, or allegations related to the pursuit of their objectives and to the performance of their personnel.*

All complaints and allegations of misconduct by PIN (or other Department of Justice personnel) are handled by the Department of Justice's Office of Professional Responsibility (OPR) (<http://www.justice.gov/opr/index.html>), and the Office of the Inspector General, (<http://www.justice.gov/oig/index.html>).

- x. *The manner in which the budgetary resources needed for their operations are ensured.*

PIN receives an annual budgetary allotment as part of the overall budget of the Criminal Division of the Department of Justice. Aside from salaries, the largest component of the budget is for travel costs, because PIN attorneys and paralegals travel extensively to handle cases across the country. The Criminal Division budget and the overall Justice Department budget requests are part of the President's public budget request to Congress each year. The Congress then determines the amount that will actually be appropriated and available to the Department to spend. The number of attorneys employed by PIN is determined by the Criminal Division, balancing the needs of the entire Division, which also has responsibility for such areas as computer crime, organized crime, fraud, narcotics, and child exploitation.

- xi. As appropriate, the coordination mechanisms for harmonizing their functions with those of other oversight agencies or public authorities and for securing the support of other authorities and the public for full compliance with their duties.*

PIN coordinates with other Federal Government agencies who have overlapping responsibilities, including the Offices of Inspector General for various Federal departments and agencies, the Federal Election Commission <http://www.fec.gov/>, the Office of Special Counsel <https://www.osc.gov/>, and the Office of Government Ethics <http://www.oge.gov/>. As noted earlier, PIN also works closely with the Federal Bureau of Investigation in conducting investigations and prosecutions. For example, PIN participates in the review and approval of all proposed FBI Undercover Operations that involve public corruption. In addition, PIN provides counsel to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency. The Integrity Committee reviews allegations of misconduct that are made against Inspectors General themselves, or their high-level officers.

- xii. Accountability mechanisms applicable to the performance of their duties; the way in which the information needed for that is gathered and processed; and the information issued for that purpose, and the way in which it is made public and how members of the public may access it.*

Under the Ethics in Government Act, 28 U.S.C. § 529, PIN is required to submit an Annual Report to Congress describing the Section's activities, and those reports are publicly available. <http://www.justice.gov/criminal/pin/>. The Annual Report also includes district-by-district statistics regarding the nationwide effort to prosecute public corruption over the past 20 years.

- D) For each of the oversight bodies selected in the response to question B), summarize the results obtained in the performance of their duties, providing the relevant information available to your country and making reference, to the extent that is possible, to issues such as the following:*

(i—iii)

Items i (prevention), ii (detection) and iii (punishing)

PIN helps prevent corruption through the specific and general deterrent effect of the prosecutions it brings. A criminal prosecution has a substantial deterrent impact on the particular office in which the defendant-public official was employed, and a broader deterrent effect when information regarding a prosecution and conviction is distributed among Government agencies and publicized in the news media. PIN helps detect corruption by working closely with various investigative bodies to review allegations of public corruption that come from a wide variety of sources, including news media, public services organizations, and the public. PIN punishes

public corruption through the criminal prosecutions it brings, the criminal convictions that it obtains, and the sentences that are imposed on the defendants. More specifically, PIN's role is to investigate allegations of public corruption and bring criminal charges where appropriate. PIN assists the 93 United States Attorneys' Offices in their investigations and prosecutions of public corruption, thereby achieving nationwide deterrence of public corruption.

The results of PIN's and the Department of Justice's efforts to prosecute public corruption are publicized each year in the PIN Annual Report to Congress, which includes district-by-district statistics regarding the nationwide effort to prosecute public corruption over the past 20 years. (<http://www.justice.gov/criminal/pin/>) In addition to the statistics provided in the Annual Report, PIN provides the information below regarding the number of investigations handled by PIN, the number of defendants convicted, and the number of defendants acquitted, all for the past five years.

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## **PIN Stats**

### **2009-2013**

#### **Years**

	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Investigations pending at year-end</b>	104	73	60	53	63
<b>Defendants charged</b>	39	79	56	48	48
<b>Defendants convicted</b>	36	61	48	56	48
<b>Number of defendants Acquitted</b>	1	1	4	7	1
<b>Fines/Penalties Assessments and Restitution Levied</b>	\$33,088,239	\$3,503,424	\$28,606,389	\$41,626,415	\$13,070,615

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*E) For each of the oversight bodies selected in the response to question B), briefly report on difficulties encountered in preventing, detecting, and punishing corrupt acts of relevance in consideration of their functions and, if applicable, identify specific technical cooperation needs.*

One challenge that is common to PIN and other offices involved in the criminal investigation and prosecution of public corruption is the existence of parallel proceedings. It is common that the conduct that PIN is investigating is also a subject of investigation or under review by other offices, such as the Federal Election Commission, the Federal department or agency in which the public official works, the Merit Systems Protection Board, the Office of Special Counsel, or Congress. Moreover, there may be civil litigation related to the same conduct. Each of these offices and authorities has its own responsibility to investigate and handle allegations of misconduct by public officials, and PIN must attempt to ensure that the existence of the parallel proceedings does not interfere with its criminal investigation.

*F) If so desired, report on no more than one best practice developed in connection with the duties of each of the oversight bodies selected in the response to question B) that you wish to share with the other MESICIC member countries, . . .*

The most important practice established and maintained by PIN over the past several decades is its indictment review procedure. Over the years, this careful and thorough review of all criminal indictments has ensured that PIN maintains the highest standards in all of its cases.

The first step in the indictment review process is the drafting of a detailed and thorough "Prosecution Memorandum" by the Trial Attorneys who are assigned to a case. The Prosecution Memorandum includes the following: a description of the facts uncovered in the investigation; the law concerning any proposed criminal charges; the potential legal and factual defenses that the defendant may raise, along with the proposed response to those defenses; and an outline of the potential sentences that may be imposed. The Prosecution Memorandum is accompanied by a draft indictment setting forth the proposed criminal charges.

Once the Prosecution Memorandum and draft indictment have been reviewed by a Deputy Chief, they are distributed to an Indictment Review Committee, which consists of the Chief, Principal Deputy Chief, Deputy Chiefs, and experienced Trial Attorneys in PIN. The Indictment Review Committee meets to go over the factual and legal issues presented by the case in detail. The prosecutors who participate in the Indictment Review Committee provide their input to the Chief, who makes the decision regarding whether charges are brought.

## THE UNITED STATES OFFICE OF SPECIAL COUNSEL

- i. *Their objectives and functions; their autonomy for pursuing them; and when applicable, the exercise of their functions in conjunction or concert with other agencies or authorities; and the mechanisms for resolving any conflicts of jurisdiction that may arise.*

### ***Introduction***

The U.S. Office of Special Counsel (OSC) is an independent Federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system by protecting employees from prohibited personnel practices, especially reprisal for whistleblowing. The agency also provides employees a secure channel for disclosing wrongdoing in Government agencies, enforces and provides advice on Hatch Act restrictions on political activity by Government employees, and enforces employment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) for federal employees who served in the uniformed services.

The Unit within OSC that has been selected by the U.S. to represent one of the four oversight bodies is OSC's Disclosure Unit (DU). The DU serves as a safe conduit for the receipt and evaluation of whistleblower disclosures from Federal employees, former employees, and applicants for Federal employment [5 U.S.C. § 1213]. A whistleblower disclosure alerts OSC to possible wrongdoing in a Federal agency. Disclosures are separate and distinct from complaints of reprisal or retaliation for whistleblowing activities, which are prohibited personnel practices addressed by OSC's Investigation and Prosecution Division, which is not the focus of this discussion.

### ***Statutory Background***

OSC was established on January 1, 1979, when Congress enacted the Civil Service Reform Act (CSRA). Under the CSRA, OSC at first operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB or the Board). Congress directed that OSC would: (1) receive and investigate complaints from Federal employees alleging prohibited personnel practices; (2) receive and investigate complaints regarding the political activity of Federal employees and covered state and local employees and provide advice on restrictions imposed by the Hatch Act on political activity by covered government employees; and (3) receive disclosures from Federal whistleblowers about Government wrongdoing. Additionally, OSC, when appropriate, filed petitions for corrective and/or disciplinary action with the Board in prohibited personnel practices and Hatch Act cases. In 1989, Congress enacted the Whistleblower Protection Act (WPA). Under the WPA, OSC became an independent agency within the executive branch with continued responsibility for the functions described above. The WPA also

enhanced protections for employees who alleged reprisal for whistleblowing and strengthened OSC's ability to enforce those protections. OSC's 1994 Reauthorization Act expanded protections for Federal employees and defined new responsibilities for OSC and other Federal agencies.

### *Disclosure Unit Operations*

OSC is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety [5 U.S.C. § 1213(a) and (b)]. By law, the Special Counsel acts on the disclosures received in one of two ways:

1) If the Special Counsel finds, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, she is required to advise the appropriate agency head of the findings. The agency head is required to conduct an investigation of the allegations and submit a written report within 60 days of the date of this letter. [5 U.S.C. § 1213(c)(1)].

The Special Counsel may require an agency head to conduct an investigation and submit a written report under subsection (c) only if the information was submitted by—

- (A) an employee, former employee, or applicant for employment in the agency which the information concerns; or
- (B) an employee who obtained the information in connection with the performance of the employee's duties and responsibilities. [5 U.S.C. § 1213(c)(2)].

The Special Counsel's finding of a substantial likelihood of a violation of law, rule, or regulation may result in the discovery by the agency of evidence of a criminal violation. The agency may determine that the evidence should be referred for consideration for prosecution by the Attorney General (typically the Office of the United States Attorney). In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) is referred to the Attorney General, the written report from the agency head may not be transmitted to the whistleblower. The agency must also notify the Office of Personnel Management and the Office of Management and Budget of the referral [5 U.S.C. § 1213(f)]. Reports falling into this category are not made public. [5 U.S.C. § 1219].

When an agency identifies a criminal violation and notifies the Special Counsel that the referred allegations will be investigated criminally, DU will suspend the reporting requirement until the completion of the criminal investigation. As a matter of policy, DU requests that the agency provide a written status report in 90-day intervals.

If a whistleblower discloses information that suggests an imminent danger to public health or safety or imminent violation of any criminal law, the Special Counsel may disclose the identity of the individual making the disclosure [5 U.S.C. § 1213(h)]. In emergency cases, the Special Counsel may act immediately by notifying the agency of the urgent or life-threatening concern. This may obviate the need for a referral if the agency takes appropriate action to address the risk.

2) If the Special Counsel receives information from “an individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2),” or if she does not make a positive substantial likelihood determination, she may transmit the information to the head of an agency in order to solicit a written report, to be delivered within a reasonable time, which reflects what action the agency has taken, or is taking, and when such action will be completed. [5 U.S.C. § 1213(g)(1) and (g)(2)].

An individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2) might be a former employee of a Federal agency, whose disclosure concerns an agency other than the agency in which the former employee was employed. A disclosure under subsection (g) might also be made by an employee who learned of the information outside of the duties and responsibilities of his position.

The DU processes disclosures differently from other Government whistleblower channels in at least three ways: (1) Federal law guarantees confidentiality to the whistleblower; (2) the Special Counsel may order an agency head to investigate and report on the disclosure; and (3) after any such investigation, the Special Counsel must send the agency's report, with the whistleblower's comments, to the President and Congressional oversight committees. In most cases, the agency's report will be posted in a public file, maintained on OSC's website, [www.osc.gov](http://www.osc.gov). [5 U.S.C. § 1219].

As stated above, a whistleblower's identity will not be revealed without his or her consent. However, in the unusual case where the Special Counsel determines there is an imminent danger to public health or safety, or imminent violation of any criminal law, the Special Counsel has the authority to reveal the whistleblower's identity. [5 U.S.C. § 1213(h)].

Whether received from a whistleblower described under subsection (c) or (g), a disclosure of information that involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, is transmitted by the Special Counsel to the National Security Advisor, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate. There is no investigative or reporting requirement. [5 U.S.C. § 1213(j)].

In some cases, the information disclosed by the whistleblower implicates the head of the agency involved. The statute under which the DU operates does not address this scenario directly, but requires referral to the agency head. The Special Counsel will consider whether the agency has an Inspector General, or a relationship with another Federal agency with an Inspector General, and will make a recommendation to the agency head that the matter should be delegated to that external component or agency. The Special Counsel will also consider referral directly to the President with a request for assistance in identifying an agency to conduct an investigation and return a report to OSC.

Where the disclosures involve an Inspector General, the Special Counsel will consider referral to the Council of the Inspectors General on Integrity and Efficiency (CIGIE). CIGIE was statutorily established as an independent entity within the executive branch by the Inspector General Reform Act of 2008, P.L. 110-409, 122 Stat. 4302 (2008). It is comprised of all Inspectors General whose offices are established under section 2 or section 8G of the Inspector General Act of 1978, P.L. 95-452, §1, 92 Stat. 1101(1978), are appointed by the President after Senate confirmation and those that are appointed by agency heads (designated Federal entities).

ii. *The scope of their functions, indicating whether any exceptions to it exist.*

The DU has jurisdiction over disclosures made by Federal employees, former Federal employees, and applicants for Federal employment. The DU has no jurisdiction over disclosures filed by: employees of the U.S. Postal Service and the Postal Regulatory Commission; members of the armed forces of the United States (i.e., non-civilian military employees); state employees operating under Federal grants; and other employees exempt by statute.

When the DU receives a disclosure from an individual not within OSC's jurisdiction, it will notify the individual by letter of the lack of jurisdiction and close the matter. If possible, the letter will refer the individual to an alternate reporting channel such as the Inspector General of the involved agency. The DU also receives anonymous disclosures, in which jurisdiction cannot be determined. The DU cannot obtain the information required to meet the substantial likelihood threshold when the source of the disclosure is anonymous. For this reason, anonymous disclosures are forwarded to the Inspector General of the agency involved for review and investigation as deemed appropriate by that office, and are closed by OSC.

iii. *The manner in which they adopt their decisions, indicating whether there are various agencies with jurisdiction to do so and whether they are collegiate or single-person agencies; review remedies that can be brought against the decisions adopted, both*

*internally and with other external agencies or authorities; and the actions need to implement or enforce those decisions.*

OSC provides a safe channel through which Federal employees, former Federal employees, or applicants for Federal employment may disclose violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Many disclosures involve complex and highly technical matters unique to an agency's or whistleblower's duties, such as disclosures about aviation safety, engineering issues, and impropriety in Federal contracting.

Upon receipt of a disclosure, DU attorneys review the information to evaluate whether there is a substantial likelihood that the information discloses one or more of the categories of wrongdoing described in 5 U.S.C. § 1213. "Substantial likelihood" is not defined by statute. The DU will find a substantial likelihood when it appears from the evidence provided by the whistleblower that it is more likely than not that at the conclusion of the investigation, the allegations will be substantiated. If a positive determination is made, the Special Counsel is required by § 1213(c) to send the information to the head of the agency for an investigation. If the whistleblower consents, his or her name is provided to the agency as the source of the information. If the whistleblower does not consent, the agency is notified that the whistleblower has chosen to remain anonymous.

Upon receipt of a referral from the Special Counsel, the agency head is required to conduct an investigation and to promptly issue a report to the Special Counsel describing the agency's findings [5 U.S.C. § 1213(c) and (d)]. The whistleblower has the right to review and provide OSC with comments on the report [5 U.S.C. § 1213(e)(1)], unless the report contains evidence of a criminal violation referred by the agency to the Attorney General [5 U.S.C. § 1213(f)]. The DU and Special Counsel review the report to determine whether the findings of the agency head appear reasonable and the report of the agency contains the information required under subsection (d) [5 U.S.C. § 1213(e)(2)]. The Special Counsel then sends the agency report, any comments by the whistleblower, and any comments or recommendations by the Special Counsel, to the President and congressional oversight committees for the agency involved [5 U.S.C. 1213(e)(3)]. A copy of the agency report, if non-criminal, is placed in OSC's public file [5 U.S.C. § 1219]. As a matter of policy, OSC also places the whistleblower's comments, if the whistleblower consents, and the transmittal letter to the President, in the public file.

OSC's regulations provide specific procedures for the filing of disclosures of information. Disclosures must be in writing, and may be filed electronically. Filers are encouraged to use Form OSC-12 (<http://www.osc.gov/documents/forms/osc12.htm>). If filers use another written format to submit a disclosure to OSC, the regulations provide instructions for the

required content. Filers are also notified of the manner in which disclosures can be filed, including by mail, by fax, or electronically [5 CFR § 1800.2].

- iv. *The manner in which their senior officers are selected, indicating whether they serve fixed terms or are freely appointed and removable, and the agencies authorized to hold them responsible for their actions and deciding on their continued tenure in those positions.*

OSC is headed by the Special Counsel, who is appointed by the President, and confirmed by the Senate for a five-year term. The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position.

The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. [5 U.S.C. § 1211].

In addition to the Special Counsel, the Senior Leadership of the OSC involves 22 positions. Of those 22, six are classified as positions in the Senior Executive Service. Eighteen are positions in the Excepted Service, and four are positions in the Competitive Service. All except four are career positions and are filled, evaluated and removed, if necessary, according to published standard Government-wide human resource policies.

- v. *The manner in which the human resources needed for their operations are identified and how their personnel are selected, indicating whether they are freely appointed and removable or whether they are selected by means of merit-based completion; if certain requirements have to be met to hold such positions; and whether their personnel are subject to a regime of disqualifications and incompatibilities and of responsibility for their actions.*

OSC maintains a headquarters office in Washington, D.C., and three field offices (located in Dallas, Detroit, and Oakland). The agency includes a number of program and support units as detailed below. The agency has a staffing plan that is reviewed periodically to determine human resource needs. The agency currently employs approximately 125 employees (primarily personnel management specialists, investigators, and attorneys) to carry out its Government-wide responsibilities. The DU is made up of 11 attorneys, including the Disclosure Unit Chief and Deputy Chief, as well as one paralegal specialist and two investigators.

The Special Counsel uses a variety of appointing authorities to hire staff. Attorneys are appointed into the Excepted Service, under 5 CFR § 213. Other employees,

unless otherwise excepted, are appointed into the Competitive Service. Newly appointed Federal employees serve a probationary period, which can be a highly effective tool to evaluate a candidate's potential to be an asset to the Government before an appointment becomes final. Once an appointment becomes final, the probationer becomes an employee with a considerable level of protection under the Federal government's merit system. Selection, appointment and removal of an OSC employee is subject to a system of laws and regulations governing employment in the executive branch that were described in the response to the Second Round questionnaire in Section I, Chapter One. This system of laws and regulations also sets forth the requirements executive branch employees must meet to hold their positions.

All employees of OSC are subject to the executive branch standards of conduct; applicable supplemental agency regulations; the criminal conflict of interest laws; and, depending upon the type and level of their positions, the civil ethics statutes and financial disclosure requirements. Further information relating to these issues may be found in the United States' First Round ([http://www.oas.org/juridico/english/mec\\_rep\\_usa.pdf](http://www.oas.org/juridico/english/mec_rep_usa.pdf)) and Second Round ([http://www.oas.org/juridico/english/mesicic2\\_usa.htm](http://www.oas.org/juridico/english/mesicic2_usa.htm)) reports.

- vi. *The existence of manuals or other documents that describe the functions of their personnel, and also indicating whether regular training is given in connection with those functions.*

Each employee has a job description, an annual performance plan and an annual performance review. Employees in each unit are offered training, both internal and external to OSC. A listing of training attended by OSC employees on an annual basis is posted on OSC's website and at [www.data.gov](http://www.data.gov).

- vii. *The existence of documented procedures for performing their tasks, or of manuals or guides dealing with those duties; institutional strengthening or quality improvement actions implemented; and the implementation of systems or modern technologies to facilitate their work.*

The DU, as well as each of the other program units at OSC, has training manuals or Standard Operating Procedures that describe the functions of their personnel. The agency also has regulations that set forth the procedures that will be followed by OSC in carrying out its functions [5 C.F.R. 1800 (2003)]. Agency-wide, OSC has adopted a Strategic Plan (<http://www.osc.gov/documents/pubs/Strategic%20Plan%20for%20posting%20to%20website%205%2010%2012.pdf>) and operates according to its primary mission to safeguard the merit system by protecting Federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. To ensure

continuing quality improvement, OSC conducts annual surveys and has participated in external reviews of program operations, including by the Harvard Negotiation and Mediation Clinical Program and private contractors.

- viii. *The manner in which the general public is provided with information about their objectives and functions, is informed of the procedures established for the performance of their functions, and is given guidance about how to carry out proceedings before them.*

OSC maintains a website to provide information and guidance to the general public regarding its objectives and functions, at [www.osc.gov](http://www.osc.gov). OSC's website offers the public general information about each of the program units and its operations and authorities. The website directs users to OSC's electronic filing system for filing disclosures of wrongdoing and other OSC complaints. Recent OSC actions are detailed on the website, including press releases highlighting the transmittal of agency reports to the President and Congress pursuant to 5 U.S.C. § 1213(e)(3). The public may also access the investigative reports delivered to OSC by agency heads pursuant to § 1213, from FY '09 through the present. These reports are made public pursuant to 5 U.S.C. § 1219, and the public file includes OSC's transmittal letter to the President and the whistleblower's comments. OSC's website also contains a reading room, from which users may access OSC reports, such as the Annual Reports to Congress, Congressional Budget Justification, and Performance and Accountability Reports.

In addition, OSC is committed to the goals of transparency, participation, and collaboration for the American population. As such, OSC has detailed its work in responding to the U.S. Office of Management and Budget Open Government Directive, requiring Federal agencies to take specific actions to implement the principles of transparency, participation, and collaboration.

OSC offers training to Federal agencies and non-Federal organizations in the various areas within OSC's jurisdiction, as well as a certification program for agencies.<sup>7</sup> Specifically, OSC offers training on (1) prohibited personnel practices, including reprisal for whistleblowing; (2) whistleblower disclosures filed with OSC's

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<sup>7</sup> Congress enacted 5 U.S.C. § 2302(c) in response to reports of limited understanding in the federal workforce concerning employees' right to be free from prohibited personnel practices, especially retaliation for whistleblowing. Section 2302(c) requires agency heads to ensure, in consultation with the Office of Special Counsel, that employees are informed of the rights and remedies available to them under the Whistleblower Protection Act (WPA) and related laws. In 2002, OSC established a "2302(c) Certification Program" to provide agencies and/or agency components with a process for meeting this requirement. In 2014, the White House directed agencies to take affirmative steps to complete OSC's program. In accordance with a February 2014 [memorandum](#) from the White House's Chief Technology Officer and the White House's 2013 [second Open Government National Action Plan](#), agencies must establish a plan for completing OSC's 2302(c) Certification Program. Final plans must be posted on agency websites by June 1, 2014.

Disclosure Unit; (3) the Hatch Act and its application both to Federal employees and to state and local employees; and (4) the USERRA. In addition, OSC seeks feedback on the quality of our published information, and what information users identify as priorities for future publication.

OSC also posts Annual Reports on its website, including Freedom of Information Act, Operational, Performance and Accountability reports, as well as OSC's organizational chart and Open Government Plan.

<http://www.osc.gov/readingroom.htm>

Specific to the DU, OSC maintains a public file containing agency reports, transmittal letters to the President, and whistleblower comments, in Disclosure matters that have been referred to an agency head for investigation and reporting pursuant to 5 U.S.C. §§ 1213(g)(1) and (c). This public file is mandated by 5 U.S.C. § 1219, and may be accessed at the following link:

<http://www.osc.gov/publicfile1213agencyrpt.htm>.

- ix. *The mechanisms for internal control and for dealing with claims, complaints, or allegations related to the pursuit of their objectives and to the performance of their personnel.*

OSC has agency directives addressing claims, complaints, or allegations related to the pursuit of its objectives and to the performance of its personnel. Complaints involving the Special Counsel or the Principal Deputy Special Counsel are handled outside OSC by the Integrity Committee of CIGIE; those involving OSC political appointees, members of the Senior Executive Service and other Senior Level employees are handled pursuant to a Memorandum of Understanding with an Inspector General from another agency. Complaints against other officials are handled following standard Government personnel procedures.

- x. *The manner in which the budgetary resources needed for their operations are ensured.*

OSC, like other Federal executive branch agencies, formulates an annual budget request and submits it to the Office of Management and Budget for review. The budget request then becomes a part of the President's budget request submitted annually to the Congress. The appropriations committees of the U.S. House and Senate ultimately have to agree on a level of appropriations that will be given to OSC. That amount is part of a larger appropriations bill passed by the Congress and agreed to by the President. OSC's level of request and ultimate appropriation appear under its name in the President's budget request and the subsequently passed appropriations bill, respectively.

During Fiscal Year (FY) 2014, OSC is operating with budget authority of \$21,085,000, of which \$20,639,000 is from appropriated funds, and \$446,000 from reimbursement agreements. OSC's President's Budget Level for FY 2015 is \$21,452,000, which would be a 4% increase over the current appropriation. This funding level will sustain 128 total full-time employees (FTE), and help OSC with its increasing levels of prohibited personnel practices and whistleblower disclosures.

- xi. As appropriate, the coordination mechanisms for harmonizing their functions with those of other oversight agencies or public authorities and for securing the support of other authorities and the public for full compliance with their duties.*

OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that the information discloses a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, she is required to advise the appropriate agency head of her determination. The agency head is required to conduct an investigation of the allegations and submit a written report within 60 days after the date on which the information is transmitted [5 U.S.C. § 1213(c)]. If evidence of a criminal violation obtained by an agency in an investigation under subsection (c) is referred to the Attorney General, the investigating agency must notify the Office of Personnel Management and the Office of Management and Budget of the referral.

Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable [5 U.S.C. § 1213(e)(2)]. She will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1). Where deficiencies exist in the report, OSC will seek to resolve those deficiencies prior to making a final sufficiency determination. Methods for resolving such deficiencies include seeking supplemental reports or agency updates.

OSC will not routinely grant an extension of time to an agency in conducting a whistleblower disclosure investigation. However, OSC will consider an extension request where an agency concretely evidences that it is conducting a good faith investigation that will require more time to successfully complete.

By law, the agency's report must be reviewed and signed by the agency head personally. If the agency head delegates authority to review and sign the report to the Inspector General, or other agency official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. §

1213(d)(5). The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). OSC also seeks information reflecting any dollar savings, or projected savings, and any management initiatives related to these cost savings, that may result from the agency review.

As required by 5 U.S.C. § 1213(e)(3), the Special Counsel sends copies of the report, along with any comments on the report from the whistleblower and any comments or recommendations from her, to the President and the appropriate oversight committees in the Senate and House of Representatives. In referrals under 5 U.S.C. § 1213(g), transmittal to the President and Congress is not mandatory, but the Special Counsel may exercise discretion to forward agency reports in a similar manner. Unless the report is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, OSC will place a copy of the report in a public file in accordance with 5 U.S.C. § 1219(a).

In certain cases, when the Special Counsel has determined that the findings of the agency head do not appear reasonable, further enforcement or oversight rests with the President and/or Congress. In significant cases, the Special Counsel has issued press releases concurrently with the transmittal of her report to the President and Congress. Such press releases highlight agency action or inaction. Press releases are archived on OSC's website, <http://www.osc.gov/press.htm>.

- xii. *Accountability mechanisms applicable to the performance of their duties; the way in which the information needed for that is gathered and processed; and the information issued for that purpose, and the way in which it is made public and how members of the public may access it.*

Annual Reports containing operational data and Annual Performance and Accountability Reports are available on OSC's website at [www.osc.gov](http://www.osc.gov). Such reports summarize the results obtained in the performance of agency duties and detail specific whistleblower disclosures that were substantiated and that resulted in corrective and/or disciplinary action, or changes in agency policy.

D) *For each of the oversight bodies selected in the response to question B), summarize the results obtained in the performance of their duties, providing the relevant information available to your country, and making reference, to the extent possible, to issues such as the following:*

- i. *If the oversight body in question is tasked with the prevention of corrupt acts, list the actions taken in the past five years to prevent those acts, such as: campaigns to publicize their consequences; probity programs or awareness-raising on the duty of*

*respecting and protecting public property and general interest; production of manuals or guides to orient public servants and private citizens regarding ethical behavior in their dealings with the State; alerts about corruption risks in specific areas of the State's operations and proposals for preventing them; attention to inquiries, issuing of opinions, or advisory actions or preventive auditing related to the State's actions; attention paid to corruption prevention studies in the areas of their jurisdiction and to related suggestions made by civil society.*

OSC offers training to Federal agencies and non-federal organizations in each of the areas within OSC's jurisdiction. Specifically, OSC offers training on (1) prohibited personnel practices, including reprisal for whistleblowing; (2) whistleblower disclosures filed with OSC's Disclosure Unit; (3) the Hatch Act and its application both to Federal employees and to state and local employees; and (4) the USERRA. Additionally, OSC publishes a variety of materials on prohibited personnel practices, whistleblower disclosures and the Hatch Act. These publications can be ordered directly from [GPO](#), or smaller-scale publications may be printed from OSC's website at [www.osc.gov](http://www.osc.gov).

While the DU provides a safe and secure channel for the reporting of wrongdoing observed by Federal employees, many employees continue to experience retaliation for reporting wrongdoing. Congress enacted 5 U.S.C. § 2302(c) in response to reports of limited understanding in the Federal workforce concerning employees' right to be free from prohibited personnel practices, especially retaliation for whistleblowing. Section 2302(c) requires agency heads to ensure, in consultation with the Office of Special Counsel, that employees are informed of the rights and remedies available to them under the Whistleblower Protection Act (WPA) and related laws. In 2002, OSC established a "2302(c) Certification Program" to provide agencies and/or agency components with a process for meeting this requirement. In 2014, the White House directed agencies to take affirmative steps to complete OSC's program.

In accordance with a February 2014 [memorandum](#) from the White House's Chief Technology Officer and the White House's 2013 [second Open Government National Action Plan](#), agencies must establish a plan for completing OSC's 2302(c) Certification Program. Final plans must be posted on agency websites by June 1, 2014. Plans require that agencies place informational posters at agency facilities, provide information to new and current employees about the WPA/WPEA, train supervisors on prohibited personnel practices and the WPA, and display a link to OSC's website on the agency's website or intranet.

In addition to the above requirements, OSC reminds agencies to maintain compliance with the WPEA's provision on the use of nondisclosure agreements. 5 U.S.C. § 2302(b)(13). The WPEA requires that all agency nondisclosure policies, forms, or agreements include an explicit statement notifying employees of certain rights and

responsibilities under whistleblower protection and other laws. The notification statement required by section 2302(b)(13) should be incorporated into every non-disclosure policy, form, or agreement used by an agency. In March 2013, the Special Counsel issued a [memorandum](#) for executive departments and agencies, including the text of the statement and other agency requirements.

- ii. *If the oversight body in question is tasked with detecting corrupt acts that trigger disciplinary; administrative; financial or civil; or criminal responsibility for persons involved therein, indicate, as appropriate, the total number of investigations begun in each of the past five years and indicate how many remain ongoing; how many have been suspended for whatever reason; how many have been shelved due to statute of limitations; how many have been shelved without a decision being reached on the merits in the case under investigation; how many are at a stage that allows a decision to be reached on the merits of the case under investigation; and how many have been referred to the competent body in order for such a decision to be taken.*

The DU received an average of 975 disclosures annually between FY 2009 and FY 2013, with a steady increase each year. For that period, the DU referred to the agency head for investigation and reporting under 5 U.S.C. § 1213(c), a total of 209 matters. Of those 209, all cases referred between FY 2009 and FY 2011 have been transmitted to the President and congressional oversight committees, and filed in OSC's public file ([www.osc.gov](http://www.osc.gov)) pursuant to 5 U.S.C. § 1219 (unless classified or otherwise prohibited by law from release). Of the cases referred in FY 2012 and 2013, 50 cases remaining pending. A matter may be pending because OSC has provided extensions of time to respond to the report, the agency report is under review by OSC, OSC has requested additional information from the agency, or the report is under review by the whistleblower for comment.

Between FY2009 and 2013, the DU transmitted the agency report and whistleblower comments, if applicable, to the President and Congress in 206 matters. This number is different than the number of cases referred because a case may have been referred in FY2007 and closed in FY 2009, or referred in FY 2013, and currently pending. Of the 206 matters, the agency investigation and reports resulted in changes in agency rules, regulations, policy, or practices in 120. The agency took disciplinary action against an employee or employees in 64 cases.

Matters brought to the DU are not subject to a statute of limitations, and all cases referred will be transmitted to the President and congressional oversight committees and closed.

An extremely limited number of cases – no more than two since OSC was established– have been closed and transmitted to the President without a report, with a finding by the Special Counsel that the agency head failed to submit the required report.

For FY 2014, the DU has received approximately 825 matters, has closed 752, and has referred for investigation 45. (Some of the matters closed or referred were cases received in a prior fiscal year.)

- E) For each of the oversight bodies selected in the response to question B), briefly report on difficulties encountered in preventing, detecting, and punishing corrupt acts of relevance in consideration of their functions and, if applicable, identify specific technical cooperation needs.*

The challenges faced by OSC within the past several years are discussed in the OSC's Fiscal Year 2015 Congressional Budget Justification and Performance Budget Goals. OSC's successes during FY 2013 were achieved despite the difficult fiscal environment and sequestration. Due to reduced resources, OSC lost over 12 FTE, and remaining staff members were required to take furlough days. Furloughs were necessary despite trimming virtually all non-essential expenditures, such as agency travel and various employee benefits. OSC was able to further reduce its operating costs by awarding mandatory contracts on a competitive basis.

[http://www.osc.gov/RR\\_OSCReportsAndInformation.htm](http://www.osc.gov/RR_OSCReportsAndInformation.htm)

- F) If so desired, report on no more than one best practice developed in connection with the duties of each of the oversight bodies selected in the response to question B) that you wish to share with the other MESICIC member countries, . . .*

In 2014, the Special Counsel signed a revised internal Directive implementing OSC's Memorandum of Understanding (MOU) with the National Science Foundation, Office of Inspector General. The MOU and implementing directive provide for independent review of OSC employee allegations of wrongdoing at OSC. This arrangement is necessitated, in part, by the fact that OSC doesn't have an Office of Inspector General. The directive covers Disclosure, PPP, Hatch Act and USERRA complaints by OSC employees. It details how an OSC employee may file a complaint involving OSC and how it is to be addressed, depending upon its subject matter and the level of employee.

While OSC had a prior directive providing for internal handling of employee complaints, this newly revised directive and MOU provide for external review of complaints against certain OSC political appointees, members of the Senior Executive Service, and other senior OSC management employees. Employees may also submit allegations of wrongdoing by the Special Counsel or Principal Deputy Special Counsel either internally (for immediate referral) or directly to the Integrity Committee of CIGIE.

In issuing this Directive, the Special Counsel signified her commitment to providing her own staff the opportunity to report wrongdoing free from the fear of retaliation. Disclosures and complaints filed by OSC employees, former employees, or applicants for employment will be received, investigated, and resolved in such a way as to guard against actual or apparent bias.

## **SECTION II**

### **STANDARD FORMAT FOR THE UNITED STATES TO PRESENT INFORMATION ON PROGRESS AND NEW INFORMATION AND DEVELOPMENTS RELATED TO THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW**

As noted in the individualized format for the United States, the Recommendations in Sections 1-5 have been satisfactorily considered and will not be repeated here. The United States has no new information that would have an impact on their validity or that should lead to their restatement or reformulation. Consequently, only the outstanding General recommendations are addressed here.

#### Recommendation 7.2:

*Select and develop procedures and indicators, as appropriate, that enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, it may take into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.*

#### Recommendation 7.3:

*Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained in it.*

The subjects covered by the first round were standards of conduct; systems for registering income, assets and liabilities; oversight bodies; mechanisms to encourage participation by civil society and nongovernmental organizations; and mutual assistance and technical cooperation. Responsibilities for the programs that address these topics are spread over a number of Federal entities, but each of these entities has a common legal requirement

as part of the budget process to develop and set performance goals, to establish systems of measurement for meeting those goals and then to report annually on how effective they have been in meeting those goals. Each agency is required to make these annual performance reports public. The Office of Management and Budget provides detailed guidance to agencies. *See*

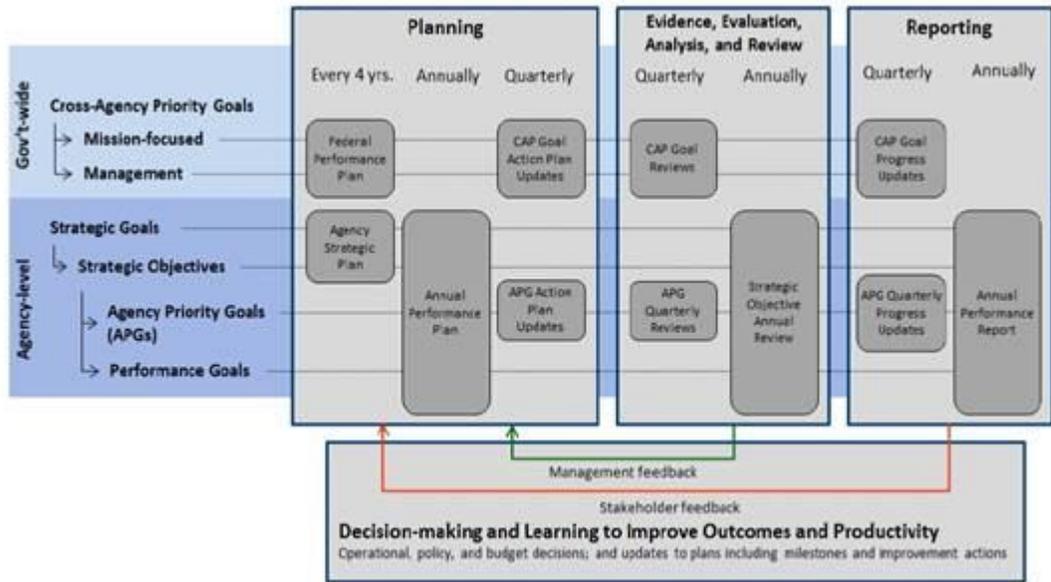
[http://www.whitehouse.gov/sites/default/files/omb/assets/a11\\_current\\_year/part6\\_executive\\_summary.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/part6_executive_summary.pdf)

The following is an excerpt from that guidance:

“As important as it is to sustain a strong performance culture through the practices described in the guidance, it is equally important to have reliable and effective processes which support continuous improvements and opportunities for capacity building. The description below gives an overview of the Federal Performance Management Cycle.

- Starting with the strategic goals and objectives in the Strategic Plan, agencies establish an annual process to set and monitor performance goals and Agency Priority Goals.
- Agencies use quarterly data-driven reviews to focus on targeted, short-term progress, and use strategic reviews to assess progress toward longer-term objectives.
- Finally, agencies summarize the full years’ past performance in their Annual Performance Reports. These communicate publicly to external stakeholders about progress and help inform the development of the next Strategic Plan or Annual Performance Plan.”

### The Performance Management Cycle



The United States believes that these requirements, followed by the entities that have responsibilities for the topics of the First Round, fully meet the intentions of recommendations 7.2 and 7.3. For example, OGE, which promulgates and maintains the standards of conduct for employees of the executive branch and oversees the executive branch financial disclosure system, addresses both of those topics in its strategic plan, its annual performance plans and its annual performance reports. *See* <http://www.oge.gov/About/Management-Reports-and-Policies/Management-Reports---Policies/> OSC which has a whistleblower disclosure unit addresses its performance in administering that program. *See* <https://www.osc.gov/opengov.htm> When the topic under review is one of a number of responsibilities of a larger Department or agency, such as the Department of Justice, the overall annual performance plans and reports of that larger Department may not be as detailed about each specific program within that Department that implements a topic covered by the First Round evaluation; however, established goals and internal evaluations of those programs do feed into that larger report. Further, many of the subunits within those larger Departments and agencies measure and publicize information on the effectiveness of their programs in addition to their internal performance management reporting processes. For example, the General Services Administration recently publicized the new steps it is taking to determine how to judge the effectiveness of Federal Advisory committees established under the Federal Advisory Committee Act. *See* <http://www.gsa.gov/portal/category/21245>. And, the Office of Information Policy in the Department of Justice posts on its portion of the DOJ website the annual reports of

individual agencies' implementation of the Freedom of Information Act. *See* <http://www.justice.gov/oip/reports.html>

The United States has also had many of these programs evaluated by other mutual evaluation mechanisms including the Group of States against Corruption (GRECO), the UNCAC Review of Implementation mechanism, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The results of those reviews and any subsequent compliance reports are posted on each review mechanism's website. These evaluations serve to support already planned changes or the implementation of new approaches within a program. For example, in order to meet its own program enhancement plans (subsequently supported by the UNCAC review), the Office of International Affairs of the Department of Justice Criminal Division is currently conducting an analysis of its MLA practices with the aim of identifying and implementing efficiencies and reconfiguring its case tracking system.

Consequently, since the first round MESICIC review of the United States in 2005, the United States has maintained or enhanced the systems in place that require agencies systematically to set performance goals and measurements and then review the effectiveness of their performance. This includes entities' implementation of programs in those areas that were the topics of consideration for that first round.

### **SECTION III**

#### **INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE**

Please provide the following information:

- (a) State Party: The United States of America
- (b) The official to be consulted regarding the responses to the questionnaire is:

Mr. Robert Leventhal

Title/position: Director, Anticrime Programs Division

Agency/office: U.S. Department of State, INL Bureau, Office of Anticrime Programs

Address: 1800 G. St., NW, Room 2107, Washington, DC 20223

E-mail: LeventhalRM@state.gov

Tel.: (202) 312-9723

Appendix 1

**Office of Inspector General's Fiscal Year Budget Request**

The Inspector General Reform Act of 2008 (Pub. L. No. 110-409) was signed by the President on October 14, 2008. Section 6(f)(1) of the Inspector General Act of 1978, 5 U.S.C. app. 3, was amended to require certain specifications concerning Office of Inspector General (OIG) budget submissions each fiscal year.

Each Inspector General (IG) is required to transmit a budget request to the head of the establishment or designated Federal entity to which the IG reports specifying:

- the aggregate amount of funds requested for the operations of the OIG,
- the portion of this amount requested for OIG training, including a certification from the IG that the amount requested satisfies all OIG training requirements for that fiscal year, and
- the portion of this amount necessary to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

The head of each establishment or designated Federal entity, in transmitting a proposed budget, via OMB, to the President for approval, shall include:

- an aggregate request for the OIG,
- the portion of this aggregate request for OIG training,
- the portion of this aggregate request for support of the CIGIE, and
- any comments of the affected IG with respect to the proposal.

The President shall include in each budget of the U.S. Government submitted to Congress:

- a separate statement of the budget estimate submitted by each IG,
- the amount requested by the President for each OIG,
- the amount requested by the President for training of OIGs,
- the amount requested by the President for support of the CIGIE, and
- any comments of the affected IG with respect to the proposal if the IG concludes that the budget submitted by the President would substantially inhibit the IG from performing the duties of the OIG.