G20 Anti-Corruption Working Group

Accountability Report Questionnaire 2014

SUMMARY OF NATIONAL PROGRESS

1. Please provide a high-level summary of the most significant Anti-Corruption measures or initiatives that your country has introduced or implemented since the last progress report. (maximum 1 paragraph).

   The 2013 Progress Report can be accessed at http://en.g20russia.ru/docs/g20_russia/materials.html

In December 2013, the United States adopted its second National Action Plan under the Open Government Partnership initiative; the Plan includes a wide range of commitments. In April 2014, the U.S. Department of Justice (DOJ) announced the formation of a specialized corruption investigative unit dedicated to working alongside prosecutors assigned to the DOJ Kleptocracy Unit. That same month, the United States supported the Arab Forum on Asset Recovery II in Morocco, co-hosted the Ukraine Forum on Asset Recovery in London and announced its intention to post an asset recovery advisor in Ukraine. In March 2014, the U.S. froze more than US$458 million in criminal assets linked to the late Nigerian dictator Sani Abacha and hidden in accounts around the world. In March 2014, the United States underwent a third round compliance review by the Council of Europe's Group of States against Corruption (GRECO) and has begun the Fourth Round review process for the follow-up mechanism for the Inter-American Convention against Corruption (MESICIC).

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

2. Has your country ratified the UNCAC?

   YES X NO ☐

   If no, is there a process underway to ratify the Convention?

3. Since the last progress report, has your country proposed or implemented any changes to its legislation to comply with the UNCAC?

   YES ☐ NO X

   If yes, please provide details.

4. Has your country begun the UNCAC peer review process as a country under review?

YES X NO ☐

If yes, please indicate what stage of review your country has completed and the date.

Completed in 2011

5. If yes, has your country made use of any of the UNCAC peer review voluntary options, or committed to do so (if the review is not already started)?

a. Publication of full report	YES X	NO ☐	COMMITTED TO DO SO ☐
b. Involvement of civil society	YES X	NO ☐	COMMITTED TO DO SO ☐
c. Involvement of business	YES X	NO ☐	COMMITTED TO DO SO ☐
d. Allowing country visits	YES X	NO ☐	COMMITTED TO DO SO ☐

If yes, please provide details (e.g., Web link for published report, how and when civil society / business was engaged during the review process, date of country visit)

The executive summary and the full report are published at:
http://www.unodc.org/unodc/treaties/CAC/country-profile/profiles/USA.html

The U.S. country visit took place on April 5-7, 2011, and, on the second day, included discussions with civil society and the private sector. In addition, private sector representatives and interest groups were provided access to the United States self-assessment and a number provided comments or input during the review process.

6. Has your country taken steps to respond to recommendations identified in its UNCAC peer review report?

YES ☐ YES TO SOME X NO ☐ NOT YET RECEIVED THE REPORT ☐

If yes, please indicate what steps your country has taken / is taking.

With regard to the recommendation concerning the handling of MLA requests, the Department of Justice is currently conducting an analysis of its MLA practices with the aim of identifying and implementing efficiencies and reconfiguring its case tracking system.

With regard to recommendation that the United States continue to review its policies and approach on facilitation payments, in preparation for its follow-up to the third round recommendations of the OECD Working Group on Bribery, the US hosted numerous roundtables on the FCPA that included discussions on the issue of facilitating payments. See pages 6-7 of OECD Phase 3 follow up: http://www.oecd.org.;daf;anti-bribery/UnitedStatesphase3writtenfollowupreportEN.pdf the feedback gained from these meetings also played an important role in informing the US approach to drafting the Resource Guide to the US foreign Corrupt Practices Act, co-authored by DOJ and SEC. http://www.justice.gov/criminal/fraud/fcpa/guide.pdf On pages 25-26, the Guide discusses in detail facilitating payments, including discussing relevant cases, examples of routine governmental action and a sample hypothetical. It also emphasizes the Working Group on Bribery's 2009 Recommendation that signatories encourage companies to prohibit or discourage the use of facilitating payments, which the United States has done and continues to do regularly, and it

underscores that such payments may violate local law and violate other countries' foreign bribery laws. Furthermore, the Guide reminds companies that facilitating payments must still be properly recorded in an issuer's books and records.

7. If you have responded to all or some of the recommendations, have you made those responses publicly available?

YES NO ☐ NOT YETX

8. Has your country taken measures to promote, facilitate and support technical assistance in the prevention of and fight against corruption?

If yes, please provide a short overview indicating in which regions and topics you have provided technical assistance.

The United States has allocated approximately US$1 billion per fiscal year to anticorruption and good governance foreign assistance aimed at promoting transparency, accountability and participation in government institutions and public processes at all jurisdictional levels. The U.S. has posted expert prosecutors and law enforcement officials in more than 35 countries this year to assist in building sound, fair, and transparent justice systems and institutions.

BRIBERY

Note - questions relating to implementation of the G20 *Principles on the Enforcement of the Foreign Bribery Offence* endorsed by Leaders in 2013 and the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* are included in a separate questionnaire. The questions below concern other aspects of bribery not covered by this set of principles.

9. Has your country criminalized the domestic offer or payment of bribes (active bribery)?

YES X NO ☐

10. Has your country criminalized the domestic solicitation or acceptance of bribes (passive bribery)?

YES X NO ☐

11. If no, is your country taking steps to criminalize active and/or passive bribery?

YES ☐ NO ☐

If yes, please provide details.

12. Has your country instituted measures to discourage the solicitation of bribes?

YES X NO ☐

If yes, please provide details.

Through the standards of conduct applicable to all public officials within each of the branches of the US federal government and the periodic training conducted by each branch for its officers and employees, the federal government has established and continually reinforces the standards applicable to the solicitation and acceptance of gifts. Those standards are far more strict than merely prohibiting the solicitation of a bribe. In addition, prosecution of public officials for accepting bribes are publicized each year through the conflict of interest and bribery prosecution summaries compiled by the Office of Government Ethics and published on its website.

13. Does your country provide support for/work with business in resisting solicitation?

YES X NO ☐

If yes, please provide details.

The assistance provided to business to resist foreign official solicitation is described in the Resource Guide to the Foreign Corrupt Practices Act: http://www.justice.gov/criminal/fraud/fcpa/guide.pdf (see particularly pages 5-7). We understand this question, however, relates to solicitation by domestic officials.

The federal government provides a number of avenues for individuals and businesses to report directly or anonymously any perceived violation of law by federal officials, including the solicitation of any payments by those officials if the payments are in any way related to carrying out their official duties. For example, many offices of Inspectors General have created and advertise "hotlines" that take complaints (including those that are anonymous) regarding potential misconduct by officials within their respective Departments and agencies. Further, complementary to the training given to federal officials with regard to the prohibition on solicitation of gifts and payments, (discussed in the answer to 14 below), federal officials often participate in private sector seminars and programs where the issue of gifts to federal officials, both solicited and unsolicited, is discussed.

14. Has your country instituted measures to discourage facilitation payments?

YES X NO ☐

If yes, please provide details.

Under the U.S. federal domestic bribery statute, Title 18, U.S. Code, Section 201, there is no exception for, nor use of the term "facilitation payment." A thing of value offered to a federal official is either an acceptable gift given and accepted within the standards of conduct for each branch--which do not allow the acceptance of what is commonly understood to be a facilitation payment—or, with the showing of the requisite intent, the thing of value runs the risk of being

treated as a bribe under section 201.

The discouragement of such payment comes through training officials with regard to the prohibitions on solicitations and the limits on accepting unsolicited gifts, making those restrictions and limitations widely-known by publicizing the standards for each branch, and providing easily accessible venues for reporting by those who are offered as well as those who are solicited for such payments.

In addition, many US businesses have established ethics and compliance programs. These programs often have written standards that specifically address the giving of gifts to public officials.

ANTI-MONEY LAUNDERING

15. Since the 2013 progress report, has your country taken any measures to implement the revised FATF standards on anti-money laundering?

YES X NO ☐

If yes, please provide details.

The United States is undertaking its national risk assessment, commensurate with the revised FATF standards, and expects to publish the assessment later this year.

16. Since the last progress report, have changes to your country's anti-money laundering legislation been proposed or implemented?

YES X NO ☐

If yes, please provide details.

The White House announced in March 2014, as part of the President's budget, a legislative proposal to identify the "beneficial owner" of all entities organized in the United States. This proposal would require the Internal Revenue Service to collect information on the beneficial owner of any legal entity organized in any state, and would allow law enforcement to access that information to pursue money laundering and terrorist financing investigations.

The U.S. Department of the Treasury continues to develop regulation to clarify and strengthen CDD obligations for U.S. financial institutions, including a requirement to identify beneficial owners of certain customers that are legal entities. This proposed rulemaking was submitted to the Office of Management and Budget on April 11, 2014 for review, which precedes the process for providing notice and an opportunity to comment to the public.

DENIAL OF ENTRY

17. Have any changes to your country's legislation, regulations or powers to deny entry to foreign officials charged with or convicted of corruption offences been proposed/implemented since the last progress report?

YES X NO ☐

If yes, please provide details.

There were minor changes to internal requirements for the administration of the program but no change to legal authorities. (See Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2014 (Div. K, P.L. 113-76))

If no, is such legislation under consideration?

YES NO X
See below.

If yes, please provide details.

While not legislation, the December 2013 Second U.S. Action Plan for OGP commits to reviewing Presidential Proclamation 7750 (visa denial/revocation for corruption) to seek ways to further strengthen its reach and application.

INTERNATIONAL COOPERATION

18. Is your country's administration of mutual legal assistance consistent with the G20 High Level Principles?

YES X NO ☐

If your country's approach is not yet consistent, are you taking steps to implement the Principles?

YES ☐ NO ☐

If yes, please provide details.

19. Are you aware of your country having used one or more of the G20 country Guides to Mutual Legal Assistance?
No

If yes, please provide details.

20. Are you aware of non-G20 members having used the G20 Guide to Mutual Legal Assistance to request mutual assistance from your country?
No

If yes, please provide details.

21. Have any changes to your country's legislation related to international cooperation been proposed since the last progress report?

YES ☐ NO X

If yes, please provide details.

22. Has your country either used UNCAC, or stated that it will allow the use of UNCAC, as the treaty basis for mutual legal assistance (MLA) and/or extradition?

a. Has used as the treaty basis for MLA	YES X	NO ☐
b. Will allow use as the treaty basis for MLA	YES X	NO ☐
c. Has used as the treaty basis for extradition See note below	YES ☐	NO X
d. Will allow use as the treaty basis for extradition See note below	YES ☐	NO X

(Note for c. above) The United States has cited the UNCAC, in conjunction with the bilateral extradition treaty in force between the United States and the requested country, to expand the scope of covered offenses under the existing bilateral extradition treaty. In the absence of a bilateral treaty, the United States does not rely on the UNCAC alone to surrender a person to another government.

(Note for d. above)The UNCAC alone may not be used as a basis for extradition from the United States, although as noted above the UNCAC may be used to expand the scope of offenses covered under the bilateral extradition treaty in force between the United States and the requesting country, assuming the United States and that country are parties to the UNCAC

23. Do domestic authorities in your country cooperate and share information with the integrity offices of international organizations?

a. Cooperate and share information See note below.	x
b. Could cooperate, but has not been asked	☐
c. Cannot cooperate	☐

If you cannot cooperate, please provide details.

We can and do cooperate. For example, the Office of Government Ethics has shared good practices on training and on review of financial disclosures with the integrity offices of international organizations based in Washington and New York, and has in the past invited representatives of those offices to its national conferences.

24. Has your country designated an appropriate authority responsible for mutual legal assistance and law enforcement requests relating to asset recovery (a point of contact)?

YES X NO ☐

If yes, to which organizations:

a. UNODC	X
b. StAR/Interpol Focal Point Initiative	X
c. Camden Asset Recovery Network	X
d. Other(s)	☐

If yes to 'Other(s)', please provide details.

The U.S. central or competent authority for mutual legal assistance requests is the U.S. Department of Justice, Criminal Division, Office of International affairs (OIA). OIA generally executes mutual legal assistance requests related to asset recovery with the U.S. Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section.

For purposes of international cooperation outside more formal channels, the United States has designated points of contact for each organization identified above. Also, foreign law enforcement authorities may contact U.S. attachés, if stationed in their respective countries, to obtain law enforcement assistance, too. As to formal requests for law enforcement cooperation, the United States generally receives and executes such requests based on a bilateral mutual legal assistance treaty, multilateral conventions, or reciprocity, particularly in the case of letters rogatory or letters of request. As noted above, OIA is the U.S. central or competent authority for formal mutual legal assistance requests.

ASSET RECOVERY

25. Does your country have legislation allowing for asset recovery by foreign authorities or is such legislation proposed?

YES X NO ☐

If yes, please provide details.

The United States can support foreign asset recovery proceedings through a number of mechanisms. International cooperation can often be obtained through a number of investigative agency attachés located abroad who are able to liaise with their counterparts for investigative and prosecutorial assistance needs. The United States is a member of the Egmont Group, an association of more than 127 Financial Intelligence Units (FIUs) from around the world that have agreed to share financial intelligence with one another in support of criminal/terrorist investigations. When domestic legislation allows, law enforcement officials from a member state of Egmont can request financial intelligence from another member state through its FIU. The available information may include bank account information, cross- border cash transportation forms, criminal information,

and records that may be on file with a public registry. The United States is also a member of several practitioner networks related to the recovery of the proceeds of crime, including the Camden Asset Recovery Inter-Agency Network, which can facilitate informal information exchange (e.g., asset identification).

Where compulsory measures are required (e.g., production of bank records, service of process, taking testimony, authentication of records, execution of a search and seizure warrant, enforcement of a restraining and/or a confiscation judgment), a mutual legal assistance (MLA) request is necessary. MLA requests may be based on a bilateral mutual legal assistance treaty ("MLAT"), multilateral convention, or reciprocity, particularly in the case of letters rogatory or letters of request. The U.S. central authority for MLA requests is the U.S. Department of Justice, Office of International Affairs. MLA requests are executed pursuant to the terms of the treaty or convention, if invoked, and U.S. domestic law.

Upon receipt of an MLA request, the U.S. Department of Justice, pursuant to Title 18, U.S. Code, Section 3512, may file an application with a U.S. District Court seeking authorization to execute a foreign request for assistance in the investigation and prosecution of criminal offenses. The scope of assistance provided using this measure may include search warrants, warrants for the contents of stored wire and electronic communications and related records, and orders compelling testimony and/or the production of documents (e.g., bank records).

Asset Restraint and Confiscation

Restraint (Freezing or Seizing) based on Foreign Arrest or Charge

Under U.S. law, at the request of prosecutors, courts may order a temporary (renewable) 30-day restraint of assets located in the United States based on evidence of an arrest or charge in a foreign jurisdiction in anticipation of filing a non-conviction based confiscation proceeding against that property based upon the list of foreign offenses that might give rise to confiscation under U.S. law. In pursuing such restraint, the United States may apply to any federal judicial officer (a judge) in the district in which the property is located for an *ex parte* order restraining the property subject to confiscation for not more than 30 days, while awaiting evidence. If proceeding *ex parte*, notice is not provided to interested parties. The 30-day period may be extended if U.S. authorities can show "good cause."

In the application, which is based on information supplied by the foreign jurisdiction through an MLAT or multilateral convention request, U.S. prosecutors must set forth the nature and circumstances of the foreign charges, as well as the basis for the belief that the person arrested or charged has property in the United States that would be subject to confiscation under U.S. law, which would require some evidence that the property in question is likely the traceable proceeds of the foreign offense. For additional detail regarding the information that must be submitted in support of such a request, please reference the attached *U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation.*

Enforcement of Foreign Orders and Judgments

The United States has the ability to enforce foreign restraining orders and confiscation judgments pursuant to an MLA request or pursuant to requests made under certain multilateral conventions, including the 1988 Vienna Convention, the UN Convention against Corruption (UNCAC), and the UN Convention against Transnational Organized Crime (UNTOC). The crime for which the property is to be restrained and ultimately forfeited must be one that would subject the property to

confiscation under U.S. law, had the underlying acts been committed in the United States.

Initiating a Domestic Forfeiture Action

If the foreign jurisdiction does not yet have an order against the asset, the United States, when appropriate, may initiate an action in the United States, either as a criminal confiscation or as a "*non-conviction based*" (civil) confiscation. This ability is based on U.S. confiscation authority. The United States may forfeit properties within the jurisdiction of the United States which constitute, are derived from, or are traceable to, a broad range of domestic and foreign offenses. In addition, U.S. confiscation authority extends to criminal proceeds and instrumentalities located outside the United States that are traceable to a criminal defendant prosecuted in the United States or to criminal conduct occurring in part in the United States. For additional detail regarding the information that must be submitted in support of restraint or confiscation-related requests for assistance, please reference the attached *U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation.*

26. Has your country established a specialist/dedicated unit for the recovery of the proceeds of corruption?
YES X NO ☐

If yes, please provide the name of the specialist unit and contact details.

In 2010, the U.S. Department of Justice launched the Kleptocracy Asset Recovery Initiative and designated a core group of experienced prosecutors to work exclusively on recovering corrupt officials' criminal proceeds for the benefit of people harmed by such conduct. This initiative is led by the Asset Forfeiture and Money Laundering Section, Criminal Division, of the U.S. Department of Justice. This team also relies on experienced financial investigators from the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) and together with the Department of Justices' Office of International Affairs (OIA), Fraud Section, and other components, initiates investigations and helps trace, freeze, and recover the proceeds of corruption that may be located in or affect the United States.

27. Does your country publish or otherwise make publicly available details of amounts frozen, seized, recovered or returned?

YES X NO ☐

If yes, please provide details.

The U.S. Department of Justice maintains aggregate reporting on the amounts seized and confiscated. This reporting, however, does not differentiate between types of underlying conduct for which such funds were seized and/or confiscated (domestic or foreign). The Department also maintains records relating to confiscated funds transferred to a foreign government. Finally, the Department of Justice has typically announced matters involving significant asset freezes and/or seizures, asset confiscation actions, and international confiscated asset transfers via press release.

28. Is your country providing technical assistance to developing countries aimed at helping the recovery and return of proceeds of corruption?

YES X NO ☐

If yes, please provide details.

The United States has placed several asset recovery mentors abroad to work with international counterparts on financial and corruption investigation skills in a pilot project underway since 2009. Many country-specific technical assistance programs funded by the United States enhance partner capacity to pursue asset recovery, by focusing on financial crime investigation, techniques to prosecute corruption cases, international legal cooperation techniques, anti-money laundering, and legislative reforms in the area of restraint, confiscation, and asset management, Other U.S.-supported regional or country-specific programs develop partner capacity on tools that have both a preventative and enforcement value in relationship to asset recovery, such as asset declarations by officials. The United States also published a guide on U.S. Asset Recovery tools and Procedures in May 2012. It is available in English, Arabic, Chinese, French, Ukrainian, Russian, and Spanish. *See* *http://www.state.gov/documents/organization/190690.pd.* The United States also provides financial support to the Stolen Asset Recovery Initiative and the global asset recovery FOCAL Point initiative supported by StAR and Interpol and has close involvement in their activities.

TRANSPARENCY OF LEGAL ENITITIES

29. Does your country have transparency requirements for legal persons, including companies, bodies corporate, foundations and partnerships?

YES ☐ NO X

If yes, please provide details.

Legal persons are established under individual states' laws. The transparency requirements vary state-by-state.

The White House announced earlier this year as part of the President's budget a legislative proposal to help law enforcement investigate the use of shell companies that are set up to engage in illegal activity, including the laundering of illicit proceeds. The President's proposal would require all companies formed in any state to obtain a federal tax employee identification number. This proposal would require the Internal Revenue Service to collect information on the beneficial owner of any legal entity organized in any state, and would allow law enforcement to access that information.

In addition, the proposal would permit the IRS to share beneficial ownership information with law enforcement officials to identify and investigate criminals who form and misuse U.S. corporate structures to launder criminal proceeds and finance terrorism through the international banking system. Such sharing would advance criminal investigations and successful prosecution of money laundering and terrorist financing cases and assist in identifying criminal proceeds and assets.

30. Does your country require that the beneficial ownership and company formation of all legal persons organized for profit be reported by the legal person?

YES ☐ NO X

If yes, to whom is it reported?

31. If yes, is this information available to the public?

YES ☐ NO ☐

32. If this information is not available to the public, is it available to law enforcement?

YES ☐ NO ☐

WHISTLE BLOWER PROTECTION

33. Does your country have legislation to protect whistleblowers:

a. In the public sector YES X NO ☐

b. In the private sector YES X NO ☐

34. Have changes to whistle blower protection legislation been proposed or implemented since the last monitoring report?

YES X NO ☐

If yes, please provide details.

In the public sector:

Since 2012, the U.S. Government has implemented legislative changes to improve whistleblower protections for federal employees, employees of federal contractors and grantees, and active duty military personnel.

The Whistleblower Protection Enhancement Act of 2012 (WPEA), Pub. L. 112-199, was signed by the President on November 27, 2012. The WPEA strengthens whistleblower protections for most employees in the federal government. Specifically, the WPEA:

- Clarifies and expands the scope of protected disclosures for government workers;
- Requires federal agencies to inform employees of their whistleblower rights when issuing any non-disclosure policy, form, or agreement;
- Provides whistleblowers with the ability to seek relief and damages on account of retaliatory investigations;

- Provides the U.S. Office of Special Counsel with greater ability to pursue disciplinary actions against individuals who violate the whistleblower protection laws;
- Allows whistleblowers to seek compensatory damages in a claim for corrective action;
- Extends judicial review of whistleblower claims to the regional courts of appeals under a 2-year pilot program;
- Extends whistleblower and other anti-discrimination protections to employees of the Transportation Security Administration (TSA);
- Extends whistleblower protections for disclosures concerning censorship related to research, analysis, or technical information;
- Requires federal agency heads to advise their employees on how to make a lawful disclosure of information that is required to be kept classified in the interest of national defense or the conduct of foreign affairs;
- Authorizes the Special Counsel to appear as amicus curiae in whistleblower actions in federal court;
- Makes other technical, procedural, and substantive changes to improve the effectiveness of federal employee whistleblower protections.

The National Defense Authorization Act (NDAA) for Fiscal Year 2013, Pub. L. 112-239, was signed by the President on January 2, 2013. Sections 827 and 828 of that Act strengthen whistleblower protections for employees of government contractors and grantees. Specifically, the NDAA:

- Permanently covers all employees of Defense Department contractors, subcontractors or grant recipients;
- Covers all other employees of non-intelligence community contracts or grants in a four-year pilot, pending a GAO study and recommendations on making the rights for these employees permanent;
- Similar to the WPEA protections for federal employees, the NDAA 2013 provisions protect contractors from disclosures of information that the employee reasonably believes are evidence of illegality, gross waste, gross mismanagement, abuse of authority, or a substantial and specific danger to public health or safety;
- Extends protections to whistleblowers harassed or fired by a contractor at the government's direction;
- Provides whistleblowers with a three-year statute of limitations to act on their rights;
- Allows contractor whistleblowers to file retaliation complaints with the relevant Office of Inspector General (OIG), which then must conduct an investigation and make recommendations to the respective agency head;
- If the relevant agency head fails to provide requested relief within 210 days, the whistleblower may go to federal district court for de novo proceedings and have the case decided through a jury trial. The Whistleblower Protection Act legal burdens of proof will determine who wins the lawsuit or prevails in the OIG investigation. Whistleblowers who win are entitled to relief making them "whole," including compensatory damages without caps;
- Mandates that all affected employers must provide all contractor employees with written notice of these new rights and remedies;
- Makes other technical, procedural, and substantive changes to improve the effectiveness of federal contractor and grantee whistleblower protections.

The National Defense Authorization Act (NDAA) for Fiscal Year 2014, Pub. L. 113-66, was signed by the President on December 26, 2013. Section 1714 of that Act strengthens whistleblower

protections for active duty military personnel. Specifically, the NDAA:

- Extends the statute of limitations for filing a whistleblower retaliation claim from 60 days to 1 year;
- Expands the audiences for making a protected disclosure;
- Expands the scope of protected disclosures, consistent with the changes made by the WPEA;
- Requires that investigations of reprisal claims be conducted by an Inspector General that is independent of the command in which the alleged retaliation occurred;
- Makes other technical, procedural, and substantive changes to improve the effectiveness of military whistleblower protections.

In the private sector:

The Senate has passed but the House has taken no action on the Criminal Antitrust Anti-Retaliation Act of 2013 which prohibits an employer from discharging, demoting, suspending, harassing, or in any other manner discriminating against an employee, contractor, subcontractor, or agent of such employer who: (1) provided information to the employer or the federal government concerning a violation of antitrust law or of another criminal law committed in conjunction with a potential violation of antitrust law or in conjunction with an antitrust investigation by the Department of Justice (DOJ); or (2) filed, testified, participated, or otherwise assisted in an investigation relating to such a violation. Excludes from such protection any individual who planned and initiated such a violation or an obstruction to the investigation of such a violation.

35. Since the last progress report, has your country implemented any measures to protect journalists reporting incidents of corruption?

If yes, please provide details

PROCUREMENT

36. Does your country publish online any of the following?

a. Procurement laws and policies including any legislation defining the use of exceptions	YES X	NO ☐
b. Selection and evaluation criteria	YES X	NO ☐
c. Awards of contracts and modifications of contracts	YES X	NO ☐

Please provide details.

The Federal Acquisition Regulation (FAR) is available at www.acquisition.gov.

Solicitations and awards that include source selection and evaluation criteria, and amendments to solicitations and modifications to awards are posted on FedBizOpps.gov at

www.fbo.gov

37. Since the last progress report, have any new initiatives to promote public procurement transparency and integrity been proposed or implemented?

If yes, please provide details.

On July 24, 2012, Phase I of the System for Acquisition Management (SAM), a consolidation of federal government systems used for contracting was established. After July 30, 2012, users who visited the Central Contractor Registry (CCR), Federal Agency Registration (FedReg), Online Representations and Certifications Application (ORCA), or Excluded Parties List System (EPLS) websites are automatically redirected to SAM.gov. SAM combines federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. This consolidation is being done in phases.

Phase 1 - SAM includes CCR, Fedreg, ORCA, and EPLS.
Phase 2 - (completed in 2013-2014): – Electronic Subcontracting Reporting System/FFATA Subaward Reporting System (eSRS/FSRS), Federal Business Opportunities (FedBizOps), Wage Determinations Online(WDOL), and Catalog of Federal Domestic Assistance (CFDA) .
Phase 3 – (migration TBD) transition of the FPDS-NG – Federal Procurement Data System – Next Generation
Phase 4 - (migration TBD) transition of PPIRS/CPARS/FAPIIS – Past Performance Information Retrieval System/Contractor Performance Assessment Reporting System/Federal Awardee Performance and Integrity Information System to be determined. The overarching benefits of SAM include streamlined and integrated processes, elimination of data redundancies, and reduced costs while providing improved capability.

Listed below is a link to the Administration's efforts on Open Government action plan for which we have some transparency and other actions that may be useful in citing for this G20 - http://www.whitehouse.gov/open

38. Are there regulations and procedures for public procurement officials to govern conflicts of interest?

YES X NO ☐

If yes, please provide details.

The general criminal conflict of interest statute applicable to the official acts of any executive branch official is Title 18, U.S. Code, Section 208. This statute would prohibit a procurement official from taking any official action (including recommendations and advice) in a particular matter (including a contract process) which will have a direct and predictable effect on any financial interest of that procurement official or certain members of his/her family or that of entities with which he/she has specified ties. There are also post-

employment conflict of interest restrictions in Title 18, U.S. Code, Section 207 applicable to officers and employees including procurement officials. In addition, there are more specific provisions in the Procurement Integrity Act of 1988, as amended, and set out in Federal Acquisition Regulation 3.1. Safeguards include policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence. FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest also include responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest.

The United States has defined specific conflict of interest situations through statute or regulation. More generally, though, a conflict of interest is a situation where one's personal/family/private interests or activities may conflict or appear to conflict with the impartial conduct of official duties.

In the Federal Government contracting environment, the United States deals with two types:

- "Personal conflicts of interest" (PCIs), as discussed in the FAR, are situations in which a covered employee has a financial interest, personal activity or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. (A de minimis interest that would not "impair the employee's ability to act impartially and in the best interest of the Government" is not covered under this definition.)

- Organizational conflicts of interest (OCIs) are currently defined in the FAR as follows: "because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage." Based on this definition, and on a substantial history of GAO case law, OCIs have been divided into three types:

  - Biased ground rules;
  - Impaired objectivity; and
  - Unequal access to information.

In recent years, a number of trends in acquisition and industry have led to the increased potential for and interest in OCIs, including—

- Industry consolidation;

- Agencies' growing reliance on contractors for services, especially where the contractor is tasked with providing advice to the Government; and

- The use of multiple-award task- and delivery-order contracts, which permit large amounts of work to be awarded among a limited pool of contractors.

The Acquisition Advisory Panel (Service Acquisition Reform Act (SARA) Panel) addressed the issue in its 2007 report, concluding that the FAR does not adequately address ''the range of possible conflicts that can arise in modern Government contracting.'' The SARA Panel observed that the FAR provides no detailed guidance to contracting officers regarding how they should detect and mitigate actual and potential OCIs and called for improved guidance, to possibly include a standard OCI clause or set of clauses.

Shortly thereafter, section 841 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110-147) included a number of requirements related to conflicts of interest. On April 26, 2011, the Federal Acquisition Regulatory Council (FAR Council) Agencies (DoD, GSA, and NASA) issued a proposed rule (FAR Case 2011-001) to implement section 841 of the NDAA for FY 2009 (Pub. L. 110-147). Section 841 of the Duncan Hunter NDAA for FY 2009 required a review of the FAR coverage on OCIs and consideration of how to address the current needs of the acquisition community with regard to Organizational Conflicts of Interest. Public comments were solicited from industry and remain under review.

The FAR Council recently published, on April 2, 2014, a proposed rule, FAR Case 2013-022, Extension of Limitations on Contractor Employee Personal Conflicts of Interest. This rule will implement section 829 of the NDAA for FY 2013 (Pub. L. 112-239). Section 829 requires the Secretary of Defense to review existing guidance on personal conflicts of interest for contractor employees performing acquisition functions closely associated with inherently governmental functions, to determine whether it would be in the best interest of DoD and the taxpayers to extend such guidance to contractor personnel performing certain other functions or contract types. As a matter of policy, any such revisions will apply Government-wide. See **Federal Register (79 FR 18503).**

39. Are companies that have been found to be involved in corrupt contracting practices excluded from future participation in public tenders?

YES X NO ☐

If yes, please provide details.

FAR Subpart 9.4, Debarment, Suspension, and Ineligibility, includes

(1) policies and procedures governing the debarment and suspension of contractors by agencies for the causes given in 9.406-2 and 9.407-2;

(2) the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of "ineligible" in 2.101); and

(3) Sets forth the consequences of this listing at www.SAM.gov.

(b) Although this subpart does cover the listing of ineligible contractors (9.404) and the effect of this listing (9.405(b)), it does not prescribe policies and procedures governing declarations of ineligibility.

Any company or individual that is suspended or debarred is placed on WWW.SAM.GOV as

an excluded entity. This is an electronic system that lists all contractors and individuals prohibited from doing business with the Federal government and it is available to the public. The contractor or individual is also sent a written notice telling them they have been suspended or debarred and giving the reasons why the action was taken. Before any contract is awarded, contracting officers are required to check SAM.GOV twice. If a contractor is listed, they cannot receive new government contracts, including task orders. Agencies may not exercise options under existing contracts, or issue modifications that add work or extend duration. Contractors may not perform subcontracts equal to or greater than US$30,000 and may not act as a representative or agent of other contractors.

40. If yes, is the debarment list of International Financial Institutions taken into account?

YES ☐ NO X

There is no requirement to consult the list before making a procurement-related debarment decision, but nothing would prevent information from this source from being considered in making such decisions.

41. Are the names of companies excluded from future participation in public tenders made publicly available?

YES X NO ☐

If yes, please provide details.

The **System for Award Management** (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and Excluded Parties List System (EPLS). Now a part of the System for Awards Management (SAM), the EPLS is an electronic, web-based system that identifies those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. The EPLS keeps its user community aware of administrative and statutory exclusions across the entire government, and individuals barred from entering the United States. The public can search SAM for this information.

DISCLOSURE BY PUBLIC OFFICIALS

42. Does your country require disclosure by public officials of:

a. Income	YES X	NO ☐
b. Assets	YES X	NO ☐
c. Conflicts of interest	YES X	NO ☐
d. Gifts	YES X	NO ☐
e. Other	YES X	NO ☐

If yes, please provide details.

As required by the Ethics in Government Act (“the Act”), of 1978, as amended, individuals who serve in the most senior positions of all three branches of Government are required to file a personal financial disclosure report upon entry into the senior position, annually and then upon leaving the senior position. Employees in positions requiring public financial disclosure, including the President and Vice President, must also file periodic transaction reports of certain personal financial transactions in stocks, bonds and other securities. These reports are available to the public upon request. Some of these reports are also available online; the reports for the President and Vice President are posted on the White House website.

Who must file:

- Executive branch: President; Vice President; officers and employees of the executive branch (including, but not limited to, those appointed by the President with confirmation of the Senate) whose basic rate of pay meets a certain threshold amount (including Generals and Admirals of the uniformed services); administrative law judges; certain employees in the executive branch occupying positions that are exempt from the competitive service by reason of being of a confidential or policymaking character, regardless of level of pay (generally political appointees at or below Level 15 of the General Schedule pay system); certain officers and employees of the Postal Service and the Postal Rate Commission; the Director of the U.S. Office of Government Ethics; each designated agency ethics official; and certain high-level appointees within the Executive Office of the President (civilian commissioned officers).
- Legislative branch: Members of Congress and certain senior officers and employees within the legislative branch (generally determined by basic level of pay).
- Judicial branch: Chief Justice of the United States; Associate Justices of the Supreme Court; judges of the United States courts of appeals, United States district courts, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior; and judicial officers and employees whose basic rate of pay is at or above a specified threshold amount.
- Candidates for elected office and nominees for appointed office: Candidates for election to the House or Senate; candidates for election to the Offices of President and Vice President; and most nominees to positions in all three branches that require nomination by the President and confirmation by the Senate (though in some instances a public report is not required for part-time positions).

What must be reported (in general):

- INCOME – sources and amounts of investment and earned income above a certain threshold
- ASSETS – certain interests held for the production of income, above a particular threshold
- GIFTS – sources and types of gifts over a certain amount
- TRAVEL REMIBURSEMENTS – travel reimbursement over a certain amount
- LIABILITIES – certain liabilities over a threshold amount
- TRANSACTIONS – for incumbent and termination filers, transactions (ex, purchase, sale, exchange) above a certain threshold of specific types of real property or securities

- POSITIONS – certain positions held outside the U.S. Government
- AGREEMENTS – any agreement or arrangement with respect to future employment; a leave of absence during the period of the reporting individual's government service; continuation of payments by a former employer other than the U.S. Government; and continuing participation in an employee welfare or benefit plan maintained by a former employer.
- COMPENSATION – for first-time filers, recent sources of compensation for personal services (major clients) in excess of a certain amount.

Filers must include the information described above for spouses and dependent children for the following: investment income; gifts given and reimbursements received due to the relationship to the filer; and transactions. The report must also show the sources, but not amounts, of spousal earned income.

The Act also provides authority for the establishment of a confidential financial disclosure system for those not covered by the public filing provisions of the Act. The executive branch has issued regulations under this authority, which require individuals in positions below the senior level who occupy positions that are at a higher risk of conflicts of interest to file confidential reports. Confidential disclosure filers are required to file upon entering into the position and then annually.

It is important to note that the purposes for collecting financial disclosure reports and for making reports public at the federal level in the United States are to detect and prevent conflicts of interest and to support public confidence in government, not to detect illicit enrichment. Therefore, exact amounts for items such as investment income and certain asset valuations are not required. Instead, filers indicate a category of value for these items.

Where the reports are filed:

In general, reports are filed with the agency, court, or legislative entity that employs the individual or with the agency, court, or legislative entity with which the individual will serve (e.g. in the case of candidates for the House and Senate). Candidates for President and Vice President file with the Federal Election Commission. Copies of reports filed by executive branch personnel who hold positions requiring Presidential appointment and Senate confirmation are transmitted from the employing agency to the United States Office of Government Ethics (OGE). All reports of senior officials of all three branches and of candidates have been publically available, upon request, since 1979. Some of these reports are also available online.

PUBLIC OFFICIALS' IMMUNITIES

43. Does your country provide immunities from prosecution to individuals holding public offices for corruption related offences?

a. All public office holders — YES ☐ NO X

See note below.

b. Certain public office holders — YES ☐ NO ☐

c. No immunities available to public office holders — YES ☐ NO ☐

d. While in office — YES ☐ NO ☐

e. Permanently YES ☐ NO ☐

If yes, which public office holders are immune and if immunity is limited, please explain.

In the United States, individuals holding public office do not receive any form of immunity as a result of their official position. In fact, public officials are given no special favor and are treated like ordinary citizens. There is, however, a limited constitutional privilege that protects Members of Congress and their staff from being prosecuted "for any Speech or Debate in either House . . . ." *See* U.S. CONST. art. I, § 6, cl. 1. This constitutional privilege also precludes "any Speech or Debate in either House" from being used as evidence in a criminal prosecution of a Member of Congress or his or her staff. The "central role" of the Clause is to "prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary," but it "also prevents disruption of Congressional operations by preventing distractions or interference with ongoing activity." *In re Grand Jury*, 821 F.2d 946, 952 (3d Cir. 1987) (internal quotation marks omitted). The Clause is limited and does not shield Members of Congress or their staff from prosecutions of corruption or prosecutions generally. Indeed, the Clause is not a blanket protection shielding members of the legislative branch from any criminal investigation: "no more than the statutes we apply, was its purpose to make Members of Congress super-citizens, immune from criminal responsibility." *United States v. Brewster*, 408 U.S 501, 516 (1972) (reaffirming a previous holding that members of Congress may be prosecuted for violations of the criminal laws).

EDUCATIONAL INITIATIVES

44. Is your country involved in any of the following international anti-corruption educational initiatives?

International Anti-Corruption Academy	YES X	NO ☐
UNODC Anti-Corruption Academic Initiative	YES ☐	NO X
Other international anti-corruption educational initiative(s)	YES X	NO ☐

If yes, please provide details.

The United States has either established or provided support to the development and operations of regional educational institutions that incorporate anticorruption in their curricula. These include the International Law Enforcement Academies, www.state.gov/j/inl/c/crime/ilea/index.htm, the CEELI Institute in Prague and the International Anti-Corruption Academy. The United States provides technical assistance and other support in numerous countries to educational institutions such as judicial training academies or police academies, including with respect to issues of ethics and anticorruption.

45. Does your country provide anti-corruption educational/training programs for officials, including public office holders?

YES X NO ☐

If yes, please provide details.

Education and training programs on the standards of conduct of the executive and judicial branches and of the House of Representatives and Senate are carried out generally by the ethics offices, committees or entities within those branches or entities. Such training will include references to the application of the criminal conflict of interest statutes as well. In addition, individuals in certain types of positions, as a part of both initial and ongoing specialized training for that position, may receive more specific training on handling the risks inherent to those positions.

46. Does your country or business associations in your country promote anti-corruption training for the private sector?

YES X NO ☐

If yes, please provide details.

U.S. officials participate in workshops, seminars and conferences hosted by the private sector including business associations where they are asked to speak about U.S. anti-corruption efforts and their application to the private sector. Many U.S. businesses also have ethics and compliance programs and training for the officers and employees of those businesses is conducted through those programs.

47. Has your country disseminated G20 products and documents developed by the group with relevant domestic authorities?

YES X NO ☐

If yes, please provide details.

Final G20 product and documents are distributed to all federal interested partners via e-mail as well as distributed at interagency policy coordination meetings.

JUDICIARY

48. Has your country taken any measures to promote and disseminate the Bangalore Principles for Judicial Integrity?

If yes, please provide details

Yes. The principles of judicial independence, impartiality, integrity, propriety, equality, professional competence and diligence are fundamental principles in the United States judiciary. Judicial

independence, more than just a concept or an ideal, is a constitutionally protected principle.

Within the federal judicial branch, a statutory mechanism exists by which each federal judicial circuit, or regional grouping, may designate a committee, a Judicial Conduct Board, to consider allegations that a trial or appellate judge of that circuit is disabled or has engaged in conduct prejudicial to the effective and expeditious administration of the courts, which would include corrupt behavior. Such committees may temporarily prevent new cases from being assigned to a judge under inquiry, and may issue a public censure, but cannot remove a judge from office or Initiate a prosecution.

Federal judges also maintain an international dialogue with judges and judiciary officials in other countries. The United States Judicial Conference Committee on International Judicial Relations Regularly supports international rule of law programs at which the Bangalore Principles for Judicial Integrity are the subject of dialogue

49. Has your country taken other measures to promote the accountability and independence of the Judiciary?

    If yes, please provide details

The framers of the United States Constitution established an independent Judiciary as a necessary component of protecting the freedom and rights of the people, and for protecting the rule of law. Judicial independence includes two important concepts: (1) the freedom of an individual judge to decide cases without fear of retribution; and (2) the institutional ability of the judicial branch of government to administer its own affairs.

Article III of the United States Constitution provides a significant basis for individual judicial independence by providing Article III judges with lifetime tenure and salary protection. With regard to the administration of the Judiciary, the Judiciary is largely responsible for its own court procedures and administration.

Judicial accountability encompasses a number of formal and informal constraints, requirements, and procedures that, taken together, ensure the political branches and the public that the judicial branch is properly performing its constitutionally defined role in the United States government. The standards and guidelines include: (1) a code of ethics along with advisory opinions that provide ethical guidance to judges; (2) rules governing judicial conduct and disability proceedings; (3) restrictions on the receipt of outside earned income and gifts; (4) restrictions on outside activity; (5) financial disclosure requirements; (6) disclosure of judges' attendance at education seminars sponsored by private providers; and (7) conflict of interest screening procedures and software.

Code of Ethics and Advisory Opinions

The Code of Conduct for United States Judges was initially adopted by the Judicial Conference in 1973. The five Canons of the Code of Conduct provide guidance regarding appropriate conduct, but must be construed so as not to impinge upon the independence of judges in making decisions. The Canons address: (1) upholding the integrity and independence of the judiciary; (2) avoiding impropriety and the appearance of impropriety; (3) performing the duties of office fairly, impartially and diligently; (4) allowable extrajudicial activities; and (5) refraining from political activity. The Judicial Conference has also established a committee of judges that provides advice and recommendations to judge on ethical issues.

Rules for Judicial Conduct and Judicial Disability Proceedings

The Rules for Judicial Conduct and Judicial Disability Proceedings establish standards and procedures for addressing complaints of misconduct that are filed against federal judges. The rules govern the process for filing, investigating, and disposing of complaints and keep disciplinary authority within the judiciary itself, and mostly at the local circuit level.

Restrictions on Outside Compensation and Gifts

Both the Ethics Reform Act of 1989 and Judicial Conference regulations place restrictions on federal judges' receipt of "outside earned income" and certain gifts. Judges are prohibited from receiving honoraria. Judges are prohibited from receiving compensation for practicing a profession involving a fiduciary relationship. Judges are also prohibited from soliciting a gift from anyone "who is seeking official action from or doing business with the court ... served by the [judge] ... or from any other person whose interests may be substantially affected by the performance or nonperformance of the [judge's] official duties."

Financial Disclosure

Under the Ethics in Government Act of 1978, as amended, most high level government officials and employees, including the President, Vice-President, members of Congress, and judges, are required to file annually comprehensive financial disclosure reports. Financial disclosure reports are matters of public record.

Privately-Funded Educational Program Attendance Disclosure

The Judicial Conference adopted a policy in 2006 that provides for timely disclosure, both by educational program providers and by judges who attend the programs. Judges may not accept reimbursement of expenses for attending privately funded educational programs unless the program provider has made the required disclosures and the federal judges file a report with their respective clerk of court within 30 days of the conclusion of the educational program. The judges' reports must be made available to the public.

Financial Conflicts Screening

A judge is required to recuse from a case when a judge "knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding ... ." To facilitate the timely and comprehensive screening by judges of financial conflicts of interest, the Judicial Conference in 2006 adopted a Mandatory Conflict Screening Policy that requires judges and courts to use automated software to screen for financial conflicts of interest.

SECTOR-SPECIFIC TRANSPARENCY INITIATIVES

50. Is your country supporting or implementing any sector-specific initiatives?

Extractive Industries Transparency Initiative (EITI)

Implementing	YES X	NO ☐
Support	YES X	NO ☐
Construction Sector Transparency Initiative (CoST)		
Implementing	YES ☐	NO X
Support	YES X	NO ☐
Other (specify below)		
Implementing	YES X	NO ☐
Support	YES ☐	NO ☐

Please provide details on other sectoral initiatives supported by your country, or domestic measures taken in relation to specific sectors.

The U.S. application for candidacy in the Extractive Industries Transparency Initiative (EITI) was approved by the EITI Board at its March 18-19, 2014 meeting in Oslo, Norway. The U.S. is the first G8 country to achieve candidate status and become an EITI implementing country. With approval of its candidacy application, the U.S. will now move to produce its first USEITI Report within the next two years and complete the remaining requirements to become an EITI Compliant Country.

In September 2011, President Obama announced the U.S. commitment to domestic implementation of EITI, a key element of the President's Open Government Partnership commitments, and appointed the Secretary of the Interior as the senior U.S. official to lead USEITI implementation. In December 2013, the USEITI Multi-Stakeholder Group, which is comprised of government, industry and civil society representatives, approved the U.S. Candidacy Application.

In November 2011, the United States became a signatory to the **International Aid Transparency Initiative (IATI)** (IATI), which is a voluntary, multi-stakeholder initiative that includes donors, partner countries, and civil society organizations whose aim is to make information about foreign aid spending easier to access, use, and understand.

Late in 2012, the U.S. Government published its **IATI implementation schedule** and first IATI-compliant data files, which included a timetable and frequency of data publication and an overview of the types of data to be published. USAID's IATI data is updated quarterly and is accessible on the **Foreign Assistance Dashboard**, which is the repository for all USG IATI data.

Through the Foreign Assistance Dashboard (FAD), the U.S. will collect, format and publish data to meet its commitments under IATI. Currently, the FAD includes data for the Department of State, US Agency for International Development (USAID), Millennium challenge Corporation (MCC), the Department of Defense, Department of the Treasury, Peace Corps, Inter-American Foundation and U.S. African Development Foundation, registered as the United States in the IATI registry.

51. Does your government have integrity pacts with the business sector?

YES ☐ NO X

If yes, please provide details.

FISCAL AND BUDGET TRANSPARENCY

52. Has your country taken steps to implement the IMF Good Practices in Fiscal Transparency?

YES X NO ☐

If yes, please provide details.

53. Has your country taken steps to implement the OECD Best Practices on Budget Transparency?

YES X NO ☐

If yes, please provide details.

Thank your for your time in completing this questionnaire.