

MECHANISM FOR FOLLOW-UP ON IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

(For reporting on progress made between March 13, 2017, and March 12, 2018)

INTRODUCTORY SECTION: PRINCIPAL DEVELOPMENTS RELATED TO THE IMPLEMENTATION OF THE RECOMMENDATIONS AND MEASURES SUGGESTED BY THE COMMITTEE IN THE FIRST THREE ROUNDS AND REGARDING OTHER MEASURES PROVIDED IN THE CONVENTION

Instructions: Please list below, in no more than one page, the principal developments that have taken place in your country, within the period referred to in this report (March 13, 2017, to March 12, 2018), with regard to the implementation of the recommendations and measures suggested by the Committee in the first four rounds of review, as well as with regard to other measures provided for in the Convention:

B. SECOND ROUND OF REVIEW

Instructions: Following the same structure as the country report of the Second Round, and with respect to each one of the recommendations to which your country wishes to refer in this progress report, please supply the following information:

I. RECOMMENDATION:

Continue strengthening the systems for government procurement of goods and services. To comply with this recommendation, the United States could take the following measures into account:

- (a) Continue to give the appropriate consideration to the relevant measures to improve the acquisition workforce, taking into account the results of studies such as the study by the Advisory Acquisitions Panel and the survey performed Office of Federal Procurement Policy and the Federal Acquisition Institute. (See Section 1.2.2 of Chapter II of this report)

II. ADOPTED MEASURES: The United States is in the process of establishing a digital services training and development program and certification for civilian agency contracting officers. The Federal Acquisition Institute (FAI) conducts a biannual acquisition workforce competency assessment, the results of which are used to develop appropriate training to address the competency gaps. Results from the 2018 survey are currently being analyzed.

III. RECOMMENDATION:

Continue strengthening the systems for government procurement of goods and services. To comply with this recommendation, the United States could take the following measures into account:

- (b) Continue to give the appropriate consideration to the relevant measures to implement the Federal Procurement Data System – Next Generation, given that it is the only

government-wide system that tracks federal procurement spending. (See Section 1.2.3 of Chapter II of this report)

- IV. **ADOPTED MEASURES:** The United States publicly reports information on contracts awarded by the federal government. Information is available on over 200 different points of data for each procurement and is provided publicly at no cost. The system can be accessed and searched by visiting acquisition.gov and selecting Federal Procurement Data System from the acquisition systems tab.

D. FOURTH ROUND OF REVIEW

Instructions: Regarding each of the 4 or 5 oversight bodies from your country that were examined in the Fourth Review Round to which your country wishes to refer in this report, provide the following information as regards the recommendations that were formulated by the Committee in connection with them to which your country wishes to make reference in this report:

NAME OF THE OVERSIGHT AGENCY EXAMINED: Office of the Special Counsel (OSC)

- I. **RECOMMENDATION:** 1.4.1. Make greater use of the authority granted to the Office of the Special Counsel by 5 U.S.C., § 1213(g)(1), in order to accept disclosures from those who are neither Federal employees, former employees, nor applicants for employment in the Federal Government, including government contractors. (See Chapter II, Section 1.2 of this report.)
- II. **ADOPTED MEASURES:** In January 2015, OSC issued a Notice of Proposed Rulemaking, proposing changes to 5 CFR Part 1800, to revise its regulations to allow federal contractors, subcontractors, and grantees to file whistleblower disclosures with the U.S. Office of Special Counsel (<https://osc.gov/Resources/1213g1%20Notice%20Proposed%20Rulemaking%201-22-2015.pdf>). Based on comments received, OSC declined to pursue the new regulatory changes. Comments provided are publicly available on OSC's website (<https://osc.gov/Pages/notice-contractor-disclosures.aspx>).
- III. **RECOMMENDATION:** 1.4.3. Examine the need to provide the Disclosure Unit of the OSC with additional authority to resolve disclosures that it receives, in addition to or as a part of the referral process requiring agency investigation and reporting, such as the ability to mediate disputes for simple matters. (See Chapter II, Section 1.2 of this report.)
- IV. **ADOPTED MEASURES:** In April 2015, OSC's Disclosure Unit, and in 2016, its Retaliation and Disclosure Unit, implemented an informal process for resolution of less serious whistleblower disclosures. The process has shown potential for success in expediting resolution of disclosures. Agencies have been willing to accommodate OSC's requests outside of the statutory process. In addition, the Retaliation and Disclosure Unit has successfully incorporated some disclosures in cases involving both prohibited personnel practices and disclosures, when the prohibited personnel practice case is mediated through its Alternative Dispute Resolution Unit.

- V. **RECOMMENDATION:** 1.4.4. Explore the implementation of an alternate mechanism to address disclosures pertaining to smaller agencies that do not have their own OIG, or where the complaint is against the head of the respective small agency. (See Chapter II, Section 1.2 of this report.)
- VI. **ADOPTED MEASURES:** OSC is continuing to explore alternatives in this regard, but has not formalized a process for an alternative mechanism. In 2016, for example, OSC referred disclosures to the Council of the Inspectors General for Integrity and Efficiency (CIGIE) and, by agreement, to an Inspector General for an agency other than the involved agency.
- VII. **RECOMMENDATION:** 1.4.5. Consider providing a statutory or regulatory definition of, or internal guidelines for application by the Disclosure Unit of the OSC of the term “substantial likelihood” as used in 5 U.S.C., § 1213. (See Chapter II, Section 1.2 of this report.)
- VIII. **ADOPTED MEASURES:** The Office of Special Counsel Reauthorization Act of 2017 requires OSC to promulgate regulations within two years of enactment.¹ OSC is developing a working group of program staff through which to formulate the substance of these proposed regulations, which will consider whether to provide a regulatory definition of the term “substantial likelihood.”
- IX. **RECOMMENDATION:** 1.4.6. Include, on the OSC Internet website, information on those agencies who are obligated to comply with OSC’s 2302(c) Certification Program, those that have been certified, those that have been registered to complete the program, as well as those that have failed to comply with the June 1, 2014 deadline, or which fail to comply with future deadlines that may be established with respect to this Certification Program. (See Chapter II, Section 1.3 of this report.)
- X. **ADOPTED MEASURES:** OSC's website, www.osc.gov, lists certified and registered agencies. In addition, the law requiring certification has been strengthened, and deadlines modified. In late 2017, the President signed into law the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 and the OSC Reauthorization Act of 2017. These statutes reemphasize the importance of the OSC’s Certification Program to meet the requirements of section 2302(d) and satisfy the new statutory obligations. OSC has revamped its certification program to comply with the new statutory requirements. OSC has also enhanced the information available to agencies and the public by expanding the resources available on its website. (See <https://osc.gov/Pages/Outreach-2302Cert.aspx>)
- XI. **RECOMMENDATION:** 1.4.7. Maintain results on the outcome of referrals of potential criminal violations sent to the Attorney General originating from disclosures made to the OSC’s Disclosure Unit and transferred to agencies for investigation and reporting pursuant to

¹ The 2017 OSC reauthorization as found in section 1097 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA), Public Law 115-91.

5 U.S.C. Section 1213(f), in order to identify challenges and recommend corrective measures. (See Chapter II, Section 1.3 of this report.)

- XII. **ADOPTED MEASURES:** OSC is prepared to maintain results on the outcomes of potential criminal referrals, but has no outcomes to report at this time.
- XIII. **RECOMMENDATION:** 1.4.8. Consider either (i) adopting and implementing the legislative changes necessary to increase the 15-day time-frame provided for in the Whistleblower Protection Act with a more realistic time-frame which can be met by the Disclosure Unit of the OSC; or (ii) increasing the number of staff of the Disclosure Unit so that it can process most, if not all of the disclosures that it receives within the 15-day statutory timeline. (See Chapter II, Section 1.3 of this report.)
- XIV. **ADOPTED MEASURES:** The OSC Reauthorization Act of 2017 amended 5 U.S.C. Section 1213(b) to expand the 15-day time frame to 45 days.
- XV. **RECOMMENDATION:** 1.4.9. Study the reasons why agencies are generally unable to comply with the 60-day time-limit established in 5 U.S.C. § 1213(c), in order to identify challenges and recommend corrective action. (See Chapter II, Section 1.3 of this report.)
- XVI. **ADOPTED MEASURES:** OSC continues to study this issue, through its strategic plan working group and a newly established Efficiency and Effectiveness Working Group, which is using data to examine OSC's work processes and will make recommendations to leadership on how to improve them.

NAME OF THE OVERSIGHT AGENCY EXAMINED: Council of the Inspectors General on Integrity and Efficiency (CIGIE)

- I. **RECOMMENDATION:** 2.4.2. Take steps to ensure that appointing authorities take action to promptly appoint IGs once the position becomes vacant, and consider limiting the instances when Acting Inspectors General are appointed to fill these vacancies, establishing specific limited time-frames for these Acting Inspectors General to remain in these posts. (See Chapter II, Section 2.2 of this report.)
- II. **ADOPTED MEASURES:** In December 2016, the Inspector General Empowerment Act of 2016 (IGEA) was enacted, which mandated that the U.S. Government Accountability Office (GAO) conduct a review of Inspector General (IG) Vacancies. This review concluded in early 2018 and the GAO report was issued on March 9, 2018 (<https://www.gao.gov/products/GAO-18-270>). The GAO report addressed “(1) the status of IG vacancies as of the end of fiscal year 2017, and the number and duration of IG vacancies for fiscal years 2007 through 2016, and (2) the IG community’s views about how IG vacancies impact the OIGs’ ability to carry out their duties effectively, including views on the impact on independence.” The GAO report was shared with the U.S. Congress for information and consideration.

- III. **RECOMMENDATION:** 2.4.3. Take the steps necessary to clarify whether and in what instances attorney-client privilege or other Federal laws may be used by agencies to refuse to provide an Inspector General's Office with information requested in order to perform its statutorily assigned functions, in order to ensure that this privilege is not improperly invoked by agencies or does not operate to impede the execution of the functions and responsibilities of the OIGs. (See Chapter II, Section 2.2 of this report.)
- IV. **ADOPTED MEASURES:** One of the IGEA provisions strengthened the meaning of Office of Inspectors General (OIG) access to information. Specifically, section 5 of the IGEA, provided that OIGs have full and prompt access to all documents available to their Federal establishments (<https://www.congress.gov/114/bills/hr6450/BILLS-114hr6450enr.pdf>).
- V. **RECOMMENDATION:** 2.4.5. Consider, through the means necessary, granting Inspectors General subpoena power with regard to, among others, Federal employees, former employees, and current and former contractors and their employees, when necessary for the performance of OIG functions. (See Chapter II, Section 2.2 of this report.)
- VI. **ADOPTED MEASURES:** Providing IGs with testimonial subpoena power is a legislative priority for CIGIE, see letter dated May 26, 2017, from CIGIE to the Acting Director for Management, Office of Management and Budget, and CIGIE's Acting Executive Chair found here <https://www.ignet.gov/sites/default/files/files/CIGIE%20Legislative%20Priorities%20115th.pdf>. In recent sessions of the U.S. Congress bills have been proposed to provide OIGs with testimonial subpoena authority; however, to date no bill has yet to be enacted providing such. The current bill being considered by the U.S. Congress is H.R. 4917 and can be located here <https://www.congress.gov/bill/115th-congress/house-bill/4917/text>.

NAME OF THE OVERSIGHT AGENCY EXAMINED: Public Integrity Section (PIN)

- I. **RECOMMENDATION:** 3.4.1. Ensure that there is adequate coordination between the PIN and the United States Attorneys Offices, so that parallel investigations do not undermine any potential criminal investigations. (See Chapter II, Section 3.2 of this report.)
- II. **ADOPTED MEASURES:** The Public Integrity Section continues to coordinate and communicate with the U.S. Attorneys Offices regarding criminal investigations and the potential for parallel investigations. The FBI and other investigating agencies also coordinate and de-conflict criminal investigations.

NAME OF THE OVERSIGHT AGENCY EXAMINED: Office of Government Ethics (OGE)

- I. **RECOMMENDATION:** 4.4.1. Take the steps necessary to ensure that ethics officials receive adequate training to promote uniform application of ethics principles in the agencies of the executive branch. (See Chapter II, Section 4.2 of this report.)

II. **ADOPTED MEASURES:** The U.S. Office of Government Ethics (OGE) established the Institute for Ethics in Government (Institute) for the training of ethics officials in 2013. The Institute comprises a library of more than 80 online on-demand courses, a portal for registering for in-person training, and a repository for job-aides and other helpful ethics tools. OGE also provides quarterly orientations for Designated Agency Ethics Officials (DAEOs) through the Institute as well as semi-annual intensive curricula in ethics for new ethics officials in critical roles. In a typical year, courses and materials available through the Institute are accessed thousands of times.

In 2016, OGE modernized its regulations that establish requirements for agency ethics programs. As part of this modernization, OGE established specific requirements for the qualifications of the Designated Agency Ethics Official.² OGE also established by regulation an affirmative obligation of the Designated Agency Ethics Official at each agency to ensure that staff members who perform ethics functions have received appropriate training and are qualified to carry out those functions.³ OGE assesses staff qualification during its oversight reviews of ethics programs. OGE has also established a training program for new DAEOs and Alternate DAEOs (ADAEOs) that is hosted by OGE senior training officials and is focused on educating new DAEOs and ADAEOs on their roles and responsibilities as well as on substantive ethics issues.

III. **RECOMMENDATION:** 4.4.2. Promote periodic meetings between OGE and Designated Agency Ethics Officials, and, when feasible, include Alternate Designated Agency Ethics Officials in those periodic meetings, in the event that they are not already included, given that they perform similar functions as the Designated Agency Ethics Official. (See Chapter II, Section 4.2 of this report.)

IV. **ADOPTED MEASURES:** In 2017, the Office of Government Ethics amended the ethics program regulations to expressly set forth that OGE will, where practicable, convene quarterly executive branch-wide meetings of key agency ethics officials.⁴ In connection with this codification, OGE has continued to hold periodic meetings with Designated Agency Ethics Officials and other invited ethics staff. To accommodate ethics officials who are located outside of the metropolitan DC area or who otherwise cannot attend, OGE also has offered a quarterly conference call that is made available to DAEOs, ADAEOs, and other ethics officials and which covers the same information as the quarterly in-person meeting.

V. **RECOMMENDATION:** 4.4.3. Take steps necessary to keep the online list of Designated Agency Ethics Officials and Alternate Designated Agency Ethics Officials up-to-date. (See Chapter II, Section 4.2 of this report.)

² 5 CFR 2638.104, available at <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.11&idno=5>

³ Ibid.

⁴ 5 CFR 2638.108(a)(7), available at <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.11&idno=5>

- VI. **ADOPTED MEASURES:** OGE has continued to take steps necessary to ensure that the online list of DAEO and ADAEOs is kept up-to-date.⁵ OGE has instituted a standard operating procedure for changes in key agency ethics personnel. Each agency is required to notify OGE when a new DAEO or ADAEO has been designated. Upon receipt of that letter, the OGE staff member who is responsible for providing services to the agency ensures that the online list is updated to reflect the present DAEO and ADAEO. The OGE staff member will at the same time also work with the agency ethics office to ensure that both the incoming and outgoing DAEO have filed necessary financial disclosure forms. OGE staff will also offer to enroll new DAEOs and ADAEOs in training courses, as well as offer to provide an in-person meeting and relevant resources for ethics officials.
- VII. **RECOMMENDATION:** 4.4.4. Conduct a review of OGE regulations in order to identify any rules, such as those related to standards of conduct, or ethics program requirements, such as agency ethics training requirements, that could be made more effective. (See Chapter II, Section 4.2 of this report.)
- VIII. **ADOPTED MEASURES:** Starting in 2015, OGE began a comprehensive, multi-year retroactive review of the Standards of Conduct and the regulations governing the executive branch ethics program. This review included significant input from agency ethics officials and inspectors general, as well as public comment. As a result of the review, OGE promulgated comprehensive changes to the provisions of the Standards of Conduct governing the solicitation and acceptance of gifts from outside sources and the provisions dealing with employees' disqualification obligations when they are seeking future employment or compensation.⁶ These changes included, among other things, adding values-based considerations for employees to undertake when considering whether to decline otherwise permissible gifts. OGE also promulgated broad amendments to the regulations covering the executive branch ethics program.⁷ These amendments were aimed at more clearly setting forth the roles and responsibilities of different actors in the ethics program, as well as improving and augmenting ethics program administration requirements. For example, OGE amended the training requirements to ensure incoming agency heads received additional one-on-one training shortly after appointment.⁸ OGE continues to review the other provisions of the Standards of Conduct to determine whether additional changes are necessary to ensure they are an effective compliment to the criminal and civil conflict of interest laws.

⁵<https://www.oge.gov/web/oge.nsf/Program%20Management%20Resources/B6AC9C6C882057DC85257EC10061FCDB?opendocument>

⁶ 5 CFR 2635 subpart B, available at <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.9&idno=5>; 5 CFR 2635 subpart F, available at <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.9&idno=5>

⁷ 5 CFR 2638, available at <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.11&idno=5>

⁸ 5 CFR 2638, available at <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.11&idno=5>

- IX. **RECOMMENDATION:** 4.4.5. Review OGE records in order to determine whether there are additional documents and/or data that might be of value to the public and which could be made publicly available by OGE. (See Chapter II, Section 4.2 of this report.)
- X. **ADOPTED MEASURES:** OGE takes seriously our commitment to transparency and public participation in government, and continues to review and make publicly available documents and data in accordance with the FOIA Improvement Act of 2016, OGE's Strategic Plan for years 2018-2022, and internal policies. OGE has identified making government ethics information public as a core strategic goal for the next 5 years, as set out as strategic goal 4.2 in our Strategic Plan:

OGE makes ethics information publicly available to increase public confidence in Government decision making. Ethics information includes reports and data on agency ethics program compliance, the public financial disclosures and ethics agreements of senior leaders, and written policy guidance. OGE will direct its efforts toward improving existing datasets, identifying potential new datasets, streamlining the collection process of ethics information, posting documents timely, and making resources and information easy to locate and access. OGE will seek to improve stakeholders' understanding of the ethics resources and information available to them, as well as how to use these resource and information.⁹

In addition to making available a wide variety of published advisories, regulatory issuances, forms, and educational materials, OGE has also continued to identify and release documents and data sets that can be made publicly available. Examples include the publication of "certification of ethics agreement compliance" forms filed by high-level officials, which describe whether those officials have complied with their ethics commitments, as well as various ethics waivers and authorizations issued by executive branch officials as a result of a special review conducted by OGE.¹⁰ OGE has also established a FOIA-processed records page that contains records processed for release under the FOIA after January 1, 2017.¹¹ OGE also continues to proactively post documents that may be of interest to the public in its FOIA reading room.¹²

Finally, OGE has started a public information campaign through social media aimed at raising public awareness of what information is publicly available, how to access that information, and how that information is used. For example, OGE recently used social media to describe what ethics paperwork is required to be filed by nominees to positions requiring

⁹ [https://www.oge.gov/web/oge.nsf/0/5BE07CAD19ACE12B85258232006C9768/\\$FILE/Finished%202018-22%20Strategic%20Plan.pdf](https://www.oge.gov/web/oge.nsf/0/5BE07CAD19ACE12B85258232006C9768/$FILE/Finished%202018-22%20Strategic%20Plan.pdf)

¹⁰ Retrievable by searching for nominee by last name.

<https://extapps2.oge.gov/201/President.nsf/201+Request?OpenForm>;

<https://www.oge.gov/Web/oge.nsf/Resources/Certain+Waivers+and+Authorizations+issued+between+May+1,+2016++April+30,+2017>

¹¹ <https://extapps2.oge.gov/FOIAStatus/FOIAResponse.nsf/2FC940AD2A3190BD8525811B004560CE>

¹² [https://www.oge.gov/web/oge.nsf/Freedom%20of%20Information%20Act%20\(FOIA\)/B9B880B7B93AF8EF85257EF5006DAAB6?opendocument](https://www.oge.gov/web/oge.nsf/Freedom%20of%20Information%20Act%20(FOIA)/B9B880B7B93AF8EF85257EF5006DAAB6?opendocument)

Presidential appointment and Senate confirmation, as well as what data is in those documents and how they are used by OGE and agencies to ensure employees take steps to avoid potential conflicts of interest.

- XI. **RECOMMENDATION:** 4.4.6. Consider making any necessary changes to the Ethics in Government Act in order to ensure its continued effectiveness in light of OGE and other oversight bodies' practical experience in its application. (See Chapter II, Section 4.2 of this report.)
- XII. **ADOPTED MEASURES:** OGE continues to review the Ethics in Government Act to determine whether additional changes are necessary. In 2016, OGE published a proposed rule to update and modify the executive branch interpretative regulation implementing the provisions of the Ethics in Government Act concerning financial disclosure, qualified trusts, and certificates of divestiture based on OGE's practical experience.¹³ These revisions include modernizing language, streamlining additional and updated examples, and ensuring that the regulation aligns more closely with the Ethics in Government Act and OGE's other regulations. OGE anticipates issuing regulations in fiscal year 2018.

¹³ <https://www.gpo.gov/fdsys/pkg/FR-2016-10-05/pdf/2016-22958.pdf>