MECHANISM FOR FOLLOW-UP ON THE
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UNITED STATES OF AMERICA

FINAL REPORT

(Adopted at the March 25, 2011 Plenary Session)

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

REPORT ON IMPLEMENTATION IN THE UNITED STATES OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND, AND ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN PREVIOUS ROUNDS[1]

INTRODUCTION

1. Contents of the report

[1] This report presents, first, a review of implementation in the United States of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the Third Round: Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the implementation of the recommendations that were formulated to the United States by the MESICIC Committee of Experts in the previous rounds, which are contained in the reports on that country adopted by the Committee and published at the following web pages: http://www.oas.org/juridico/english/mec_rep_usa.pdf; and http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf

2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official registry of the OAS General Secretariat, the United States ratified the Inter-American Convention against Corruption (IACC) on September 15, 2000 and deposited the respective instrument of ratification on September 29, 2000.

[4] Similarly, the United States signed the Declaration on the Mechanism for Follow-Up of Implementation of the IACC on June 4, 2001, during a regular session of the OAS General Assembly held in San José, Costa Rica.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the United States

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the United States and in particular, from the Bureau for International Narcotics and Law Enforcement Affairs/Office of Anti-Crime Programs, of the State Department, which was evidenced, inter alia, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the United States sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: http://www.oas.org/juridico/english/mesicic3_usa.htm

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 25, 2011, at its Eighteenth meeting, held at OAS Headquarters, March 21-25, 2011.

[6] For its review, the Committee took into account the information provided by the United States up to August 13, 2010, and that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the Review Methodology.

2. Documents received from civil society organizations.

[7] The Committee also received, within the time limit established in the Schedule for the Third Round, a document from the civil society organization, "Transparency International".[2]

II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT[3] FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

1.1. Existence of provisions in the legal framework and/or other measures

[8] The United States has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[9] – Title 26 of the United States Code (U.S.C.), the Internal Revenue Code, which at Section 61(a), provides that gross income includes all income from whatever source derived, including (but not limited to), compensation for services (Section 61(a)(1)); gross income derived from business (Section 61(a)(2)); and gains derived from dealings in property (Section 61(a)(3));[4]

[10] Section 62(a) defines adjusted gross income as gross income minus various deductions, including, among others, trade and business deductions (Section 62(a)(1)); and losses from sale or exchange of property Section 62(a)(3).[i]

[11] Section 63(a) defines the term "taxable income" as gross income minus the deductions allowed by the Internal Revenue Code. With respect to individuals who do not itemize their deductions, Section 63(b) defines "taxable income" as adjusted gross income minus the standard deduction[ii] and the personal exemptions deduction provided by Section 151.[5]

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2. This report can be consulted at: http://www.oas.org/juridico/english/mesicic3_usa_sc.pdf

3. For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

4. The full text of 26 U.S.C. 61(a) provides as follows: "***(a) General definition*** *Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:* ***(1)*** *Compensation for services, including fees, commissions, fringe benefits, and similar items;* ***(2)*** *Gross income derived from business;* ***(3)*** *Gains derived from dealings in property;* ***(4)*** *Interest;* ***(5)*** *Rents;* ***(6)*** *Royalties;* ***(7)*** *Dividends;* ***(8)*** *Alimony and separate maintenance payments;* ***(9)*** *Annuities;* ***(10)*** *Income from life insurance and endowment contracts;* ***(11)*** *Pensions;* ***(12)*** *Income from discharge of indebtedness;* ***(13)*** *Distributive share of partnership gross income;* ***(14)*** *Income in respect of a decedent; and* ***(15)*** *Income from an interest in an estate or trust."*

5. Additional information on the personal exemption deduction can be found at: http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000151----000-.html

[12] Part II of Title 26, Subtitle A, Chapter 1 of the U.S.C. provides that the following items are specifically included in gross income: alimony and separate maintenance payments (Section 71); annuities; certain proceeds of endowment and life insurance contracts (Section 72); services of child (Section 73); prizes and awards; (Section 74); dealers in tax-exempt securities (Section 75); commodity credit loans (Section 77); dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit (Section 78); group-term life insurance purchased for employees (Section 79); restoration of value of certain securities (Section 80); reimbursement for expenses of moving (Section 82); property transferred in connection with performance of services (Section 83) transfer of appreciated property to political organization (Section 84); unemployment compensation (Section 85); social security and tier 1 railroad retirement benefits (Section 86); alcohol and biodiesel fuels credits (Section 87); certain amounts with respect to nuclear decommissioning costs (Section 88); and illegal Federal irrigation subsidies (Section 90).[6]

[13] Part III of Title 26, Subtitle A, Chapter 1 of the U.S.C. provides that the following items, among others, are specifically excluded from gross income Certain death benefits (Section 101); gifts and inheritances (Section 102); interest on State and local bonds (Section 103) compensation for injuries or sickness (Section 104); amounts received under accident and health plans (Section 105); contributions by employer to accident and health plans (Section 106) rental value of parsonages (Section 107); income from discharge of indebtedness (Section 108); Improvements by lessee on lessor's property (Section 109); qualified lessee construction allowances for short-term leases (Section 110); recovery of tax benefit items (Section 111); certain combat zone compensation of members of the Armed Forces (Section 112); income of States, municipalities, etc. (Section 115); qualified scholarships (Section 117); contributions to the capital of a corporation (Section 118); meals or lodging furnished for the convenience of the employer (Section 119); amounts received under qualified group legal services plans (Section 120); exclusion of gain from sale of principal residence (Section 121); certain reduced uniformed services retirement pay (Section 122); amounts received under insurance contracts for certain living expenses (Section 123); cafeteria plans (Section 125); certain cost-sharing payments (Section 126); educational assistance programs (Section 127); dependent care assistance programs (Section 129); certain personal injury liability assignments (Section 130); certain foster care payments (Section 131); certain fringe benefits (Section 132); certain military benefits (section 134); income from United States savings bonds used to pay higher education tuition and fees (Section 135); energy conservation subsidies provided by public utilities (Section 136); adoption assistance programs (Section 137); Medicare Advantage MSA (Section 138); disaster relief payments (Section 139); federal subsidies for prescription drug plans (Section 139A); benefits provided to volunteer firefighters and emergency medical responders (Section 139B); and COBRA premium assistance (Section 139C).[7]

[14] Section 212 allows individuals to deduct the ordinary and necessary expenses for paid or incurred for the production of income (Section 212(1)); for the management, conservation, or maintenance of property held for the production of income (Section 212(2)) or in connection with the determination, collection, or refund of any tax (Section 212(3)).

[15] Section 162(a) allows the deduction of the ordinary and necessary expenses paid or incurred in carrying on any trade or business, including, a reasonable allowance for salaries or other compensation for personal services actually rendered (Section 162(a)(1)); traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the

6. The definitions and rules relating to each of these items that are included in gross income may be consulted at: http://www.law.cornell.edu/uscode/html/uscode26/usc_sup_01_26_10_A_20_1_30_B_40_II.html
7. The definitions and rules relating to each of these items that are excluded from gross income may be consulted at: http://www.law.cornell.edu/uscode/html/uscode26/usc_sup_01_26_10_A_20_1_30_B_40_III.html

circumstances) while away from home in the pursuit of a trade or business (Section 162(a)(2)); and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity (Section 162(a)(3)).

[16] Section 162(c)(1), provides that *"No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud)."*

[17] – The Foreign Corrupt Practices Act, 15 U.S.C. Sections 78dd-1, et seq., at Section 78dd-1(a), provides in pertinent part, that *"It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to-- (1) any foreign official for purposes of-- (A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or (B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; (2) any foreign political party or official thereof or any candidate for foreign political office for purposes of-- (A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or (B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality. in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or (3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of-- (A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or (B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person."*

[18] – The Foreign Corrupt Practices Act, 15 U.S.C. Sections 78dd-1, et seq., at Section 78dd-2(a), provides in pertinent part, that *"It shall be unlawful for any domestic concern*,[8] *other than an issuer which is subject to section 7855-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to – (1) a foreign official* FN [9] *for purposes of (A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official; or (iii) securing any improper advantage; (B) inducing such foreign official to use his influence with a foreign government of instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any such person…"*

[19] – The Foreign Corrupt Practices Act, 15 U.S.C. Sections 78dd-1, *et seq*., at Section 78dd-3(a), provides in pertinent part, that *"It shall be unlawful for any person other than an issuer that is subject to section 30A of the Securities Exchange Act of 1934 or a domestic concern, as defined in section 104 of this Act), or for any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of such person, while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to-- (1) any foreign official for purposes of-- (A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or (B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person; (2) any foreign political party or official thereof or any candidate for foreign political office for purposes of-- (A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or (B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality. in order to assist such person in obtaining or retaining business for or with, or directing business to, any person; or (3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of-- (A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official,*

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8. The Foreign Corrupt Practices Act defines "domestic concern" as: "*(A) any individual who is a citizen, national, or resident of the United States; and (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States."*

9. The Foreign Corrupt Practices Act defines "foreign official" as: *"any officer or employee of a foreign government or any department, agency or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of such government or department, agency or instrumentality, or for or on behalf of any such public international organization."*

or candidate, or (iii) securing any improper advantage; or (B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person."

[20] Section 78dd-1, 2, and 3 provide that *"Subsections (a) and (i) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party or party official."*

[21] Section 78dd-1, 2, and 3 provide the following will be affirmative defenses to a charge under the FCPA: *(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations or the foreign official's, political party's, party official's or candidate's country; or (2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—(A) the promotion, demonstration, or explanation of products or services; or (B) the execution or performance of a contract with a foreign government or agency thereof."*

[22] Sections 77dd-1(e) and 77dd-2(f), task the Attorney General with establishing a procedure to provide responses to specific inquiries by issuers and domestic concerns, respectively, concerning conformance of their conduct with the Department of Justice's present enforcement policy. This procedure is long established and more than 30 such opinions have been issued.

[23] Part IX of Title 26, Subtitle A, Chapter 1 of the U.S.C. which provides a list of items that are not deductible, including, personal, living, and family expenses (Section 262); capital expenditures (Section 263); capitalization and inclusion in inventory costs of certain expenses (Section 263A); certain amounts paid in connection with insurance contracts (Section 264) expenses and interest relating to tax-exempt income (Section 265); carrying charges (Section 266); losses, expenses, and interest with respect to transactions between related taxpayers (Section 267); sale of land with unharvested crop (Section 268); acquisitions made to evade or avoid income tax (Section 269); personal service corporations formed or availed of to avoid or evade income tax (Section 269A); stapled entities (Section 269B); debts owed by political parties, etc. (Section 271); disposal of coal or domestic iron ore (Section 272); holders of life or terminable interest (Section 273); disallowance of certain entertainment, etc., expenses (Section 274); certain taxes (Section 275); certain indirect contributions to political parties (Section 276); deductions incurred by certain membership organizations in transactions with members (Section 277); interest on indebtedness incurred by corporation to acquire stock or assets of another corporation (Section 278); disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc. (Section 280A); demolition of structures (Section 280B); certain expenses for which credits are allowable (Section 280C); expenditures in connection with the illegal sale of drugs (Section 280E); limitation on depreciation for luxury automobiles; limitation where certain property used for personal purposes (Section 280F); golden parachute payments (Section 280G); and limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years (Section 280H).

[24] Title 26 U.S.C. Section 6001, which requires every person liable for tax imposed by the Internal Revenue Code to maintain records as prescribed by the Secretary (of the Treasury).

[25] – Title 26 of the Code of Federal Regulations (C.F.R.), which at Section 1.6001-1, requires all persons liable for tax to keep *"such permanent books of accounts or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information."*

[26] Title 26 U.S.C. Section 7602(a), titled "Examination of Books and Witnesses", provides that for the purposes of ascertaining the correctness of returns, making a return where none has been made, determining tax liability or collecting any tax liability, the IRS has the power to examine any books, papers, records, or other relevant data (Section 7602(a)(1)); or to summon the person liable for tax or the person having possession, custody or care of the books, to appear and produce such books, papers, records or other data (Section 7601(a)(2)).

[27] Title 26 of the US Code provides for a variety of civil penalties related to violations of its provisions, including, inter-alia, failure to collect and pay over tax, or attempt to evade or defeat tax (Section 6672); frivolous tax submissions (Section 6702); failure to furnish information regarding reportable transactions (Section 6707); and failure to produce records (Section 7269).

[28] The Internal Revenue Code provides for several felony tax related offenses, including, inter-alia, the following: Attempt to evade or defeat tax (26 U.S.C. Section 7201); Willful failure to collect or pay over tax (26 U.S.C. Section 7202); Subscribing to a false tax return (26 U.S.C. Section 7206(1)); Aiding and assisting in the preparation of a false return (Section 7206(2));

[29] 26 U.S.C. Section 7203 also provides for the misdemeanor offense of failure to file return, supply information, or pay tax.

[30] 18 U.S.C. Section 371, titled Conspiracy to commit offense or to defraud the United States, provides that *"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."*[10]

[31] The IRS Criminal Investigation Unit, which has exclusive responsibility for investigating criminal violations of the Internal Revenue Code.[11] With respect to this Unit, the response of the United States notes that *"The Internal Revenue Service (IRS) has a Criminal Investigation (CI) function to which referrals can be made by the civil division, if it is believed a criminal tax violation has occurred. The deductibility of bribes could be considered a criminal tax violation, thus permitting such a referral. Agents of the IRS often participate in investigations of foreign bribery in cooperation with the*

10. In connection with this offense, the response of the United States to the Questionnaire for the Third Round of Review notes the following: "*The criminal tax statutes in Title 26 of the United States Code do not include a statute for the crime of conspiracy. As a result, tax related conspiracies are generally prosecuted under 18 U.S.C. § 371, the general conspiracy statute (two or more persons conspire either to commit and offense against the United States). Conspiracy to defraud the government is a very broad concept. It is not limited to efforts to obtain money or property, but includes conspiracies where the object of the conspiracy is to defraud the laws of the United States by obstructing, impairing, interfering, impeding or defeating the legitimate functioning of the government (the Internal Revenue Service) through fraudulent or dishonest means. The foremost case of interfering with the proper operation of the Internal Revenue Service is United States v. Klein, hence the term "Klein-type" conspiracy. The harm to the government is the agreement to impede and impair the IRS and it is not necessary to establish tax harm."*

11. More information on the IRS Criminal Investigation Unit is available at: http://www.irs.gov/compliance/enforcement/index.html

Department of Justice (DOJ) and Federal Bureau of Investigations (FBI), and may both refer such cases and receive referrals."[12]

[32] – Publication, Circulars and Manuals issued by the Internal Revenue Service, which provide advice and guidance on a wide range of issues related to compliance with the applicable provisions of the Internal Revenue Code.[13]

[33] – Publication No. 525, titled Taxable and Nontaxable Income, issued by the Internal Revenue Service on February 6, 2010, and which provides that both bribes and kickbacks are to be included in taxable income.[14]

[34] – The Internal Revenue Service E-file System, available at http://www.irs.gov/efile/, which allows tax returns to be filed electronically, and which provides specific options, inter-alia, for Individual Taxpayers, Business and Self-Employed Taxpayers, Large and Mid-Size Corporations, Tax Professionals, and Charities and Non-Profits.

1.2. Adequacy of the legal framework and/or other measures

[35] With respect to provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee notes that based on the information available to it, they can be said to constitute a set of relevant measures for promoting the purposes of the Convention.

[36] Nonetheless, the Committee considers it appropriate to formulate the following observations:

[37] The Committee observes that Section 162 of Title 26 of the United States Code prohibits the deduction of illegal bribes and kickbacks paid to any government official or employee. Similarly, the same section prohibits the deduction of those payments when they are made to a foreign government official or employee, provided that the payment is unlawful under the FCPA.

[38] In this regard, the Committee observes that while the FCPA criminalizes many forms of payment made to foreign government officials and employees, Sections 78dd-1, 2, and 3 provide an exception for facilitation or expediting payments for routine government action.

[39] In this connection, the Committee notes that facilitation payments are generally considered an illegal bribe in the countries in which they are paid. In a similar sense, the Committee notes that the principal domestic bribery statute in the country under review, 18 U.S.C. Section 201, which was examined in the Report on the United States for Second Round of Review, contains no such exception for facilitation or expediting payments made to domestic government officials or employees.[15]

[40] In view of the foregoing, and taking into consideration that facilitation payments are not criminalized in the country under review, the Committee believes that the United States could consider

12. See the response of the United States to the questionnaire for the Third Round of Review, at p. 3, available at: http://www.oas.org/juridico/english/mesicic3_usa_resp.pdf
13. Publications issued by the Internal Revenue Service are available in electronic format, at: http://www.irs.gov/formspubs/index.html
14. This publication is available in electronic format, at : http://www.irs.gov/pub/irs-pdf/p525.pdf
15. See the Report on Implementation in the United States of the Convention Provisions Selected for Review in the Second Round of Review, at p. 31, available at: http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf

continuing to make efforts to ensure that these payments do not receive favorable tax treatment. (See Recommendation 1.4 (a) in Chapter II of this report)

[41] The Committee also believes that it would be beneficial for the country under review to consider continuing to take such steps as it deems appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment.[16] (See Recommendation 1.4 (b) in Chapter II of this report)

1.3. Results of the legal framework and/or other measures

[42] With respect to results in this field, the response of the country under review notes the following: IRS-Criminal Investigation participated in 31 criminal investigations involving bribery or Foreign Corrupt Practices Act violations. Two of these investigations resulted in indictments for tax violations. One indictment was for 26 U.S.C. § 7201 (income tax evasion) and one indictment was for 26 U.S.C. § 7206(1) (filing a false tax return). The results of the other investigations are captured in the FCPA enforcement statistics (attached at the end of this report).[iii]

[43] In addition, the United States also notes that *"The IRS is unable to provide statistical information related to civil tax enforcement."*[17]

[44] The Committee considers that the foregoing figures demonstrate that enforcement action has taken place with respect to the criminal offenses related to favorable tax treatment for payments made in violation of the anticorruption laws. Additionally, the information provided also indicates that companies have been required to pay civil fines.

[45] Taking the foregoing into account, the Committee will formulate a recommendation to the country under review so that, through the tax authorities responsible for processing applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See recommendation 1.4(c) in Chapter II of this report)

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16. In this connection, the United States informed the review subgroup of the following: *"Both domestic and international tax examiners are trained, on an ongoing and regular basis, to consider illegal payments in the course of an audit. For example, the Internal Revenue Manual alerts examiners as to how illegal payments are to be treated in terms of subpart F income. In conducting a tax audit, in addition to deductions for operating expenses, examiners review components of cost of goods sold and other areas susceptible to concealment, such as returns and allowances. Special attention would be given to the use of foreign bank accounts and other indicators of "slush funds" or the use of cash payments. Expense categories requiring special attention might include outside services (e.g., consulting) or items relating to foreign property of questionable use to the taxpayer or its affiliates. Examiners are encouraged to research sources such as other Federal agencies, as well as internal and external audit reports, for indications of illegal payment activity."*

17. In addition, with respect to this type of statistic, the United States informed the members of the review subgroup that *"There are no civil tax enforcement statistics with respect to the non-tax deductibility of expenses related to bribery to foreign officials because it is explicitly disallowed. Given that there is no line item on a federal tax return for a "bribery" payment deduction, the deduction would be "disguised" as something else on a tax return. In instances where an illegal deduction is claimed and observed, the IRS civil tax authorities conducting the audit would make referrals to the IRS Criminal Investigation Unit and those results would be captured as criminal prosecutions. In other words, there is no explicit civil tax enforcement of bribery or kickbacks because it is criminal to do so and would result in criminal prosecution."*

1.4. Conclusions and recommendations

[46] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 7 of the Convention:

[47] **The United States has considered and adopted measures intended to create, maintain and strengthen standards on the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in section 1 of chapter II of this report.**

[48] In light of the comments formulated in that section, the Committee suggests that the United States consider the following recommendation:

[49] Strengthen the standards and measures for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, the United States could take the following measures into account:

a. Consider continuing to make efforts to ensure that facilitation payments do not receive favorable tax treatment, taking into consideration that these payments are not criminalized in the country under review. (see section 1.2 of Chapter II of this report):

b. Continue to use, and consider the adoption of any measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as grounds for obtaining such treatment, such as the following: (see section 1.2 of Chapter II of this report):

    i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to determine the origin of the expenditures or payment on which the claims are based.

    ii. The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests from financial institutions.

    iii. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.

    iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, on such aspects as certifying the authenticity of the documents in support of the application of favorable tax treatment;

    v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications;

    vi. Channels of communication so that they may promptly report to tax authorities who decide on deductibility and warn them of the anomalies detected or of any irregularity that could affect the decision.

c. Select and develop, through the tax authorities responsible for processing applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto (see section 1.3 of Chapter II of this report).

2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III(10) OF THE CONVENTION)

2.1. Existence of provisions in the legal framework and/or other measures

[50] The United States has a set of provisions related to the prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[51] – The Foreign Corrupt Practices Act, 15 U.S.C. Sections 78dd-1, et seq., at Section 78(m)(b), requires issuers of securities to make and keep books, records, and accounts, which, in reasonable detail,[18] accurately and fairly reflect the transactions and dispositions of the assets of the issuer (Section 78(m)(b)(2)(a)); and devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance, inter-alia, that (i) transactions are executed in accordance with management's general or specific authorization and (ii) transaction are recorded in order to permit preparation of financial statements in accordance with generally accepted accounting principles (Section 78(m)(b)(2)(b)).

[52] – The Securities Exchange Act of 1934, as amended (15 U.S.C.§ 78j-1), which at Section 10A(a) requires audits of the financial statements of issuers of securities by a registered public accounting firm, which shall include, in accordance with generally accepted auditing standards, *"(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts; (2) procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and (3) an evaluation of whether there is substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year."*

[53] Section 10A(b)(1) of the Securities Exchange Act of 1934, (15 U.S.C.§ 78j-1), titled Investigation and Report to Management, requires any public accounting firm that detects or becomes aware during the course of an audit that an illegal act has or may have occurred, *"(A)(i) determine whether it is likely that an illegal act has occurred; and (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and (B) as soon as practicable, inform the appropriate level of the management of the issuer and assure that the audit committee of the issuer, or the board of directors of the issuer in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such firm in the course of the audit, unless the illegal act is clearly inconsequential."*

[54]Section 10(A)(b)(2) of the Securities Exchange Act of 1934, (15 U.S.C.§ 78j-1), titled Response to Failure to take Remedial Action, requires public accounting firms who have taken the steps indicated in Section 10A(b)(1), to directly inform the board of directors of the issuer of securities of their

18. Section 78(m)(b)(7) of the Foreign Corrupt Practices Act provides that the terms "reasonable detail and reasonable assurances" used in the act "mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs."

conclusions, in the event that the firm concludes that *"(A) the illegal act has a material effect on the financial statements of the issuer; (B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and (C) the failure to take remedial action is reasonably expected to warrant departure from a standard report of the auditor, when made, or warrant resignation from the audit engagement…"*

[55] Section 10(A)(b)(3) of the Securities and Exchange Act of 1934, (15 U.S.C.§ 78j-1), titled Notice to Commission; Response to Failure to Notify, requires the board of directors of an issuer of securities who receives a report under Section 10(A)(b)(3), to notify the Securities and Exchange Commission (SEC) of that fact within one business day and to provide the public accounting firm with a copy of that notification. This Section also requires a public accounting firm who has not received a copy of the notification before the expiration of the one business day timeline, to either resign from the engagement, or furnish the SEC with a copy of its report within one business day after the failure to receive notice. In addition, Section 10(A)(b)(4) provides that if a public accounting firm resigns from the engagement pursuant to Section 10(A)(b)(3), it shall nonetheless furnish the SEC with a copy of its report.

[56] – Title 17 of the Code of Federal Regulations, which at Section 210.3-01, provides instructions for the preparation of consolidated balance sheets, and which at Section 210.3.02, provides instructions for the preparation of consolidated statements of income and changes in financial position.

[57] – The Financial Accounting Standards Board (FASB), a private-sector entity established in 1973, which operates under the oversight of the United States Securities and Exchange Commission (SEC), with the mission to establish standards of financial accounting that govern the preparation of financial reports by nongovernmental entities.[19]

[58] – The FASB Accounting Standards Codification, created by the FASB in order to serve as the source of authoritative generally accepted accounting principles (GAAP), recognized by the FASB to be applicable to nongovernmental entities.[20]

[59] – 15 U.S.C. Section 7201, et seq., the Sarbanes Oxley Act of 2002, which at Section 404, charges the SEC with prescribing rules requiring companies that have to file annual reports with the SEC to also file an internal control report, stating the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting (Section 404(a)(1)); and containing and assessment of the effectiveness of the internal control structure and financial reporting procedures (Section 404(a)(2)).

[60] Section 301 of the Sarbanes Oxley Act, which provides certain criteria for the operation of Audit Committees in publicly traded companies, such as Section 301(3), which requires all members of audit committees to also be members of the board of directors, and to be independent. In this regard, Section 301(3)(B) provides, that in order to be considered independent, the members of the audit committee may not, other than in their capacity as members of the audit committee or the board of directors, accept consulting, advisory, or compensatory fee from the issuer, or be an affiliated person of the issuer or any subsidiary thereof. In addition, Section 301(4) requires audit committees to establish procedures for the receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters, and for the confidential, anonymous submission by employees of the issuer regarding questionable accounting or auditing matters. Section 301 also provides for the

19. Further information on the Financial Accounting Standards Board is available at: http://www.fasb.org/home
20. An explanatory document titled "Accounting Standards Codification, Notice to Constituents", created by the FASB, and which provides information about the Codification, is available here: http://asc.fasb.org/imageRoot/18/6896518.pdf

SEC to direct national securities exchanges and associations to prohibit the listing of securities of issuers that are not in compliance with this section.

[61] Section 802 of the Sarbanes Oxley Act, which requires accounting firms that audit issuers of securities to which Section 10A of the Securities Act of 1934 applies, to maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

[62] Section 802(a) of the Sarbanes Oxley Act, which provides criminal penalties, including fines and/or imprisonment, for anyone who *"knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States…"*

[63] – The Public Company Accounting Oversight Board (PCAOB), created by Section 101 of the Sarbanes Oxley Act of 2002, as a private sector entity, *"to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors."* (Section 101(a))

[64] Section 101(d) of the Sarbanes Oxley Act charges the PCAOB, inter-alia, with the following: registering public accounting firms that prepare audit. reports for issuers (Section 101(d)(1)); establishing or adopting, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers (Section 101(d)(2)); conducting inspections of registered public accounting firms (Section 101(d)(3)); conducting investigations and disciplinary proceedings concerning, and imposing appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms (Section 101(d)(4)); and enforcing compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof (Section 101(d)(6)).

[65] Pursuant to its statutory mandate, the PCAOB has issued auditing standards[21] applicable to issuers of securities, which have been approved by the SEC, and which address such topics as audit documentation and their retention, and illegal acts by clients. Specifically, section 317.23, regarding illegal acts by clients, provides in pertinent part, that *"Disclosure of an illegal act to parties other than the client's senior management and its audit committee or board of directors is not ordinarily part of the auditor's responsibility, and such disclosure would be precluded by the auditor's ethical or legal obligation of confidentiality, unless the matter affects his opinion on the financial statements."*

[66] – The American Institute of Certified Public Accountants (AICPA), which, inter-alia, *inter alia*, sets professional standards for Certified Public Accountants (CPA's). Additionally, the AICPA issues "Professional Standards", which serve as a comprehensive source of pronouncements issued by the entity, on such topics as, inter-alia: *inter alia*, "Statements on Auditing Standards and Related Interpretations", "Statements on Standards for Accounting and Review Services and Related Interpretations", and "AICPA Code of Professional Conduct "

[67] – The AICPA Code of Professional Conduct, which provides at Rule 301, that *"A member in public practice shall not disclose any confidential client information without the specific consent of the client."*

21. The standards issued by the PCAOB may be consulted here: http://pcaobus.org/Standards/Auditing/Pages/default.aspx

The explanation provided by the AICPA together with the Rule, states in pertinent part, that the Rule shall not be construed so as to: "*(1) to relieve a member of his or her professional obligations under rules 202 and 203,*[22] *(2) to affect in any way the member's obligation to comply with a validly issued and enforceable subpoena or summons, or to prohibit a member's compliance with applicable laws and government regulations..."*

[68] – The "*Guidance for Smaller Public Companies Reporting on Internal Control over Financial Reporting",* issued by the Committee on Sponsoring Organizations of the Treadway Commission (COSO), and which supplements COSO's "*Internal Control - Integrated Framework".*

[69] – SEC Rule 13b2-1, titled Falsification of Accounting Records, which provides that *"No person shall directly or indirectly, falsify or cause to by falsified, any book, record or account subject to section 13(b)(2)(A) of the Securities Exchange Act."*

[70] SEC Rule 13b2-2, which provides that directors and officers of issuers of securities, shall not: *"(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with; or (b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with: (i) Any audit, review or examination of the financial statements of the issuer required to be made pursuant to this subpart; or (ii) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise."*

[71] – SEC Rule 17a-4, which requires certain members of the Securities and Exchange Commission, as well as brokers and dealers of securities, to maintain certain records, including, among others, ledgers, reflecting all assets and liabilities, for a period of 6 years, and other records, including, inter-alia, check books, bank statements, bills received or payable, for a period of 3 years.

2.2. Adequacy of the legal framework and/or other measures

[72] With respect to the provisions related to the prevention of bribery of domestic and foreign government officials, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[73] Nonetheless, the Committee considers that it might be useful for the country under review to consider complementing or adjusting certain legal provisions in this area, as follows:

[74] First, with respect to the AICPA and its Code of Conduct, the Committee notes that Rule 301 of the Code prohibits a CPA from disclosing confidential client information without the consent of his or her client. In addition, the Committee takes note of the proviso to this Rule, which provides that the Rule

22. Rule 202 of the AICPA Code of Professional Conduct, provides that *"A member who performs auditing, review, compilation, management consulting, tax, or other professional services shall comply with standards promulgated by bodies designated by Council [of the AICPA]."* Rule 303 provides that *"A member shall not (1) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or (2) state that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from an accounting principle promulgated by bodies designated by Council to establish such principles that has a material effect on the statements or data taken as a whole. If, however, the statements or data contain such a departure and the member can demonstrate that due to unusual circumstances the financial statements or data would otherwise have been misleading, the member can comply with the rule by describing the departure, its approximate effects, if practicable, and the reasons why compliance with the principle would result in a misleading statement."*

should not be construed in such a way as to prohibit a member from complying with a legally executed summons or subpoena, or with applicable laws or regulation. The Committee also notes that Section 10(A)(b)(3) of the Securities and Exchange Act of 1934 requires either company management or public accounting firms to report certain illegal acts to the Securities and Exchange Commission.

[75] Notwithstanding, the Committee considers that it would be useful for the country under review to consider adopting, through the means it deems appropriate, any additional measures that might be beneficial, to further promote that professional confidentiality is not an obstacle for auditors whose activities are governed by the AICPA and its Code of Conduct to bring to the attention of the appropriate authorities any acts of corruption of which they become aware in the performance of their duties. (See recommendation 2.4(a) in Chapter II of this report)

[76] Second, the Committee considers that the country under review may wish to consider continuing its efforts regarding holding awareness campaigns that target individuals responsible for the entry of accounting records and for accounting for their accuracy, to raise awareness of the importance of abiding by the standards in force to ensure the veracity of those records and the consequences for their violation. The country could also consider continuing its efforts to implement training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work.[iv] (See recommendation 2.4(b) in Chapter II of this report)

[77] Third, the Committee believes that it would be useful for the country under review to consider continuing its efforts regarding holding awareness and integrity promotion campaigns that target the private sector. In this regard, the country could consider continuing the adoption of measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption. (See Recommendation 2.4(c) in Chapter II of this report).

[78] Fourth, the Committee believes that it would be beneficial for the country under review to consider continuing the application of and the adoption of such measures as it deems appropriate to make it easier for the organs and agencies responsible for the prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records.[23] (See recommendation 2.4 (d) in Chapter II of this report.)

2.3. Results of the legal framework and/or other measures

[79] With respect to results in this field, the response of the United States notes the following:

[80] *"...In all foreign bribery-related cases brought by the SEC, the SEC has charged violations of accounting and internal controls provisions. In addition, the SEC has filed several bribery-related cases in which the SEC charged stand-alone books and records and internal controls cases with no formal bribery charge. In those cases, the SEC sought civil penalties and disgorgement of profits. Recent*

23. In this regard, the United States informed the review subgroup of the following: "*For each of these topics, the U.S.'s anti-corruption efforts include a number of measures that have been highly effective and successful, as indicated by our extensive enforcement activities. The DOJ, FBI and SEC's enforcement programs include, among other things: frequent and relevant staff training; manuals, guidelines and investigative techniques; review methods to detect possible FCPA violations; computer programs incorporated into the investigative process. Federal law provides the authority to obtain documents and records necessary for FCPA investigations, and DOJ, FBI and the SEC regularly cooperate in investigations. In 2008, the U.S. launched "FCPA Bootcamp" exercises to increase coordination, collaboration and cooperation between the various U.S. authorities that enforce FCPA violations. Participating agencies intend to maintain the FCPA Bootcamp as an annual event."*

examples include the Oil for Food cases and SEC v. ITT Corporation [ref]. In all instances, the SEC files its cases in civil court and must show, with a preponderance of the evidence, that the defendant more likely than not engaged in the alleged misconduct. If the matter is settled, the defendant neither admits nor denies in civil court the misconduct. Like the SEC, the Department of Justice generally includes books and records violations when it charges substantive FCPA violations, and may also charge books and records violations where there is no jurisdiction over the substantive foreign bribery misconduct. Criminal internal controls charges are less common."[24]

[81] In this connection, the document presented by Transparency International notes the following: *"In recent years, SEC enforcement efforts have increased significantly, with 14 SEC actions in 2009 alone. One particularly notable example involved Siemens AG. In 2008, Siemens and three of its foreign subsidiaries plead guilty to violating the FCPA and agreed to pay a record-setting $800 million fine($450 million in criminal fines to the DOJ and $350 million in disgorgement to the SEC) pursuant to agreements reached with the SEC and DOJ. Despite widespread bribery allegations, Siemens was charged with violating the FCPA's internal controls and books and records provisions. This case represented the first ever criminal charge for internal controls violations by a company."*[25]

2.4. Conclusions and recommendations

[82] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 10 of the Convention:

[83] **The United States has considered and adopted measures intended to create, maintain and strengthen standards for the prevention of the bribery of domestic and foreign government officials, as described in section 2 of chapter II of this report.**

[84] In light of the comments formulated in that section, the Committee suggests that the United States consider the following recommendation:

[85] Strengthen the standards and measures on the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, the United States could take the following measures into account:

a. Consider adopting, through the means it deems appropriate, any additional measures that might be beneficial, to further promote that professional confidentiality is not an obstacle for auditors whose activities are governed by the AICPA and its Code of Conduct to bring to the attention of the appropriate authorities any acts of corruption of which they become aware in the performance of their duties. (See section 2.2 of chapter II of this report)

b. Consider continuing its efforts regarding holding awareness campaigns that target the individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the veracity of those records as well as on the consequences of their violation. The country under review could also consider continuing its efforts regarding the implementation of training programs specifically designed to

24. See the response of the United States to the questionnaire for the Third Round of Review, available at: http://www.oas.org/juridico/english/mesicic3_usa_resp.pdf
25. See the document presented by Transparency International, available at: http://www.oas.org/juridico/english/mesicic3_usa_sc.pdf

instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect acts of corruption in the course of their work. (See section 2.2 of chapter II of this report)

c. Consider continuing its efforts regarding holding awareness and integrity promotion campaigns that target the private sector. In this regard, the country under review could consider continuing to adopt measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see section 2.2 of Chapter II of this report).

d. Consider continuing the application of and the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to ensure the accuracy of accounting records, of sums paid for acts of corruption that are concealed in those records, that are concealed in those records, such as the following (See section 2.2 of chapter II of this report):

   i. Review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption;

   ii. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred;

   iii. Manuals, guidelines or directives for those organs and agencies that do not yet have them, on how to review accounting records in order to detect sums paid for corruption;

   iv. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based;

   v. Institutional coordination mechanisms that enable these organs or entities to easily obtain the timely necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.

   vi. Training programs for the officials of these organs and entities, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them.

3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

3.1. Existence of provisions in the legal framework and/or other measures

[86] The United States has a set of legal provisions related to transnational bribery, among which Sections 77dd-1, 2 and 3, of the Foreign Corrupt Practices Act, 15 U.S.C. Sections 78dd-1, et seq, cited in Section 1.1, above, should be noted, in addition to the following:

[87] – The Foreign Corrupt Practices Act Opinion Procedure Regulations, established pursuant to Title 28 of the Code of Federal Regulations (C.F.R.), which allows individuals and businesses to request an opinion from the Attorney General "…*as to whether certain specified, prospective--not hypothetical--*

conduct conforms with the Department's present enforcement policy regarding the antibribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. 78dd-1 and 78dd-2..."[26]

3.2. Adequacy of the legal framework and/or other measures

[88] With respect to the provisions related to the criminalization of transnational bribery as provided for by Article VIII of the Convention, the Committee notes that based on the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[89]Notwithstanding, the Committee considers it appropriate to formulate certain observations on the advisability of developing and complementing certain legal provisions that might be useful for the country under review to consider, as follows:

[90] The Committee observes that to a certain degree, the FCPA goes beyond the requirements of the Convention, in that prohibits the payment of bribes to foreign government officials, foreign political parties or party officers, candidates for foreign political office, as well as others, with knowledge that the money will be given to a foreign government agent, political party or official, or candidate for a foreign political office.

[91] The Committee also observes, as discussed in Section 1.2, above, that the FCPA, at Sections 78dd-1(b), 78dd-2(b), and 78dd-3(b) provides that the foreign bribery prohibition does not apply to facilitation or expediting payments made to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official. The United States notes that this provision in fact provides additional clarification as to the reach of the FCPA, as such payments would lack the necessary intent to corrupt and would thus not fall within the parameters of the FCPA's prohibitions in any event.

[92] Article VIII of the Convention requires criminalization of foreign bribery subject to "the fundamental principles of each Party's legal system. Within the parameters of the U.S. legal system, to establish a crime of bribery, there is a mens rea requirement. In order to constitute a bribe, a payment must be intended to corrupt the recipient, meaning "they acted knowingly and dishonestly, with the specific intent to achieve an unlawful result by influencing a foreign public official's action in one's own favor." United States v. Kay, 513 F.3d 432, 450 (5th Cir. 2007). Notwithstanding the fact that the Convention does not include an exception for payments to facilitate or expedite routine, non-discretionary government action, the United States is compliant with Article VIII of the Convention, as the obligation of appropriate mens rea to establish a criminal offense is part of the "fundamental principles" of the U.S. legal system.

[93] Nonetheless, the Committee also notes that Article VIII of the Convention contains no such exception for facilitation payments. Accordingly, the Committee considers that it would be useful for the country under review to consider undertaking to periodically review its policies and approach on facilitation payments in order to effectively combat the phenomenon and continue to encourage companies to prohibit or discourage the use of facilitation payments in internal company controls, ethics and compliance programs or measures. (See recommendation 3.4 in Chapter II of this report.)

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26. More information on the Foreign Corrupt Practice Act Opinion Procedure is available at: http://www.justice.gov/criminal/fraud/fcpa/docs/frgncrpt.pdf. In addition, FCPA Opinions that have been issued may be consulted online, at: http://www.justice.gov/criminal/fraud/fcpa/opinion/

3.3. Results of the legal framework and/or other measures

[94] With respect to results in this field, in its response, the United States presented multiple charts on the results achieved, including a chart titled, "Enforcement Actions 2005 – 2010", a chart titled "Sentences for Natural Persons for FCPA Criminal Violations Charged Since 2005", and a chart titled, "Sanctions Imposed Upon Legal Persons for FCPA Criminal Violations Since 2005". These charts are attached at the end of this report.[27]

[95] With respect to the charts, the United States notes that *"In that time, the United States has secured more than $2 billion in criminal penalties. Information on the sentences levied against natural and legal persons is included in the charts found in the annex. In addition to subjecting American companies to criminal and civil prosecutions, the passage of the FCPA encouraged American businesses engaged in international business to develop comprehensive corporate compliance programs, in which corporations establish procedures to prevent the payment of bribes, conduct internal investigations when allegations of bribery are brought to management's attention, and voluntarily disclose to the government any bribery uncovered as a result of their investigation. The combination of vigilant enforcement by the government and voluntary compliance programs by the private sector, in our view, has significantly reduced the payment of bribes by American businesses*."[28]

[96] The Committee considers that the information provided by the United States with respect to results in this field, indicates that significant enforcement actions have taken place under the Foreign Corrupt Practices Act, both for natural and legal persons. In addition, the Committee notes that these enforcement actions have resulted in both financial penalties and prison sentences.

[97] In this connection, the document presented by Transparency International notes the following: *"The anti-bribery provisions are vigorously enforced by the United States Department of Justice ("DOJ"). As with the SEC, in recent years, DOJ enforcement efforts have increased significantly…According to the 2010 Transparency International Progress Report: Enforcement of the OECD Anti-Bribery Convention,[29] the DOJ and SEC have brought over 140 cases since enactment of the FCPA. The number of enforcement actions has been particularly notable in recent years, with 26 DOJ prosecutions and 14 SEC actions in 2009, compared to only 2 and 3 actions, respectively, in 2004."*[30]

3.4. Conclusion and recommendation

[98]On the basis of the review conducted in foregoing sections, the Committee offers the following conclusions and recommendation with respect to implementation in the country under review of the provisions contained in Article VIII of the Convention:

[99] **The United States has adopted measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.**

[100] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendation:

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27. See end note number iii.
28. See the Response of the United States to the questionnaire for the Third Round, available at: http://www.oas.org/juridico/english/mesicic3_usa_resp.pdf
29. This report is available at: http://www.transparency.org/news_room/latest_news/press_releases/2010/2010_07_28_oecd_progress_report
30. See the document presented by Transparency International, available at: http://www.oas.org/juridico/english/mesicic3_usa_sc.pdf

- Consider undertaking to periodically review its policies and approach on facilitation payments in order to effectively combat the phenomenon and continue to encourage companies to prohibit or discourage the use of facilitation payments in internal company controls, ethics and compliance programs or measures. (See section 2.2 of chapter II of this report)

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

4.1. Existence of provisions in the legal framework and/or other measures

[101] The United States has not adopted provisions on illicit enrichment as provided for by Article IX of the Convention, for the reasons set out in the following section.

4.2. Adequacy of the legal framework and/or other measures

[102] As noted above in Section 4.1, the United States has not criminalized the offense of illicit enrichment. In this connection, the Committee observes that both in its instrument of ratification of the Inter-American Convention against Corruption, as well as in its response to the questionnaire, the United States noted the following with respect to the offense of illicit enrichment provided for in the Convention, *"The United States of America intends to assist and cooperate with other States Parties pursuant to paragraph 3 of Article IX of the Convention to the extent permitted by its domestic law. The United States recognizes the importance of combating improper financial gains by public officials, and has criminal statutes to deter or punish such conduct. These statutes obligate senior-level officials in the federal government to file truthful financial disclosure statements, subject to criminal penalties. They also permit prosecution of federal public officials who evade taxes on wealth that is acquired illicitly. The offense of illicit enrichment as set forth in Article IX of the Convention, however, places the burden of proof on the defendant, which is inconsistent with the United States constitution and fundamental principles of the United States legal system. Therefore, the United States u[n]derstands that it is not obligated to establish a new criminal offense of illicit enrichment under Article IX of the Convention."*[31]

[103] In view of the foregoing, the Committee does not consider it appropriate to carry out an analysis with respect to this area.

4.3. Results of the legal framework and/or other measures

[104] With respect to results in this field, in its response, the response of the United States notes the following: *"As noted in the United States' reservation to the Convention at the time of ratification, the U.S. does not prosecute illicit enrichment as defined in the Convention, but does "recognize[] the importance of combating improper financial gains by public officials, and has criminal statutes to deter or punish such conduct." We do prosecute evading taxes on wealth acquired illicitly as well as improper financial gains by public officials."*

[105] *"The Central Authority for the United States in mutual legal assistance in criminal matters is DOJ's Office of International Affairs (OIA) in the Criminal Division. OIA maintains records of more than 50,000 mutual legal assistance matters, over 40,000 of which are completed and closed. Many codes in the system could encompass bribery of a public official and illicit enrichment, and it is not clear from the database which cases specifically address those offenses covered under the corruption*

31. See the response of the United States to the questionnaire, at p. 15, available at: http://www.oas.org/juridico/english/mesicic3_usa_resp.pdf. See also, http://www.oas.org/juridico/english/Sigs/b-58.html

provisions of the Convention. Those offenses could be coded as bribery, embezzlement, tax evasion, official corruption, foreign corrupt public officials, and the Foreign Corrupt Practices Act."

[106] *"The SEC obtains and provides evidence and other information located outside the United States in transnational bribery investigations through various mechanisms, including pursuant to multilateral and bilateral agreements as well as on an ad hoc basis. Multilateral and bilateral information sharing arrangements operate on the basis of memoranda of understanding (MOU) between securities authorities. Such MOUs delineate the terms of information-sharing between and among MOU signatories and create a framework for regular and predictable cooperation in securities law enforcement. Multilateral and bilateral MOUs detail the scope and terms of information-sharing among securities regulators."*

[107] *"The United States has an active mutual legal assistance relationship with our approximately 80 bilateral treaty partners, as well as any states with whom we do not have a treaty relationship but who seek our assistance under a letter rogatory, letter of request, or multilateral treaty. With regard to incoming requests, since July 2002, the United States has opened and closed 330 cases under the categories of "bribery" and "official corruption". A typical request asks for banking, corporate or Internet-related records. As a point of information, the United States does not need to receive requests under a treaty in order to execute them, and is able to execute letters rogatory and letters of request from Ministries of Justice as well."*

[108] *"With regard to outgoing MLA requests, since July 2002, the United States has sent requests to 57 countries in bribery-related matters. The vast majority have been granted, while some are still pending."*

4.4. Conclusion

[109] On the basis of the review conducted in foregoing sections, the Committee offers the following conclusion with respect to implementation in the country under review of the provisions contained in Article IX of the Convention:

[110] **The United States has not criminalized the offense of illicit enrichment as provided in Article IX of the Convention, on the ground that: (1) the offense contemplated by the Convention places the burden of proof on the defendant, which is inconsistent with the United States Constitution and the fundamental principles of its legal system; and (2) the United States made a reservation with respect to this Article of the Convention upon deposit of its instrument of ratification thereof. The Committee takes note of the explanation offered by the country under review.**

5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

5.1. Existence of provisions in the legal framework and/or other measures

[111] The United States criminalized transnational bribery as provided for by Article VIII of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention, as noted in Chapter II, Section 3 of this Report.

[112] The United States has not criminalized illicit enrichment as provided in Article IX of the Inter-American Convention against Corruption.

5.2. Adequacy of the legal framework and/or other measures

[113] The United States criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention, and accordingly, the notification referred to in Article X is not applicable. Consequently, the Committee will offer no recommendation in this regard.

[114] The United States has not criminalized illicit enrichment as provided for by Article IX of the Inter-American Convention against Corruption, on the ground that the offense contemplated by the Convention places the burden of proof on the defendant, which is inconsistent with the United States Constitution and the fundamental principles of its legal system. The Committee takes note of the explanation offered by the country under review. Accordingly, the notification referred to in Article X is not applicable.[32] Consequently, the Committee will offer no recommendation in this regard.

5.3. Conclusions

[115] On the basis of the analysis conducted in the sections 5.1 and 5.2 above, the Committee offers the following conclusions with respect to implementation in the country under review of the provisions contained in Article X of the Convention:

[116] **The United States criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention, and therefore, no notification pursuant to Article X is necessary.**

[117] **The United States has not criminalized illicit enrichment as provided in Article IX of the Convention, on the ground that: (1) the offense contemplated by the Convention places the burden of proof on the defendant, which is inconsistent with the United States Constitution and the fundamental principles of its legal system; and (2) the United States made a reservation with respect to this Article of the Convention upon deposit of its instrument of ratification thereof. The Committee takes note of the explanation offered by the country under review. Therefore, the notification provided by Article X is not applicable.**

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

6.1. Existence of provisions in the legal framework and/or other measures

[118] The United States has a set of provisions related to extradition, among which the following should be noted:

[119] – Title 18 of the United States Code, Chapter 209, titled "Extradition", which, at Section 3181(a) provides that the provisions of this Chapter related to surrender shall only continue to be in force during the existence of an extradition treaty with a foreign government.[33]

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32. As noted in Section 4.2., above, in its instrument of ratification of the Inter-American Convention against Corruption, the United States indicated, inter-alia, that "The *offense of illicit enrichment as set forth in Article IX of the Convention, however, places the burden of proof on the defendant, which is inconsistent with the United States constitution and fundamental principles of the United States legal system..."*

33. There are two exceptions set forth at 18 U.S.C. Section 3181. The United States may surrender fugitives to the International Criminal Tribunals for Yugoslavia and Rwanda. The United States may also surrender in the absence of a bilateral treaty a fugitive who is not a citizen, national, or permanent resident if the individual has committed a crime of

[120] 18 U.S.C. Section 3187, which provides for the provisional arrest of fugitives upon request, in advance of the presentation of formal proofs, provided that the request is accompanied by a statement that a warrant for the fugitive's arrest has been issued charging him with the crime for which extradition is requested.

[121] 18 U.S.C. Section 3196, which provides that even if the applicable treaty or convention does not obligate the extradition of U.S. citizens, the Secretary of State may order the surrender of a U.S. citizen whose extradition has been requested if the other requirements of that treaty or convention have been satisfied.

[122] – The bilateral extradition treaties[34] entered into between the United States and respectively, with Argentina, Barbados, the Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana,[35] Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname,[36] Trinidad and Tobago, Uruguay, Venezuela, and the Organization for Eastern Caribbean States, which includes, inter-alia, Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines.

[123] These treaties make provision, inter-alia, for: the extradition of both United States nationals and foreigners; formal requirements for extradition requests; extradition with respect to offenses that are criminalized in both the requesting and requested state, provided that they are punishable by at least one year imprisonment and/or lists of offenses that are extraditable; non-extradition for political offenses; provisional arrest in cases of urgency; as well as time frames for extraditions to take place.

6.2. Adequacy of the legal framework and/or other measures

[124] With respect to provisions related to extradition, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[125] In this connection, the Committee notes that because the United States may only seek extradition or extradite on the basis of a bilateral extradition treaty, the Convention cannot be used as the basis for extradition in and of itself. At the same time, the Committee notes that the United States has entered into extradition treaties with all the State Parties to the Convention.

[126] In this connection, the response of the United States to the questionnaire notes that: *"The United States may only seek extradition from a foreign country, or provide for extradition, under a bilateral extradition treaty, except in extremely rare circumstances. As such, the Inter-American Convention Against Corruption is not a basis for extradition absent a bilateral treaty. That said, the Convention allows the corruption offenses it covers to be the basis for extradition as supplemental offenses to existing bilateral extradition treaties that are list-based. With regard to parties to the Convention, the United States has bilateral treaties with all parties to the Convention, some dating back to the 1800's and early 1900's. With regard to such older, list-based treaties, the offenses covered by the Convention, including bribery of public officials, solicitation of bribes by public officials, financial gain, official*

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violence in a foreign country against a U.S. national, provided that the Attorney General certifies that there is dual criminality for the violent crime and it is not a political offense.

34. These treaties may be consulted at: http://www.oas.org/juridico/MLA/en/usa/index.html

35. Through a treaty with Great Britain.

36. Through a treaty with The Netherlands.

corruption, and having a role in those offenses, would now be extraditable offenses under extant bilateral extradition treaties if not already covered in the list of offenses."

6.3. Results of the legal framework and/or other measures

[127] With respect to results in this field, the response of the United States notes the following: *"The United States has a robust extradition practice with our more than 110 extradition treaty partners. The older treaties are list-based and the newer ones rely upon dual criminality as the basis for offenses being extraditable. At any given time, there are approximately 3,500 extradition matters pending in the Office of International Affairs, Criminal Division, US Department of Justice, which performs a central coordinating function within the US for such requests. That said, between 2005 and 2010, there have only been a handful of corruption offenses as the basis for extradition with other parties to the Convention. (As noted above under question 2(b) in chapter 3, please note that corruption offenses can be coded in OIA's electronic case management system as bribery, embezzlement, tax evasion, official corruption, foreign corrupt public official, and Foreign Corrupt Practices Act cases. The universe of corruption offenses handled by OIA may be larger than the statistics included herein indicate, because the cases may be coded as fraud, of which there are more than 800 pending extradition cases.)"*

[128] *"With regard to corruption offenses, it does not appear that any extradition requests, either incoming or outgoing, cited to the Convention as a basis for making the offenses extraditable. As an example, a request from the Dominican Republic to the United States in 2005 for crimes including falsifying public documents, misappropriation of government funds, embezzlement, coercion, bribery, aggravated fraud, and criminal association was made under the 1909 bilateral treaty, and did not cite to the Convention. (That request was ultimately denied by US courts, for reasons unrelated to the types of offenses charged.) Since 2005, the US has sent requests to five parties to the Convention for corruption offenses, such as the bribery of a US immigration official to provide visas to unqualified candidates, fraud related to rigging bids to obtain building contracts for an airport, and money laundering linked to embezzlement of public funds. The US has received corruption requests from three other parties to the Convention since 2005. One case with a Convention party has resulted in an extradition – in 2008 -- although some cases remain pending."*

[129] *"With regard to all extraditions, not just with Convention parties, since 2005, 13 fugitives have been extradited to the US for corruption offenses, and the US has extradited 6. For instance, several European countries have extradited fugitives to the US to face corruption charges – notably under the Foreign Corrupt Practices Act. As of July 2010, there are 10 pending outgoing extraditions and 7 pending incoming extraditions for corruption offenses."*

6.4. Conclusion

[130] On the basis of the review conducted in foregoing sections, the Committee offers the following conclusion with respect to implementation in the country under review of the provisions contained in Article XIII of the Convention:

[131] **The United States has adopted measures regarding extradition as provided in Article VIII of the Convention, as described in Chapter II, Section 6 of this report.**

III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FOR PREVIOUS ROUNDS

[132] With respect to implementation of the recommendations issued to the United States in the report from the First Round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered in Section IV of the report for that round that they needed additional attention, and on the basis of the information available to it, referring to progress in implementation subsequent to that report, the Committee notes the following:

FIRST ROUND[37]

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflict of interest and mechanisms to enforce them

Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[38]

Recommendation 1.1.

Continue to improve the provisions, measures and mechanisms for enforcement relating to conflicts of interest.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:[39]

a) Continue the process of periodic review and appropriate updating of the provisions, measures and mechanisms for enforcement related to conflicts of interest.

b) Continue to carry out periodic evaluations, by means such as the surveys conducted by OGE, or by other means that are considered appropriate, with respect to the effectiveness of the provisions, measures and enforcement mechanisms related to conflicts of interest; and continue to promote or adopt appropriate decisions based on the results of evaluations designed to improve those provisions, measures and mechanisms.

[133] The Committee notes that recommendation 1.1, above, and its measures, was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that they are continuous in nature.

37. The references to sections that appear in italics in the recommendations and measures transcribed herein, refer to the report from the First Round of Review.
38. See pages 45-47 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf
39. Ibid.

1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[40]

Recommendation 1.2.

Continue to strengthen the implementation of the standards of conduct in order to ensure the conservation and proper use of the resources entrusted to public officials in the performance of their functions.

[134] The Committee notes that recommendation 1.2, above, was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that it is continuous in nature.

1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[41]

Recommendation 1.3.

Continue to strengthen the mechanisms related to the existing measures and systems requiring public officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities.

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[42]

> *a) Continue to implement measures that allow timely consideration by the U.S. Special Counsel's Office of those cases related to protecting employees, ex-employees, and those seeking Federal employment ("whistleblowers), as provided for by law, and thus, inter alia, facilitate compliance with the requirement that officers and employees report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities.*

[135] The Committee notes that recommendation 1.3, above, and its measure, was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that they are continuous in nature.

40. See pages 47 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf
41. See pages 47-48 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf
42. Ibid.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[43]

Recommendation 2.1

Continue to strengthen the systems for registering income, assets and liabilities.

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[44]

> *a) Continue the process of periodic review and appropriate updating of the system of financial disclosure.*

[136] The Committee notes that recommendation 2.1, above, and its measure, was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that they are continuous in nature.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[45]

Recommendation 3

In view of the comments made in that section, the Committee suggests that the United States consider strengthening the cooperation and coordination relationships among the federal oversight bodies regarding the functions they carry out with respect to the provisions of paragraphs 1, 2, 4, and 11 of the Convention.

[137] The Committee notes that recommendation 3, above, was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that it is continuous in nature

43. See pages 48-49 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf
44. Ibid.
45. Ibid.

4. MECHANISMS TO PROMOTE THE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

4.2. Mechanisms for access to information

Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[46]

Recommendation 4.2.1

Continue to strengthen the mechanisms for access to public information.

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[47]

> *a) Continue the process of evaluating and perfecting implementation of the Freedom of Information Act, as amended by the 1996 Electronic Freedom of Information Act Amendments.*

[138] The Committee notes that recommendation 4.2, above, and its measure, was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that they are continuous in nature.

4.3. Mechanisms for consultation

Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[48]

Recommendation 4.3.

Continue to perfect the Advisory Committees' role as a mechanism for consultation.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:[49]

> *a) Continue the periodic evaluation of the functioning of the Advisory Committees, and taking into account the results thereof, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms, and inter alia, contribute to the fulfillment of the purposes of the Convention.*
>
> *b) Consider, where appropriate, the creation and use of advisory committees by agencies which do not currently utilize them.*

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46. Ibid, at p. 50.
47. Ibid.
48. See pages 50-51 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf
49. Ibid.

[139] The Committee notes that recommendation 4.3, above, and its measures, was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that they are continuous in nature.

4.4. Mechanisms to encourage participation in public administration

Recommendation suggested by the Committee that requires information on its implementation or which required further attention, within the Framework of the report from the Second Round:[50]

Recommendation 4.4.

Continue to strengthen the mechanisms to encourage civil society and nongovernmental organizations in public administration.

Measure suggested by the Committee that require information on its implementation or which required further attention, within the Framework of the report from the Second Round:[51]

> *a) Perform periodic evaluations of the existing mechanisms to encourage civil society and nongovernmental participation in public administration, in order to, inter alia, determine the strengths of the mechanisms and identify those areas where improvements are needed, and based on the results of those evaluations, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms and inter alia, contribute to the fulfillment of the purposes of the Convention. (See Part B, Chapter II, Section 4.4.2. of this report).*

[140] In its response,[52] the United States presents information additional to that analyzed by the Committee in the Report from the Second Round, with respect to the implementation of the foregoing recommendation and its measure. In this regard, the Committee notes, as steps which allow it to consider that this recommendation and its measure have been satisfactorily considered, the following:

[141] *"In addition to the Open Government Initiative mentioned above, the Executive Branch consistently explores new mechanisms to facilitate participation in public administration. In order to promote public participation in U.S. Government decision-making process, the National Archives constantly revises two websites with links to all federal agency public comment websites. (See http://www.archives.gov/federal-register/public-participation/rulemaking-sites.html and http://www.regulations.gov/fdmspublic/component/main.) These websites provide the text of proposed rules and regulations, opportunities for filing comments electronically, and updates on the status of rules once public comment periods have closed. These websites provide an easy method for all members of the public to submit comments to government agencies as they develop new rules and regulations."*

[142] *"Additionally, the U.S. Congress provides internet access to information on the legislative process, legislation, hearing schedules, hearing transcripts, laws, members' offices, etc., in order to facilitate citizen participation. More can be found at http://www.house.gov/, http://www.senate.gov/index.htm, and http://thomas.loc.gov/. Finally, a cable television network called C-SPAN (http://www.cspan.org/) provides television coverage of Congressional proceedings, including*

50. See pages 52-52 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf.
51. Ibid.
52. See the response of the United States to the Questionnaire for the Third Round of Review, at p. 25, available at: http://www.oas.org/juridico/english/mesicic3_usa_resp.pdf.

a comprehensive website that provides in-depth coverage of prominent legislative and other governmental issues."

[143] The Committee takes note of the satisfactory consideration of the foregoing recommendation and its measure, notwithstanding the fact that they are continuous in nature.

4.5. Mechanisms to encourage participation in the follow-up of public administration

Recommendation suggested by the Committee that require information on its implementation or which required further attention, within the Framework of the report from the Second Round:[53]

Recommendation 4.5.

Continue to strengthen the mechanisms for participation in the follow-up of public administration.

Measure suggested by the Committee that require information on its implementation or which required further attention, within the Framework of the report from the Second Round:[54]

> *a) Perform periodic evaluations of the existing mechanisms to encourage civil society and nongovernmental participation in the follow-up of public administration, in order to, inter alia, determine the strengths of the mechanisms and identify those areas where improvements are needed, and based on the results of those evaluations, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms and inter alia, contribute to the fulfillment of the purposes of the Convention.*

[144] In its response,[55] the United States presents information additional to that analyzed by the Committee in the Report from the Second Round, with respect to the implementation of the foregoing recommendation and its measure. In this regard, the Committee notes, as steps which allow it to consider that this recommendation and its measure have been satisfactorily considered, the following:

[145] *"The websites mentioned above also provide citizens with the opportunity to follow-up on decision-making processes."*

[146] The Committee takes note of the satisfactory consideration of the foregoing recommendation and its measure, notwithstanding the fact that it is continuous in nature

53. See page 52 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf.
54. Ibid.
55. See the response of the United States to the Questionnaire for the Third Round of Review, at p. 25, available at: http://www.oas.org/juridico/english/mesicic3_usa_resp.pdf

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendations suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:[56]

Recommendation 5.

> *a) Continue to consider offering the technical cooperation requested by other States Parties, in order to support implementation of the Convention and of the recommendations made to that effect by the Committee in the respective country reports.*
>
> *b) Continue to consider participating in and supporting mutual technical cooperation initiatives, through the exchange of information within the framework of the networks of competent government authorities, in areas related to the Convention.*
>
> *c) Consider entering into mutual legal assistance treaties with OAS Member States with which the US does not have an existing Mutual Legal Assistance Treaty in the areas covered under the Convention.*

[147] The Committee notes that recommendations 5(a), (b), and (c), above, were deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that they are continuous in nature.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

No recommendations were formulated by the Committee in this section.

7. GENERAL RECOMMENDATIONS

Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:[57]

Recommendation 7.1

Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of assuring adequate knowledge, handling, and implantation of the above.

[148] The Committee notes that recommendation 7.1., above, was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that it is continuous in nature.

56. See pages 53-54 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf
57. See pages 54-55 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_inf_usa_en.pdf

Recommendations suggested by the Committee that require information on their implementation or which required further attention, within the Framework of the report from the Second Round:[58]

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.

[149] The United States did not present information with respect to the implementation of recommendations 7.2 and 7.3. Accordingly, the Committee reiterates the need for the country under review to give additional attention to their implementation.

SECOND ROUND[59]

[150] Based on the information available to it, the Committee offers the following observations with respect to the implementation of the recommendations formulated to the United States in the report from the Second Round:

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

1.1. Systems of government hiring

Recommendation 1.1.:

Continue strengthening the systems for the hiring of public servants.

Measure Suggested by the Committee:

> *Continue to give the appropriate consideration to the development* [of] *instruments, such as OPM's Strategic and Operational Plan 2006-2010, in order to determine and establish measurable goals, advance in their implementation and continuously evaluate the objective results achieved in their fulfillment, with respect to the systems for the hiring of public servants.*

[151] In its response,[60] the United States presents information with respect to the implementation of the foregoing recommendation and its measure. In this regard, the Committee notes, as steps which lead to

58. Ibid.

59. The references to sections that appear in italics in the recommendations and measures transcribed herein, refer to the report from the Second Round of Review.

the conclusion that this recommendation and its measure have been satisfactorily considered, the following:

[152] *The results of the 2006-2010 Strategic Plan for the Office of Personnel Management are published annually in the U.S. Government's —Performance and Accountability Report or PAR. However the format for reporting agency performance changed in 2008 to the —Annual Performance Report or APR. These reports are submitted to the President, Congress, and members of the public as a measure of how well we are managing programs and finances.*

[153] *"Accomplishments to ensure fairness and transparency include: • The number of the 25 President's Management Council agencies that fully implemented a system of internal compliance with merit system principles and laws, rules, and regulations, in accordance with OPM standards (basic system requirements) for agency accountability systems has grown from 2 out of 25 in 2005 to 25 of 25 in 2007-2009; • 100 % of targeted major agencies, those with a Chief Human Capital Officer, have switched to using the OPM approved standardized Job announcement template and 100% of the same agencies are now using the online USAJOBS® approved standardized resume format and integrating online applications with their assessment Systems; • OPM has determined that 50 percent of hires within designated agency subcomponents or occupations met or exceeded the 80-day timeline, starting from the date a hiring manager communicates to Human Resources that he/she has a budgeted position to fill, through the date the employee enters duty, this improved efficiency substantially exceeding the target of 10 percent of hires; • At the end of FY 2009, OPM completed 80 percent of initial background clearance investigations in an average of 32 days, exceeding the target of completing 80 percent in an average of 90 days; • By the end of FY 2008, 65 percent of Federal agencies were using Electronic Official Personnel Folders (eOPF) compared to 46 percent the prior year. Additionally, nearly 1 million paper Official Personnel Folders have been converted to electronic format. This includes official personnel records of approximately 55.5 percent of Federal employees. An agency may grant access to the eOPF system so all employees may view their personnel data, which increases employee awareness and accountability."*

[154] Additionally, as noted by the United States, *"Each of OPM's annual performance reports, whether under the —Performance and Accountability Report or the —Annual Performance Report can be found for each year at the website: http://www.opm.gov/gpra/opmgpra/"*

[155] The Committee takes note of the satisfactory consideration of the foregoing recommendation and its measure, notwithstanding the fact that they are continuous in nature.

1.2. Government systems for the procurement of goods and services

Recommendation 1.2.:

Continue strengthening the systems for government procurement of goods and services.

Measures Suggested by the Committee:

> *(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*

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60. See the response of the United States to the Questionnaire for the Third Round of Review, at p. 30, available at: http://www.oas.org/juridico/english/mesicic3_usa_resp.pdf

Advisory Acquisitions Panel and the survey performed Office of Federal Procurement Policy and the Federal Acquisition Institute.

(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.

[156] In its response,[61] the United States presents information with respect to the implementation of measure (a) of the foregoing recommendation. In this regard, the Committee notes, as steps which lead to the conclusion that this measure have been satisfactorily considered, the following:

[157] *"To ensure that we sustain our acquisition improvement efforts, we are working to build up the capacity and capability of the acquisition workforce. While dollars spent on contracting more than doubled from 2000 to 2008, the size of the workforce responsible for managing federal contracts remained flat. The President's FY2011 Budget requests additional funds for civilian agencies to build the capacity, capability, and effectiveness of the acquisition workforce. Both explicitly in the Budget and throughout our work, we recognize that we need to focus not only on those engaged directly in the contracting process but also on the more broad acquisition workforce, including those who can lay the foundation of successful procurements by helping develop accurate cost estimates, performing thorough market research, and clearly and realistically defining the governments requirements, as well as those who ensure rigorous oversight of contractor performance."*

[158] *"On October 27, 2009, OMB OFPP issued an Acquisition Workforce Development Strategic Plan for Civilian Agencies for FY2010-2014. The plan included an analysis of both the quantitative and qualitative aspects of the Federal acquisition workforce, to include contracting professionals, acquisition program and project managers, and contracting officer technical representatives. The plan identified a new requirement for all civilian agencies to grow their acquisition workforce by 5% and to complete an annual acquisition human capital plan that analyzes agency mission needs supported by acquisition with the capacity and capability required of an acquisition workforce to support that mission."*

[159] *"In March, 2010 agencies developed comprehensive human capital plans that provide insight into each agency's current acquisition workforce, a thoughtful analysis of agency acquisition requirements going forward, and specific strategies for improving their acquisition workforce. We are supporting agency efforts by targeting government-wide skill gaps through training and improving certification management tools. We are also reviewing agency plans to determine what programs we can provide government-wide to avoid each agency developing its own programs, and how we can ensure adoption of innovative best practices government-wide. We are working to update and improve the curriculum for certification training for all acquisition workforce members, ensure certification standards reflect the skills needed in handling real-life procurements, and foster integration of classroom and on-the-job training, as well as the use of rotational assignments and mentoring to expose participants to the different aspects of acquisition."*

[160] In its response,[62] the United States presents information with respect to the implementation of measure (b) of the foregoing recommendation. In this regard, the Committee notes, as a step which leads to the conclusion that this measure has been satisfactorily considered, the following:

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61. See the response of the United States to the Questionnaire for the Third Round of Review, at p. 31, available at: http://www.oas.org/juridico/english/mesicic3_usa_resp.pdf

[161] *"The Office of Management and Budget, in collaboration with the General Services Administration and the Chief Acquisition Officers Council, is continuing to identify and implement improvements to the FPDS-NG. The efforts are part of the OMB focus on Transparency and Open Government and will provide, through the http://www.usaspending.gov/ site, more information to citizens, companies, small businesses, and Federal agencies on Federal contracting. The Transparency and Open Government initiative includes other procurement systems in the Integrated Acquisition Environment that support public reporting of Federal contracting data. A recent addition to the suite of products is the Federal Financial Accountability and Transparency Act (FFATA) Federal Subaward Reporting System (FSRS) and enhancements to the Central Contract Register (CCR). The CCR has been modified to incorporate an interim. Federal Acquisition Regulation that require Federal contractors meeting certain requirements to report compensation for certain executive officers. The FSRS has been stood up to capture subcontracting information for all prime contracts valued at $25,000 or greater. These enhancements, along with continuing changes to the FPDS improve the transparency of Federal contracting information."*

[162] The Committee takes note of the satisfactory consideration by the United States of the foregoing recommendation and its measures, notwithstanding the fact that it is continuous in nature.

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)

No recommendations were formulated by the Committee in this Section.

3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)

No recommendations were formulated by the Committee in this Section.

4. GENERAL RECOMMENDATIONS

Recommendation 4.1:

"Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that they are adequately known, managed, and implemented."

[163] The Committee notes that in its response, the United States did not refer to steps taken with respect to the implementation of recommendation 4.1, above. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.[63 v]

Recommendation 4.2:

"Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and mechanisms considered in this report, and to verify follow-up on the recommendations made herein."

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62. Ibid, at p. 32.

63. At the March 17 meeting of the review subgroup, the United States informed of various actions related to the implementation of recommendations 4.1 and 4.2. Because this information was submitted subsequent to the deadline for the receipt of information, it has been included in an end note, and will be taken into account in the follow up during the next round of review. See end note number v.

[164] The Committee notes that in its response, the United States did not refer to steps taken with respect to the implementation of recommendation 4.2, above. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.[64]

64. See footnote number 62.

ENDNOTES

[i] The Full text of 26 U.S.C. Section 62(a) provides as follows:

(a) General rule
For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:
(1) Trade and business deductions *The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.*
(2) Certain trade and business deductions of employees
(A) Reimbursed expenses of employees *The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.*
(B) Certain expenses of performing artists *The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.*
(C) Certain expenses of officials *The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.*
(D) Certain expenses of elementary and secondary school teachers *In the case of taxable years beginning during 2002, 2003, 2004, 2005, 2006, 2007, 2008, or 2009, the deductions allowed by section 162 which consist of expenses, not in excess of $250, paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.*
(E) Certain expenses of members of reserve components of the Armed Forces of the United States
The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.
(3) Losses from sale or exchange of property *The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.*
(4) Deductions attributable to rents and royalties *The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.*
(5) Certain deductions of life tenants and income beneficiaries of property *In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.*
(6) Pension, profit-sharing, and annuity plans of self-employed individuals *In the case of an individual who is an employee within the meaning of section 401 (c)(1), the deduction allowed by section 404.*
(7) Retirement savings *The deduction allowed by section 219 (relating to deduction of certain retirement savings).*
[(8) Repealed. Pub. L. 104–188, title I, §□1401(b)(4), Aug. 20, 1996, 110 Stat. 1788]
(9) Penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits
The deductions allowed by section 165 for losses incurred in any transaction entered into for profit, though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank or homestead

association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.
(10) Alimony *The deduction allowed by section 215.*
(11) Reforestation expenses *The deduction allowed by section 194.*
(12) Certain required repayments of supplemental unemployment compensation benefits *The deduction allowed by section 165 for the repayment to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).*
(13) Jury duty pay remitted to employer *Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term "jury pay" means any payment received by the individual for the discharge of jury duty.*
(14) Deduction for clean-fuel vehicles and certain refueling property *The deduction allowed by section 179A.*
(15) Moving expenses *The deduction allowed by section 217.*
(16) Archer MSAs *The deduction allowed by section 220.*
(17) Interest on education loans *The deduction allowed by section 221.*
(18) Higher education expenses *The deduction allowed by section 222.*
(19) Health savings accounts *The deduction allowed by section 223.*
(20) Costs involving discrimination suits, etc. *Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code [1] or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y (b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.*
(21) Attorneys fees relating to awards to whistleblowers *Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any award under section 7623 (b) (relating to awards to whistleblowers). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of such award. Nothing in this section shall permit the same item to be deducted more than once.*
(b) Qualified performing artist
(1) In general *For purposes of subsection (a)(2)(B), the term "qualified performing artist" means, with respect to any taxable year, any individual if—*
(A) *such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,*
(B) *the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and*
(C) *the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed $16,000.*
(2) Nominal employer not taken into account *An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds $200.*
(3) Special rules for married couples
(A) In general
Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.
(B) Application of paragraph (1)
In the case of a joint return—

(i) *paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but*
(ii) *paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.*
(C) Determination of marital status *For purposes of this subsection, marital status shall be determined under section 7703 (a).*
(D) Joint return *For purposes of this subsection, the term "joint return" means the joint return of a husband and wife made under section 6013.*
(c) Certain arrangements not treated as reimbursement arrangements
For purposes of subsection (a)(2)(A), an arrangement shall in no event be treated as a reimbursement or other expense allowance arrangement if—
(1) *such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or*
(2) *such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.*
The substantiation requirements of the preceding sentence shall not apply to any expense to the extent that substantiation is not required under section 274 (d) for such expense by reason of the regulations prescribed under the 2nd sentence thereof.
(d) Definition; special rules
(1) Eligible educator
(A) In general
For purposes of subsection (a)(2)(D), the term "eligible educator" means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.
(B) School
The term "school" means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.
(2) Coordination with exclusions
A deduction shall be allowed under subsection (a)(2)(D) for expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135, 529 (c)(1), or 530 (d)(2) for the taxable year.
(e) Unlawful discrimination defined
For purposes of subsection (a)(20), the term "unlawful discrimination" means an act that is unlawful under any of the following:
(1) *Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).*[2]
(2) *Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).*
(3) *The National Labor Relations Act (29 U.S.C. 151 et seq.).*
(4) *The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).*
(5) *Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).*
(6) *Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).*
(7) *Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).*
(8) *Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).*
(9) *The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).*
(10) *The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).*
(11) *Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).*
(12) *Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).*
(13) *Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).*
(14) *Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).*
(15) *Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).*
(16) *Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).*

(17) *Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.*
(18) *Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law—*
(i) *providing for the enforcement of civil rights, or*
(ii) *regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law. "*

[ii] With respect to the standard deduction, Title 26 U.S.C. Section 63(c) provides as follows:

(c) Standard deduction
For purposes of this subtitle—
(1) In general
Except as otherwise provided in this subsection, the term "standard deduction" means the sum of—
(A) *the basic standard deduction,*
(B) *the additional standard deduction,*
(C) *in the case of any taxable year beginning in 2008 or 2009, the real property tax deduction,*
(D) *the disaster loss deduction, and*
(E) *the motor vehicle sales tax deduction.*
(2) Basic standard deduction
For purposes of paragraph (1), the basic standard deduction is—
(A) *200 percent of the dollar amount in effect under subparagraph (C) for the taxable year in the case of—*
(i) *a joint return, or*
(ii) *a surviving spouse (as defined in section 2 (a)),*
(B) *$4,400 in the case of a head of household (as defined in section 2 (b)), or*
(C) *$3,000 in any other case.*
(3) Additional standard deduction for aged and blind
For purposes of paragraph (1), the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (f).
(4) Adjustments for inflation
In the case of any taxable year beginning in a calendar year after 1988, each dollar amount contained in paragraph (2)(B), (2)(C), or (5) or subsection (f) shall be increased by an amount equal to—
(A) *such dollar amount, multiplied by*
(B) *the cost-of-living adjustment determined under section 1 (f)(3) for the calendar year in which the taxable year begins, by substituting for "calendar year 1992" in subparagraph (B) thereof—*
(i) *"calendar year 1987" in the case of the dollar amounts contained in paragraph (2)(B), (2)(C), or (5)(A) or subsection (f), and*
(ii) *"calendar year 1997" in the case of the dollar amount contained in paragraph (5)(B).*
(5) Limitation on basic standard deduction in the case of certain dependents
In the case of an individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the basic standard deduction applicable to such individual for such individual's taxable year shall not exceed the greater of—
(A) *$500, or*
(B) *the sum of $250 and such individual's earned income.*
(6) Certain individuals, etc., not eligible for standard deduction
In the case of—
(A) *a married individual filing a separate return where either spouse itemizes deductions,*
(B) *a nonresident alien individual,*

__(C)__ an individual making a return under section 443 (a)(1) for a period of less than 12 months on account of a change in his annual accounting period, or
__(D)__ an estate or trust, common trust fund, or partnership,
the standard deduction shall be zero.
(7) Real property tax deduction
For purposes of paragraph (1), the real property tax deduction is the lesser of—
__(A)__ the amount allowable as a deduction under this chapter for State and local taxes described in section 164 (a)(1), or
__(B)__ $500 ($1,000 in the case of a joint return).
Any taxes taken into account under section 62 (a) shall not be taken into account under this paragraph.
(8) Disaster loss deduction
For the purposes of paragraph (1), the term "disaster loss deduction" means the net disaster loss (as defined in section 165 (h)(3)(B)).
(9) Motor vehicle sales tax deduction
For purposes of paragraph (1), the term "motor vehicle sales tax deduction" means the amount allowable as a deduction under section 164 (a)(6). Such term shall not include any amount taken into account under section 62 (a).

[iii] See the content of this note at the end of the document.

[iv] In this connection, the United States informed the review subgroup of the following: *"The United States engages in wide-spread awareness-raising efforts. Actions encouraging companies to maintain adequate internal controls have focused on systems of internal control over financial reporting, which would include controls over acts of bribery that would result in a material misstatement of the financial statements. As required by Section 404 of the Sarbanes-Oxley Act, the Commission adopted rules in 2003 to require issuers to report to the public on the effectiveness of the company's internal control over financial reporting. Internal control over financial reporting includes controls related to illegal acts and fraud, including acts of bribery that result in a material misstatement of the financial statements.*
The Commission also issued interpretive guidance for management in 2007 regarding its evaluation and assessment of internal control over financial reporting. The guidance sets forth an approach by which management can conduct a top-down risk-based evaluation of internal controls. This guidance includes direction for management in identifying financial reporting risks and controls and evaluating evidence of the operating effectiveness of internal control over financial reporting. Further, the guidance contains information to assist management in developing disclosures about their internal control over financial reporting, including disclosures about material weaknesses that may be identified.
In 2005, the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") issued Guidance for Smaller Public Companies Reporting on Internal Control over Financial Reporting to supplement COSO's Internal Control - Integrated Framework, originally published in 1992. The guidance focuses on the needs of smaller organizations in regard to compliance with Section 404 of the Sarbanes-Oxley Act, and outlines fundamental principles associated with the five key components of internal control: control environment; risk assessment; control activities; information and communication; and monitoring. Also, in 2009, COSO issued Guidance on Monitoring Internal Control Systems to help companies better monitor the effectiveness of their internal control systems and to take timely corrective actions if needed.
In 2007, the PCAOB issued Auditing Standard No. 5, An Audit of Internal Control Over Financial Reporting That Is Integrated With An Audit of Financial Statements ("AS 5"), to provide guidance for auditors in performing an integrated audit of internal control over financial reporting. For audits of smaller and less complex companies, AS 5 includes specific guidance on assessment of control risk, achievement of control objectives, testing on the effectiveness of a control and identification of controls over management override.
Each company listed on the New York Stock Exchange (NYSE) must comply with certain corporate governance standards, including maintaining an internal audit function. The purpose of the internal audit function is to provide management and the audit committee with assessments of the company's risk management processes and system of internal control.

The Commission's Division of Enforcement has been instrumental in encouraging companies' compliance with the books and records and internal control provisions of the FCPA by instituting actions against public companies that fail in this regard. As part of a reorganization of the entire Division, the Division of Enforcement has created a specialized unit dedicated exclusively to investigating potential violations of the FCPA. The specialized unit focuses on ways to be more proactive in the Commission's enforcement of the FCPA including the use of more targeted sweeps and sector-wide investigations, alone and with other regulatory counterparts both in the U.S. and abroad.
The Department of Commerce (DOC) placed the OECD new Recommendation and Annex on its anticorruption websites (www.ogc.doc.gov/trans_anti_bribery.html; www.tcc.export.gov/bribery/index.asp). Commerce's Trade Compliance Center has included on its website an Exporters' Guide to help businesses understand key provisions of the OECD Anti- Bribery Convention, and this publication has also been updated to highlight the new Recommendation and Good Guidance Annex. DOC also highlights the new Recommendation and Annex in its training of U.S. and Foreign Commercial Service Officers and Foreign Service Officers.
In addition, DOC, DOJ, and SEC officials have also spoken at numerous domestic and international anti-corruption conferences and highlighted the existence of the new instrument and guidance. At these conferences, the aforementioned officials have provided guidance on enhanced compliance programs contained in the guidance, specifically encouraged companies to prohibit or discourage the use of small facilitation payments, described recent enforcement trends, underscored high-risk industries, countries, and practices, and identified enforcement priorities. Attendees at these conferences have included members of law enforcement, in-house counsel, corporate compliance officers, and attorneys focused on FCPA enforcement and transnational business. Besides these conferences, DOC's Commercial Service has on its own conferences and, in partnership with the private sector, puts on webinars and conferences targeted at SMEs, specifically on foreign bribery, and these webinars and conferences have recently highlighted the new instrument and guidance."

[v] **1. Procurement of Goods & Services**

Update re. Office of Federal Procurement Policy

The Office of Federal Procurement Policy (OFPP) recently established an Associate Administrator for Acquisition Workforce position and this position is critical to strengthening the acquisition workforce. The Associate Administrator is responsible for strategically developing and implementing a wide variety of initiatives to ensure that the federal government's acquisition workforce is adequately identified, trained and developed to support the government's current and future mission needs. A number of initiatives are underway to accomplish this goal.

To ensure that we sustain our acquisition improvement efforts, OFPP is working to build up the capacity and capability of the acquisition workforce. Additional funds were requested for civilian agencies to build the capacity, capability, and effectiveness of the acquisition workforce. We recognize that we need to focus not only on those engaged directly in the contracting process but also on the more broad acquisition workforce, including those who can lay the foundation of successful procurements by helping develop accurate cost estimates, performing thorough market research, and clearly and realistically defining the governments requirements, as well as those who ensure rigorous oversight of contractor performance.

In March 2009, OFPP issued a memorandum, *Acquisition Workforce Development Strategic Plan for Civilian Agencies – FY 2010-2014*, to guide the growth in capacity and capability of the civilian agency acquisition workforce over the next five years. For details, visit http://www.whitehouse.gov/sites/default/files/omb/assets/procurement_workforce/AWF_Plan_10272009.pdf.

In March 2010, agencies developed comprehensive human capital plans that provide insight into each agency's current acquisition workforce, a thoughtful analysis of agency acquisition workforce

requirements going forward, and specific strategies for strengthening their acquisition workforce. We are supporting agency efforts by targeting government-wide skill gaps through training and improving certification management tools. We are also reviewing agency plans to determine what programs we can provide government-wide to leverage resources, and how we can ensure adoption of innovative best practices government-wide. We are working to update and improve the curriculum for certification training for all acquisition workforce members, ensure certification standards reflect the skills needed in handling real-life procurements, and foster integration of classroom and on-the-job training, as well as the use of rotational assignments and mentoring to expose participants to the different aspects of acquisition.

Training programs

The Federal Acquisition Institute (FAI), at www.fai.gov, provides training information and resources to acquisition professionals at civilian agencies at every stage of their career.

The Defense Acquisition University (DAU), at www.dau.mil, provides training information and resources to the defense acquisition workforce throughout all career stages. The university provides a full range of basic, intermediate, and advanced certification training, assignment-specific training, applied research, and continuous learning opportunities. Civilian agencies are afforded an opportunity to send their acquisition professionals to DAU courses; the DAU's priority is the defense acquisition workforce.

FAI and DAU work closely to ensure all acquisition training information and resources are consistent across the federal government for both the civilian and defense acquisition workforce.

Certification Programs

Over the years, OFPP issued guidance to agencies on certification programs, as listed below, that outline the training requirements and programs for acquisition professionals, such as contracting professionals, project and program managers (P/PMs), and contracting officer technical representatives (COTRs).

- The Federal Acquisition Certification for Contracting Officer Technical Representatives (November 26, 2007) (9 pages, 552 kb).
- The Federal Acquisition Certification for Program and Project Managers (April 25, 2007) (22 pages, 182 kb).
- The Federal Acquisition Certification in Contracting Program (January 20, 2006) (Revised December 2008) (16 pages, 153 kb).

Acquisition Career Managers exist in federal agencies and are responsible for ensuring that their agency acquisition workforce meets the requirements of the certification letters above and the OFPP Policy Letter 05-01, Developing and Managing the Acquisition Workforce, available at http://www.whitehouse.gov/omb/procurement_policy_letter_05-01/, which established a government-wide framework for creating a federal acquisition workforce

Procedures & Indicators

The **Federal Acquisition Regulation (FAR)** includes numerous regulations that identify indicators that can be use to prohibit and detect unethical behavior. For example:

FAR Part 3 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST at https://www.acquisition.gov/far/current/html/FARTOCP03.html#wp265938 includes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence. Each subpart is outline below and designed to protect the government's interest.

3.1 Safeguards
3.2 Contractor Gratuities to Government Personnel
3.3 Reports of Suspected Antitrust Violations
3.4 Contingent Fees
3.5 Other Improper Business Practices
3.6 Contracts with Government Employees or Organizations Owned or Controlled by Them
3.7 Voiding and Rescinding Contracts
3.8 Limitation on the Payment of Funds to Influence Federal Transactions
3.9 Whistleblower Protections for Contractor Employees
3.10 Contractor Code of Business Ethics and Conduct

FAR Part 9, Debarment Suspension, and Ineligibility at https://www.acquisition.gov/far/current/html/Subpart%209_4.html#wp1083280 includes policies and procedures governing the debarment and suspension of contractors by agencies, provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible at www.epls.gov and includes consequences of this listing. See 9.104-6 , Federal Awardee Performance and Integrity Information System, which requires contracting officers, before awarding a contract in excess of the simplified acquisition threshold, to review the Federal Awardee Performance and Integrity Information System (FAPIIS), (available at www.ppirs.gov , then select FAPIIS) to determine if the contractor has reported a civil or criminal violation as required by FAR 52.209-5, Certification Regarding Responsibility Matters, 52.209-7, Information Regarding Responsibility Matters, and 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters.

FAR 42.15—Contractor Performance Information at https://www.acquisition.gov/far/current/html/Subpart%2042_15.html#wp1075411, includes policies and establishes responsibilities for recording and maintaining contractor performance information and is designed to ensure the Government does not award contracts to poor performing and unethical contractors.

FAR Part 49, Terminations of Contracts, includes policies and procedures that allow the Government to terminate contracts for convenience of the Government or for default if the contract is not operating in the best interest of the Government. https://www.acquisition.gov/far/current/html/FARTOCP49.html#wp226845 .

The following FAR changes are underway, in various areas of the FAR, to improve regulations established to prevent and detect unethical behavior:

1. 2009-036, Clarification of Uniform Suspension and Debarment Requirement - Implements section 815 of the NDAA for FY 2010. Section 815 amends section 2455(c)(1) of FASA (31U.S.C. 6101 note) by amending the definition of "procurement activities" to include subcontracts at any tier, other than subcontracts for commercially available off-the-shelf items, except that in the case of commercial items, such term includes only first-tier subcontracts

2. 2010-012, Certification Requirement and Procurement Prohibition Relating to Iran Sanctions - Implement section 102 and section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195, enacted 7/1/2010. Section 102, entitled "Expansion of Sanctions under the Iran Sanctions Act of 1996," requires certification that each offeror, and any

person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section5 the Act. Section 106 imposes a procurement prohibition relating to contracts with persons that export sensitive technology to Iran.

3. 2009-030, Basic Safeguarding of Unclassified Government Information - Addresses unclassified information that does not meet the standard for National Security Classification under Executive Order 12958, as amended. It involves unclassified information that is pertinent to the national interests of the United States or originated by entities outside the U.S. Federal Government, and under law or policy requires protection from disclosure, special handling safeguards, and prescribed limits on exchange or dissemination

4. 2010-018, Representation Regarding Export of Sensitive Technology to Iran- Adds a representation regarding export of sensitive technology to Iran and a waiver provision to further implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195, enacted 7/1/2010).

5. 2010-017, Oversight of Contractor Ethics Programs -Implement GAO Report 09-591 recommendations to provide oversight of contractor ethics programs required by FAR 52.203-13.

6. 2011-001, Organizational Conflict of Interest and Contractor Access to Nonpublic Information - Implements section 841 of the NDAA for FY 2009 (Pub. L. 110-147). Section 841 requires consideration of how to address the current needs of the acquisition community with regard to Organizational Conflict of Interest. Separately addresses the issues regarding unequal access to information.

7. 2008-009, Prohibition on Contracts with Inverted Domestic Corporations -Implements Section 743 of Division D of the Omnibus Appropriations Act, 2009 (Pub. L. 111-8), which prohibits use of funds appropriated or otherwise made available by this or any other Act for any Federal Government contract with any foreign incorporated entity which is treated as an inverted domestic corporation under section 835 (b) of the Homeland Security Act of 2002 (6 U.S.C. 395(b)) or any subsidiary of such an entity.

8. 2010-016 Public Access to the Federal Awardee Performance and Integrity Information System - Implements section 3010 of Public Law 111-212. Section 3010 requires the Administrator of General Services to posting FAPIIS information, excluding past performance reviews, on a publicly available website. This rule informs contractors of this statutory requirement to make FAPIIS information available to the public.

9. 2008-025, Preventing Personal Conflicts of Interest by Contractor Employees Performing Acquisition Functions - Implement sec 841(a) of the FY09 NDAA (Pub. L. 110-417). Sec 841 requires OFPP, within 270 days after enactment, to develop and issue a policy to prevent personal conflicts of interest by contractor employees performing acquisition functions closely associated with inherently governmental functions for or on behalf of a Federal agency or department. Implementing clauses must take effect 300 days after the date of enactment.

2. Whistleblower Protections

3. Criminalization of Acts of corruption

Training programs

There are a number of training programs and conferences for USG investigators and prosecutors on how to investigate and prosecute corruption, as well as numerous programs on ethics, professional responsibility, and internal integrity. For example, DOJ attorneys have required ethics and professionalism training annually. DOJ's prosecutorial, law enforcement and training offices all provide such training. Also, the national prosecutorial and law enforcement academies, including those run by DHS, offer this as well

The U.S. DOJ Office of Legal Education (OLE) works closely with our DOJ Public Integrity Section to sponsor an annual Public Corruption Seminar here at the National Advocacy Center. This course is designed for those prosecutors who specialize in this area of prosecution. The description for that course is set out below. The faculty for this course includes senior prosecutors from the Public Integrity Section of our Criminal Division and United States Attorney's Offices. The number of participants vary, but range from 90 to 100 persons each course.

Public Corruption Seminar

This seminar is intended for *federal prosecutors* and *FBI public corruption coordinators* who investigate and prosecute corruption cases. Topics to be covered include initiating investigations, developing sources of information, the predication of targets, proactive investigation issues, overt and historic investigation issues, charging decisions, trial issues and common defenses, contracting corruption, congressional and lobbyist corruption, law enforcement corruption, and election crime.

In addition to this specific seminar, OLE sponsors numerous seminars which focus on advanced prosecution topics. While these courses are not specifically aimed at prosecutions under the public corruption statutes, they are designed to enhance the capacity for our prosecutors to handle the types of complex issues encountered in the area of public corruption. An example of this would be the advanced money laundering courses and white collar crime courses. Our internet site has a catalog with all of our programs scheduled for this year. http://www.justice.gov/usao/eousa/ole/ole_course_calendar/index.html

In addition to the live public corruption and advanced prosecution courses, OLE produces a number of ethics and professional responsibility video programs that U.S. DOJ employees are required to view annually as a condition of employment. Please see the attached document for a listing of some of these programs.

Procedures & Indicators

OLE relies primarily on feedback from the employees and their managers to determine the effectives of its training programs. Unlike other areas of professional adult education, where there might be statistical indicators that can be used as measures of training effectiveness (e.g. increased business profits, increased academic test scores), there are far too many variables that go into criminal investigation and prosecution to rely on statistical data.

CHART 1A
FCPA Criminal Enforcement Statistics (1998-2010)
Natural Persons

Prosecutions of Natural Persons																						
Year	Total No. Charged[1]	No. Charged with:[2]			Pending as of end of calendar year[3]			Discontinued without Sanctions[4]			Guilty Pleas			Trial Convictions			Acquittals			No. Sentenced		
		FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML
1998	4	4	0	0	7	1	2	0	0	0	2	0	0	1	0	0	0	0	0	0	0	0
1999	1	1	0	0	4	1	2	0	0	0	1	0	0	0	0	0	0	0	0	4	0	0
2000	0	0	0	0	4	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2001	7	6	2	0	10	2	2	0	0	0	3	2	0	0	0	0	0	0	0	0	1	0
2002	4	4	0	0	11	2	2	0	0	0	3	0	0	1	0	0	0	0	0	4	0	0
2003	4	4	0	3	15	2	5	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
2004	2	0	2	0	14	4	5	0	0	0	2	0	2	2	0	0	0	0	0	0	0	0
2005	5	5	0	3	19	2	8	0	0	0	0	0	0	0	0	0	0	2	0	2	0	0
2006	4	3	1	1	21	3	9	0	0	0	4	1	0	0	0	0	0	0	0	1	0	0
2007	9	9	0	6	28	2	15	0	0	0	5	0	2	0	0	0	0	0	0	2	1	0
2008	12	12	1	5	30	3	18	1	0	1	4	0	0	0	0	0	0	0	0	7	0	1
2009	44	40	0	33	70	3	51	0	0	0	9	0	5	4	0	4	0	0	0	3	0	2
2010[5]	5	3	1	3	62	4	45	0	0	0	8	2	6	0	0	0	0	0	0	11	0	9
Total	**101**	**91**	**7**	**54**	**--**	**--**	**--**	**1**	**0**	**1**	**42**	**5**	**15**	**8**	**0**	**4**	**0**	**2**	**0**	**34**	**2**	**12**

1. In this column, each natural person was only counted once, so the numbers represent the actual number of natural persons charged with FCPA violations in each year
2. For the purposes of this chart, the Department counted a natural person in each applicable column according to the conduct with which the defendant was charged. For instance, if a defendant was charged with both foreign bribery (FB) and foreign bribery related accounting misconduct (AM), the person was counted in both the applicable FB and AM columns.
3. For the purposes of this column, cases were deemed to still be pending if any of the following was true: (1) the defendant was charged, but not yet convicted; (2) the defendant was convicted, but not yet sentenced; (3) the defendant was sentenced, but had filed an appeal, which was still open; or, (4) the defendant was a fugitive, as of the end of the calendar year.
4. Since 1998, there has not been a case in which the Department discontinued the prosecution of a natural person for foreign bribery or a related offense while imposing sanctions. Therefore, this category was excluded from this table.
5. For 2010, the numbers in this chart are current through September 30, 2010.

CHART 1B
FCPA Criminal Enforcement Statistics (1998-2010)
Legal Persons

Prosecutions of Legal Persons																						
Year	Total No. Charged[6]	No. Charged with:[7]			Pending as of end of calendar year[8]			Discontinued without Sanctions			Guilty Pleas			Trial Convictions			Acquittals			No. Sentenced		
		FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML
1998	3	3	0	0	3	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0
1999	1	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	4	0	0
2000	1	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1	0
2001	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2002	1	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0
2003	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2004	3	3	1	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2	0	0
2005	4	4	2	0	0	0	0	0	0	0	2	1	0	0	0	0	0	0	0	2	1	0
2006	2	2	2	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	1	1	0
2007	15	13	8	0	0	0	0	0	0	0	4	1	0	0	0	0	0	0	0	4	1	0
2008	16	9	13	1	1	0	1	0	0	0	3	4	0	0	0	0	0	0	0	3	4	0
2009	7	5	4	0	1	0	1	0	0	0	3	0	0	0	0	0	0	0	0	3	0	0
2010[9]	15	13	8	0	3	2	0	0	0	0	9	4	1	0	0	0	0	0	0	6	2	1
Total	**68**	**54**	**39**	**1**	**--**	**--**	**--**	**0**	**0**	**0**	**29**	**12**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**26**	**10**	**1**

6. In this column, each legal person was only counted once, so the numbers represent the actual number of legal persons charged with FCPA violations in each year
7. For the purposes of this chart, the Department counted a legal person in each applicable column according to the conduct with which the defendant was charged. For instance, if a defendant was charged with both foreign bribery (FB) and foreign bribery related accounting misconduct (AM), the person was counted in both the applicable FB and AM columns.
8. For the purposes of this column, cases were deemed to still be pending if any of the following was true: (1) the defendant was charged, but not yet convicted; (2) the defendant was convicted, but not yet sentenced; (3) the defendant was sentenced, but had filed an appeal, which was still open; as of the end of the calendar year.
9. For 2010, the numbers in this chart are current through September 30, 2010.

CHART 1C
FCPA Administrative/Civil Enforcement Statistics (1998-2010)
Natural Persons

Administrative/Civil Enforcement Actions Against Natural Persons																						
Year	Total No. of Enforcement Actions[10]	Due to Conduct Involving			Pending as of end of calendar year[11]			Discontinued with Sanctions			Discontinued without Sanctions[12]			Discontinued as a Result of Civil Settlements			Decisions with Sanctions			Decisions Finding No Liability		
		FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML
1998	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1999	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2001	3	3	3	0	2	2	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0
2002	3	3	1	0	5	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2003	1	1	1	0	5	3	0	0	0	0	2	2	0	0	0	0	1	1	0	0	0	0
2004	0	0	0	0	4	3	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
2005	1	1	1	0	5	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2006	8	7	8	0	8	7	0	0	0	0	0	0	0	0	0	0	5	6	0	0	0	0
2007	8	5	8	0	10	9	0	0	0	0	0	0	0	0	0	0	3	6	0	0	0	0
2008	6	4	6	0	5	4	0	0	0	0	0	0	0	0	0	0	8	10	0	0	0	0
2009	3	3	3	0	6	5	0	0	0	0	0	0	0	0	0	0	2	2	0	0	0	0
2010[13]	7	7	5	0	5	5	0	0	0	0	0	0	0	0	0	0	8	5	0	0	0	0
Total	**40**	**34**	**36**	**0**	**--**	**--**	**--**	**0**	**0**	**0**	**2**	**2**	**0**	**0**	**0**	**0**	**29**	**31**	**0**	**0**	**0**	**0**

10. This column lists the number of enforcement actions taken against a natural person in each year from 1998 through 2010. If a natural person was subject to both an administrative proceeding and a civil enforcement action, these are counted as separate enforcement actions for the purposes of this chart. Also, if an enforcement action targeted more than one natural person, the number of enforcement actions recorded in this chart reflects the number of natural persons subject to the enforcement action.
11. For the purposes of this column, cases were deemed to still be pending if any of the following was true: (1) a final judgment or settlement had not been reached; or, (2) the matter had been stayed pending the resolution of an ongoing criminal enforcement action against the defendant in question.
12. This column includes cases in which the civil charges against the natural person were dismissed by the Court.
13. For 2010, the numbers in this chart are current through September 30, 2010.

CHART 1D
FCPA Administrative/Civil Enforcement Statistics (1998-2010)
Legal Persons

Administrative/Civil Enforcement Actions Against Legal Persons																						
Year	Total No. of Enforcement Actions[14]	Due to Conduct Involving			Pending as of end of calendar year[15]			Discontinued with Sanctions[16]			Discontinued without Sanctions			Discontinued as a Result of Civil Settlements			Decisions with Sanctions			Decisions Finding No Liability		
		FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML	FB	AM	ML
1998	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1999	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
2000	2	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0
2001	6	3	6	0	0	0	0	0	0	0	0	0	0	0	0	0	3	6	0	0	0	0
2002	4	2	4	0	0	0	0	0	0	0	0	0	0	0	0	0	2	4	0	0	0	0
2003	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2004	3	2	3	0	0	0	0	0	0	0	0	0	0	0	0	0	2	3	0	0	0	0
2005	6	6	6	0	0	0	0	0	0	0	0	0	0	0	0	0	6	6	0	0	0	0
2006	4	3	4	0	0	0	0	0	0	0	0	0	0	0	0	0	3	4	0	0	0	0
2007	18	7	15	1	0	2	0	0	0	1	0	0	0	0	0	0	7	13	0	0	0	0
2008	11	5	11	0	0	0	0	0	0	0	0	0	0	0	0	0	5	13	0	0	0	0
2009	12	5	11	1	1	0	1	0	0	0	0	0	0	0	0	0	4	11	0	0	0	0
2010[17]	12	7	12	0	0	0	0	0	0	0	0	0	0	0	0	0	8	12	1	0	0	0
Total	**79**	**41**	**74**	**2**	**--**	**--**	**--**	**0**	**0**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**41**	**74**	**1**	**0**	**0**	**0**

14. This column lists the number of enforcement actions taken against a legal person in each year from 1998 through 2010. If a legal person was subject to both an administrative proceeding and a civil enforcement action, these are counted as separate enforcement actions for the purposes of this chart. Also, if an enforcement action targeted more than one legal person, the number of enforcement actions recorded in this chart reflects the number of legal persons subject to the enforcement action. .

15. For the purposes of this column, cases were deemed to still be pending if any of the following was true: (1) a final judgment or settlement had not been reached; or, (2) the matter had been stayed pending the resolution of an ongoing criminal enforcement action against the defendant in question.

16. This column includes one case in which the Department of Justice filed a civil forfeiture action against a certain monetary amount, plus interest, being held in a foreign bank account belonging to a foreign government, alleging that the money was the proceeds of criminal conduct including violations of the FCPA, as well as wire fraud and money laundering. The Department reached an agreement with the foreign government whereby, if the money is not claimed, it will be used to fund social and civil society programs in that country.

17. For 2010, the numbers in this chart are current through September 30, 2010.

CHART 2
SENTENCES OF NATURAL PERSONS CONVICTED AT TRIAL OF FCPA VIOLATIONS, FISCAL YEARS 2005-2010[18]

	DEFENDANT	CASE NUMBER	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
1	**Gerald Green** (Owner/Film Executive)	United States v. Green, *et al*., 08-CR-059 (C.D. Cal. 2008)	~ 1.8M	6 months' imprisonment; 6 months' home confinement
2	**Patricia Green** (Owner/Film Executive)	United States v. Green, *et al*., 08-CR-059 (C.D. Cal. 2008)	~ 1.8M	6 months' imprisonment; 6 months' home confinement
3	**William Jefferson** (Congressperson)	United States v. Jefferson, 07-CR-209 (E.D. Va. 2007)	~ 500K + Equities	13 years' imprisonment
4	**Frederick Bourke, Jr.** (Investor)	United States v. Kozeny, *et al*., 05-CR-518 (S.D.N.Y. 2005)	~ Millions	1 year and 1 day's imprisonment
5	**David Kay**[19] (Vice President)	United States v. Kay, *et al*., 01-CR-914 (S.D. Tex. 2002)	~ 528K	37 months' imprisonment
6	**Douglas Murphy**1 (President)	United States v. Kay, *et al*., 01-CR-914 (S.D. Tex. 2002)	~ 528K	63 months' imprisonment
6	**Robert R. King**1 (Employee)	United States v. King, *et al*., 01-CR-190 (W.D. Mo. 2001)	~ 1.5M	30 months' imprisonment
7	**David H. Mead**[20] (President, CEO, and Executive Vice President)	United States v. Mead, *et al*., 98-Cr-240 (D. N.J. 1998)	~ 50K	4 months' imprisonment; 4 months' home detention
8	**Richard H. Liebo**1, 2 (Vice President)	United States v. Liebo, 89-CR-076 (D. Minn. 1989)	~ 131K	18 months' imprisonment (suspended); 60 days

18. The 2010 Fiscal Year ended September 30, 2010.
19 United States Sentencing Guidelines Section 2B4.1, with a base offense level of 8, was the applicable U.S.S.G. Section at this time. After 2002, Section 2C1.1, with a base offense level of 12, became the applicable U.S.S.G. Section in accordance with international treaty obligations.
20 In addition, corporate guilty pleas to FCPA violations resulted in over $2.2 million in fines.

CHART 3
SENTENCES OF NATURAL PERSONS WHO PLEADED GUILTY TO FCPA VIOLATIONS, FISCAL YEARS 2005-2010

	Defendant	Case Number	Sentence Reduction For Cooperation	Amount Of Bribes	Sentence (Excluding Monetary Penalties)
1	**Nam Quoc Nguyen** (President/Owner)	United States v. Nguyen, *et al*., 08-CR-522 (E.D. Pa. 2008)	NO	~ 690K	16 months imprisonment
2	**An Quoc Nguyen** (Employee)	United States v. Nguyen, *et al*., 08-CR-522 (E.D. Pa. 2008)	NO	~ 325K	9 months imprisonment
3	**Kim Anh Nguyen** (Employee)	United States v. Nguyen, *et al*., 08-CR-522 (E.D. Pa. 2008)	YES	~ 399K	2 years probation
4	**Joseph T. Lukas** (Joint Venture Partner)	United States v. Nguyen, *et al*., 08-CR-522 (E.D. Pa. 2008)	YES	~ 180K	2 years probation
5	**Juan Diaz** (Intermediary)	United States v. Diaz, 09-CR-20346 (S.D. Fla. 2009)	NO	~ 1M	57 months imprisonment
6	**John W. Warwick**[21] (President)	United States v. Warwick, 09-CR-449 (E.D. Va. 2009)	NO	~ 200K	37 months imprisonment
7	**Charles Paul Edward Jumet** (Vice President; President)	United States v. Jumet, 09-CR-397 (E.D. Va. 2009)	NO	~ 200K	87 months imprisonment
8	**Misao Hioki** (General Manager)	United States v. Hioki, 08-CR-795 (S.D. Tex. 2008)	YES	~ 1M	24 months imprisonment
9	**Shu Quan-Sheng** (President, Secretary, and Treasurer)	United States v. Quan-Sheng, 08-CR-194 (E.D. Va. 2008)	NO	~ 189K	51 months imprisonment
10	**Martin Eric Self**[22] (CEO)	United States v. Self, 08-CR-110 (C.D. Cal. 2008)	NO	~ 70K	2 years probation
11	**Jason Edward Steph** (General Manager)	United States v. Steph, 07-CR-307 (S.D. Tex. 2007)	YES	~ 6M	15 months imprisonment
12	**Jim Bob Brown** (Managing Director)	United States v. Brown, 06-CR-316 (S.D. Tex. 2006)	YES	~ 6M	1 year and 1 day's imprisonment
13	**Steven J. Ott** (Executive Vice President)	United States v. Ott, 07-CR-608 (D. N.J. 2007)	YES	~ 267K	6 mo. Home confinement; 5 yrs. probation

21. United States Sentencing Guidelines Section 2B4.1, with a base offense level of 8, was the applicable U.S.S.G. Section at this time. After November 2002, Section 2C1.1, with a base offense level of 12, became the applicable U.S.S.G. Section in accordance with international treaty obligations.
22. Self pleaded guilty to the "willful blindness" provision of the FCPA.

14	**Yaw Osei Amoako**[23] (Regional Director)	United States v. Amoako, 06-CR-702 (D. N.J. 2006)	YES	~ 267K	18 months' imprisonment
15	**Christian Sapsizian** (Vice President)	United States v. Sapsizian, *et al*., 06-CR-20797 (S.D. Fla. 2006)	YES	~ 2.4M	30 months' imprisonment
16	**Roger Michael Young** (Managing Director)	United States v. Young, 07-CR-609 (D. N.J. 2007)	YES	~ 267K	3 months' home confinement; 5 years' probation
17	**Steven Lynwood Head**[24] (Program Manager)	United States v. Head, 06-CR-1380 (S.D. Cal. 2006)	YES	~ 2M	6 months' imprisonment
18	**Richard John Novak** (Employee)	United States v. Randock, *et al*., 05-CR-180 (E.D. Wash. 2005)	YES	~ 30K-70K	3 years' probation
19	**Faheem Mousa Salam** (Translator/Contractor)	United States v. Salam, 06-CR-157 (D.D.C. 2006)	YES	~ 60K	36 months' imprisonment
20	**Richard G. Pitchford** (Vice President; Country Manager)	United States v. Pitchford, 02-CR-365 (D.D.C. 2002)	YES	~ 400K	1 year and 1 day's imprisonment
21	**Gautam Sengupta**l (Task Manager)	United States v. Sengupta, 02-CR-040 (D.D.C. 2002)	YES	~ 50K[25]	2 months' imprisonment; 4 months' home confinement
22	**Albert Jackson "Jack" Stanley**[26] (Officer/Director)	United States v. Stanley, 08-CR-597 (S.D. Tex. 2008)	--	~ 10.8M	84 months' imprisonment; Rule 11(c)(1)(C)

23. Judgment states "defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 18 months, including 6 months to be served in a halfway house." [Docket Entry 35]

24. Defendant pleaded guilty to violating the books and records provisions of the FCPA, not the anti-bribery provisions.

25. The defendants admitted to having taken steps in furtherance of the payment of a $50,000 bribe to a Kenyan government official, in violation of the FCPA. The defendants also admitted to having received $127,000 in kickbacks in exchange for using their positions with the World Bank to give favorable treatment to a consultant.

26. Stanley has not been sentenced, but he was included in this chart since his plea was pursuant to Rule 11(c)(1)(C), with an agreed upon sentence of 84 months and restitution of $10.8 million. The plea agreement also provides for the possibility of a sentence reduction below 84 months.

CHART 4
SANCTIONS IMPOSED UPON LEGAL PERSONS FOR FCPA VIOLATIONS, FISCAL YEARS 2005-2010

Corporate Entity	Date of disposition	Disposition			Criminal monetary penalties	Length of corporate compliance monitor	Other monetary penalties
		Guilty plea	DPA[27]	NPA[28]			
ABB Ltd (and two subsidiaries)	09/29/2010	1	1		$19,020,000	--	$22,804,262 (disgorgement); $16,510,000 (civil penalty)
One International (and two subsidiaries)	08/06/2010	2		1	$9,450,000[29] (anticipated)	3 Years	$10,000,000 (disgorgement)
Universal Corporation (and one subsidiary)	08/06/2010	1		1	$4,400,000	3 Years	$4,581,276.51(disgorgement)
The Mercator Corporation[30]	08/06/2010	1			--	--	--
Snamprogetti Netherlands	07/07/2010		1		$240,000,000	--	$125,000,000 (disgorgement
Technip S.A.	06/28/2010		1		$240,000,000	2 Years	$98,000,000 (disgorgement)
Daimler AG (and three subsidiaries)	04/01/2010	2	2		$93,600,000	3 Years	$91,432,867 (disgorgement)
Innospec Inc.	03/18/2010	1			$14,100,000	3 Years	$11,200,000 (disgorgement); $2,200,000 (civil penalty - OFAC)
Nexus Technologies Inc.	03/16/2010	1			--[31]	--	--
BAE Systems plc	03/01/2010	1			$400,000,000	3 Years	--
UTStarcom Inc.	12/31/2009			1	$1,500,000	--	$1,500,000 (civil penalty)
AGCO Corp. (and one subsidiary)	09/30/2009		1		$1,600,000	--	$2,400,000 (civil penalty); $16,000,000 (disgorgement)
Control Components, Inc.	07/31/2009	1			$18,200,000	3 Years	--
Helmerich & Payne, Inc.	07/30/2009			1	$1,000,000	--	$375,000 (disgorgement)
Novo Nordisk A/S	05/11/2009		1		$9,000,000	--	$3,025,066 (civil penalty);

27 "DPA" refers to deferred prosecution agreements.
28 "NPA" refers to non-prosecution agreements.
29 Two subsidiaries of Alliance One International, Inc. are scheduled to be sentenced on October 21, 2010. As part of their plea agreements, the two subsidiaries agreed to pay a total criminal monetary penalty of $9.45 million.
30 The Mercator Corporation is currently scheduled to be sentenced on November 19, 2010.
31 As part of its plea agreement, Nexus Technologies Inc. admitted to having operated primarily through criminal means and agreed to dissolve itself and turn over all assets to the Court. Accordingly, on September 15, 2010, Nexus was sentenced and ordered to permanently cease all operations and turn all net assets over to the Clerk of Court as a fine.

							$6,005,079 (disgorgement)
Latin Node Inc.	04/07/2009	1			$2,000,000	--	--
Kellogg Brown & Root LLC	02/11/2009	1			$402,000,000	3 Years	$177,000,000 (disgorgement)
Fiat S.p.A. (and three subsidiaries)	12/22/2008		1		$7,000,000	--	$3,600,000 (civil penalty); $7,209,142 (disgorgement)
Siemens AG (and three subsidiaries)	12/15/2008	4			$450,000,000	4 Years	$350,000,000 (disgorgement)
Aibel Group Limited	11/21/2008	1			$4,200,000	2 Years	--
Faro Technologies, Inc.	06/05/2008			1	$1,100,000	2 Years	$1,850,000 (disgorgement)
AGA Medical Corporation	06/03/2008		1		$2,000,000	3 Years	--
Willbros Group Inc. (and one subsidiary)	05/14/2008		2		$22,000,000	3 Years	$10,300,000 (disgorgement)
AB Volvo (and two subsidiaries)	03/20/2008		1		$7,000,000	--	$4,000,000 (civil penalty); $8,600,000 (disgorgement)
Flowserve Corporation (and one subsidiary)	02/21/2008		1		$4,000,000	--	$3,000,000 (civil penalty); $3,500,000 (disgorgement)
Westinghouse Air Brake Technologies Corporation	02/14/2008			1	$300,000	--	$87,000 (civil penalty); $288,000 (disgorgement)
Lucent Technologies Inc.	12/21/2007			1	$1,000,000	--	$1,500,000 (civil penalty)
Akzo Nobel N.V.	12/20/2007			1	$800,000 (contingent upon Dutch disposition)	--	$750,000 (civil penalty); $2,200,000 (disgorgement)
Chevron Corporation	11/14/2007		1		$20,000,000 (forfeiture); $5,000,000 (to NYC District Attorney's Office)	--	$3,000,000 (civil penalty-SEC) $2,000,000 (civil penalty-OFAC)
Ingersoll-Rand Company Ltd. (and two subsidiaries)	10/31/2007		1		$2,500,000	--	$1,950,000 (civil penalty); $2,270,000 (disgorgement)
Baker Hughes Incorporated (and one subsidiary)	04/26/2007	1	1		$11,000,000	3 Years	$10,000,000 (civil penalty); $24,000,000 (disgorgement)
El Paso Corporation	02/07/2007			1	$5,482,363 (forfeiture)	--	$2,250,000 (civil penalty)

Vetco Gray Inc. (and three related subsidiaries)	02/06/2007	3	1		$26,000,000	3 Years	--
Schnitzer Steel Industries, Inc. (and one subsidiary)	10/16/2006	1	1		$7,500,000	3 Years	$7,700,000 (disgorgement)
Statoil, ASA	10/13/2006		1		$10,500,000[32]	3 Years	$10,500,000 (disgorgement)
DPC (Tianjin) Co. Ltd.	05/20/2005	1			$2,000,000	3 Years	$2,800,000 (disgorgement)
Micrus Corporation	03/02/2005			1	$450,000	3 Years	--
Titan Corporation	03/01/2005	1			$13,000,000	3 Years	$15,479,000 (disgorgement); $13,000,000 (civil penalty)[33]
Monsanto Company	01/06/2005		1		$1,000,000	3 Years	$500,000 (civil penalty)
InVision Technologies, Inc.	12/06/2004			1	$800,000	18 Months	$500,000 (civil penalty); $617,703.57 (disgorgement)
TOTALS		**25**	**20**	**11**	**$2,060,502,363**	**--**	**$1,081,484,496.08**

32. Of the $10.5 million criminal penalty imposed upon Statoil, $3 million was deemed to have been satisfied by a prior penalty paid to Norwegian authorities.
33. Titan was ordered to pay a civil penalty of $13,000,000, but this obligation was deemed satisfied by the payment of a criminal fine in the same amount.