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FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in
central governments (top executive functions) and
law enforcement agencies

EVALUATION REPORT

UNITED STATES OF AMERICA



Adopted by GRECO
at its 95th Plenary Meeting
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Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



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I. EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the framework in place in the United States to prevent corruption amongst persons with top executive functions (PTEF) and law enforcement officials (LEO). It aims at supporting the country in strengthening transparency, integrity, and accountability in public life, in line with GRECO standards.

2. The first ever United States Strategy on Countering Corruption was issued in December 2021. It outlines a whole-of-government approach to elevating the fight against corruption. It places particular emphasis on better understanding and responding to the threat's transnational dimensions, including by taking additional steps to reduce the ability of corrupt actors to use the U.S. and international financial systems to hide assets and launder the proceeds of crime, including corrupt acts.

3. GRECO evaluated corruption prevention in public administration in its Second Evaluation Round. The present report focusses on preventing corruption and promoting integrity in central governments, in particular among persons in top executive functions (PTEFs), encompassing in the case of the USA the PTEFs in the Federal Executive Branch. The United States is implementing comprehensive legislation to promote integrity and prevent corruption in the Executive Branch, covering nearly all persons in top executive functions, including members of the Cabinet, political appointees and other senior civil servants. Relevant criminal and civil anti-bribery statutes, as well as regulations containing the rules of ethical conduct provide guidance for avoiding situations of conflict of interest when serving in government, for example by screening personal financial interests when taking up office, during public service, and upon termination of government functions. The compliance with these standards is ensured by a robust institutional setting, including the Office of Government Ethics, a statutory body, Designated Agency Ethics Officials, and Offices of Inspectors General.

4. The President and the Vice-President are exempt from many of the statutory and regulatory provisions, except for anti-bribery criminal statutes. The White House has no Inspector General. The White House Counsel acts as the Designated Ethics Official for this office. Impeachment for treason, bribery or other high crimes and misdemeanours is the only action that can be taken against the President-in-office for violations of ethics and integrity rules. Although not legally subject to conflict of interest laws, as a matter of policy, presidents have been advised to act as though these laws apply to them. Nonetheless, to set an example of integrity and transparency, the President and the Vice President should resign from any external positions and to divest potentially conflicting assets prior to assuming office. Senior presidential appointees are bound by ethics' pledges under the Presidential Executive Orders, setting out a solid set of rules and restrictions in this regard. Revoking Executive Orders binding presidential appointees to ethics' pledges, which has happened in the past, has potential to damage public trust in the Executive and should therefore be avoided. In addition, the President has the authority to appoint a certain number of White House officials without regard to any other legislation, including on anti-nepotism, which may raise concerns.

5. In 2021, the United States adopted its first National Anti-Corruption Strategy, focussing predominantly on combating transnational corruption, including vulnerabilities in the United States and international financial systems for corrupt actors to launder their assets and obscure the proceeds of crime. The United States also released the Fifth U.S. Open

Government National Action Plan in December 2022, which aims, *inter alia*, at improving access to Government data, research and information, and at countering corruption and ensuring government integrity and accountability to the public. However, bearing in mind the focus of this report, adopting and publishing an overarching anti-corruption strategy for the Executive Branch of the U.S. would further streamline the principles of integrity and transparency among persons entrusted with top executive functions. Lobbying plays a substantial role in the decision-making process in the Executive Branch and is well regulated as such. However, contacts of persons in top executive functions with lobbyists are not subject to routine publication, which merits review. The Freedom of Information Act establishes the right to access public information and compliance with this law is overseen by a dedicated Office of Information Policy. Nonetheless, certain difficulties in its practical implementation need to be examined and remedied. Finally, even though the existing post-employment restrictions apply to a broad range of persons in top executive functions, their scope is limited to prohibiting contacts with the former agency only and does not cover contacts with other agencies, or private businesses. The current situation warrants a thorough examination of risks relating to revolving doors in the Executive to further strengthen the system, as necessary.

6. As regards law enforcement, this report focuses on the Federal Bureau of Investigation (FBI). As the primary investigative arm of the federal government, the FBI is both the most recognisable of the nation's many law enforcement agencies and the agency with the broadest investigative authority.

7. The FBI has robust and mature policies, tools, and processes to mitigate against the potential risk of corruption by FBI personnel and to promote its professionalism and integrity. It has dedicated considerable resources and investment towards the effective implementation of an anti-corruption framework and anti-corruption practices have culturally embedded across the organisation. The development of a dedicated FBI anti-corruption strategy would be beneficial in terms of signposting the priorities for action in this domain. Strong support among senior leadership for such strategy can help ensure cooperation and information sharing through an institutionalised mechanism of coordination.

8. The FBI has a sound hiring policy and procedure. Recruitment is well-regulated, and so are promotions, with job analysis and interview panels carrying out the relevant procedures through standardised methodologies built upon measurable indicators and always requiring justification of the relevant decisions. Vetting and (continuous) re-vetting processes are strict and comprehensive. There is rotation in higher posts and a substantial degree of mobility for career advancement purposes. Additional steps can be taken to strengthen the representation of women and other underrepresented groups at all levels in the FBI, with due observance of merit-based processes. FBI employees are subject to a wide range of ethical standards. Top management personnel of the FBI, as well as employees who have a significant degree of discretion relating to oversight, management, or procurement, must submit asset declarations (only the disclosures of top management are public). Extensive training opportunities are in place and are mandatory in respect of ethics. A well-developed system of institutionalised advice is available.

9. Movements from the FBI to the private sector are no rare occurrence. Given the sensitivity of work conducted by FBI employees, particularly special agents and those who hold a senior management position in the organisation, clear organisational and state security

vulnerabilities arise where FBI employees move to the private sector and indeed potentially, in time, have the opportunity to return to the organisation. It is important that the FBI has a clear empirical understanding of risks presenting in this context, as well as efficient processes in place to mitigate against same. Moreover, while there is an extensive set of post-employment restrictions, it does not appear that this area is being monitored to assess that the rules are effectively applied.

10. Semi-annual reports issued by the Office of the Inspector General of the Department of Justice contain some statistics of fraud, corruption, and ethics violations in the FBI; however, greater transparency should be provided in this area. Finally, more needs to be done regarding the adequacy of procedural rights and protections available to FBI whistleblowers from retaliation. Recent whistleblower cases have pointed to a practice of security clearance revocations. Currently, FBI whistleblowers are not offered the anti-retaliation protections given to most federal employees under the Whistleblower Protection Act; the protection afforded to FBI agents is narrower in scope. Moreover, all FBI whistleblower complaints are investigated within the Department of Justice, with no opportunity for independent judicial review. It is incumbent on the FBI to foster an open organisational culture where employees are encouraged to report wrongdoing. A system of oversight could be put in place to monitor the effective implementation of the applicable legislation.

II. INTRODUCTION AND METHODOLOGY

11. The United States joined GRECO in September 2000 and has been evaluated in the framework of GRECO's First (in June 2002), Second (in December 2005), Third (in May 2011) and Fourth (in May 2016) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website (www.coe.int/greco). This Fifth Evaluation Round was launched on 1 January 2017.¹

12. Consistent with the topic of the Fifth Evaluation Round, the objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of the United States to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of the United States, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, the United States shall report back on the action taken in response to GRECO's recommendations.

13. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Washington DC from 8 May to 12 May 2023, and reference was made to the responses by the United States to the Evaluation Questionnaire, as well as other information received, including from civil society. The GET was composed of Ms Elena KONCEVICIUTE, Senior Anti-Corruption Adviser of the European Union Anti-Corruption Initiative, former International Relations Officer of the Special Investigations Service (Lithuania), Mr Aidan MCCARTHY, D/Superintendent, Anti-Corruption Unit, An Garda Síochána (Ireland), Mr David MEYER Head of International Engagement and Rule of Law, International, Rights and Constitutional Policy Directorate, Ministry of Justice (United Kingdom), and Ms Silvia SPÄTH, Detective Chief Inspector, Permanent Representation of the Federal Republic of Germany to the European Union (Germany). The GET was supported by Ms Hanne JUNCHER (Executive Secretary of GRECO), Ms Laura SANZ-LEVIA (Deputy Executive Secretary of GRECO), and Mr David DOLIDZE from GRECO's Secretariat.

14. The GET interviewed representatives of the Office of Government Ethics and the Department of Justice's Federal Bureau of Investigation (FBI), Public Integrity Section of the Criminal Division, Office of the Inspector General, Office of Legal Counsel and Office of Information Policy, as well as the Government Accountability Office and the Department of State (Bureau of International Narcotics and Law Enforcement Affairs). The GET also met, separately from representatives of the U.S. Government, with representatives of civil society (Citizens for Responsibility and Ethics, Transparency International), media (Associated Press, Wall Street Journal, ProPublica, The Washington Post, Politico, Reuters) and academics (American University, Washington University in St. Louis).

¹ More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's [website](http://www.coe.int/greco).

III. CONTEXT

15. The United States has been a member of GRECO since 2000. Since then, it has been subject to four evaluation rounds focusing on different topics linked to the prevention of and fight against corruption². In summary, 100% of recommendations were implemented in the First Evaluation Round, 87% in the Second Evaluation Round, 44% in the Third Evaluation Round, and 75% in the Fourth Evaluation Round.

16. The United States traditionally scores high in perception surveys on the fight against corruption. According to the Corruption Perceptions Index published by Transparency International (CPI) in 2022, the United States occupied the 24th rank out of 180 countries and had a score of 69 (out of a total score of 100 – where 0 corresponds to countries where there is a high level of perception that corruption occurs and 100 to countries with a low level of such perception). This year, the ranking for the United States showed an increase of three points as compared to the previous year (i.e., from 27 in 2021 to 24 in 2022).

17. A [recent Gallup poll](#) (January 2023) of 1,011 adults found that 21% of respondents viewed the government/poor leadership as the “most important problem facing this country today,” followed by inflation (15%), immigration (11%) and the economy (10%). Surveys carried out in recent years also display certain mistrust with the FBI (for details see paragraph 159). Perceptions sharply vary depending on generation and political views.

18. The first ever [United States Strategy on Countering Corruption](#) was issued in December 2021. It outlines a whole-of-government approach to elevating the fight against corruption and places particular emphasis on better understanding and responding to the threat’s transnational dimensions, including by taking additional steps to reduce the ability of corrupt actors to use the United States and international financial systems to hide assets and launder the proceeds of crime, including corrupt acts. The Strategy consists of five interconnected pillars of action against corruption (see more in paragraph 39 below) and its implementation is led by the White House National Security Council.

19. The United States is the only member State subject to all four international anti-corruption peer-review mechanisms and participates in other major review processes. The U.S. anti-corruption framework has been reviewed on several occasions under the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (UNCAC IRM), the Organisation for Economic Cooperation and Development’s Working Group on Bribery in International Business Transactions (OECD WGB) on the implementation of the OECD Anti-Bribery Convention, and the Organization of American States Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (OAS MESICIC). Similarly, the anti-money-laundering and counter-terrorist financing framework of the United States has been assessed by the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG).

² Evaluation round I: Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption / Extent and scope of immunities; Evaluation round II: Identification, seizure and confiscation of corruption proceeds / Public administration and corruption / Prevention of legal persons being used as shields for corruption / Tax and financial legislation to counter corruption / Links between corruption, organised crime and money laundering; Evaluation round III: Criminalisation of corruption / Transparency of party funding; Evaluation round IV: Prevention of corruption in respect of members of parliament, judges and prosecutors.

IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)

System of government and top executive functions

20. The United States is a constitutional federal republic, comprising a national (federal) government and various State and local governments. The U.S. Constitution establishes the federal government and assigns limited powers to three separate branches of government: executive, judicial, and legislative, with a system of checks and balances among the various branches through shared responsibilities and oversight.

The President

21. The President of the United States is head of the Executive Branch and is responsible for implementing and enforcing the laws adopted by the Legislative Branch (Congress) and, to that end, appoints the heads of the federal agencies, including the Cabinet (see paragraph 25 below). The Executive Branch includes the President, Vice President, the Cabinet, executive departments, independent agencies, and other boards, commissions and committees.

22. The U.S. Constitution assigns the President certain powers over the military, and powers to execute the laws of the land and to conduct foreign policy. The Executive Branch conducts diplomacy with other nations, and the President has the power to negotiate and sign treaties, to which the Senate must consent before the treaties are ratified. The President can issue executive orders, which direct executive offices, or clarify and facilitate the implementation of existing laws. The President also has the power to extend pardons and clemencies for federal crimes. The Executive Branch is responsible for prosecuting crimes, including those involving the legislature or judiciary. The President has the power either to sign legislation into law or to veto bills enacted by Congress, although Congress may override a veto with a two-thirds majority of both houses making up the Congress (the Senate and the House of Representatives).

23. GRECO has agreed that a head of state would be covered in the Fifth Evaluation Round under “central governments (top executive functions)” when s/he actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions³. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decision on government expenditure, taking decisions on the appointment of individuals to top executive functions. In view of the broad executive functions of the President of the United States, it follows that this Office is the highest authority in the U.S. Executive Branch and will therefore be considered as exercising top executive functions within the meaning of this report. The GET regrets that, despite repeated requests to meet with the White House Administration, this meeting did not take place during the on-site visit.

The Government

24. The executive power of the United States is mainly vested in the President. Cabinet members, a body made up of the heads of the executive departments, advise and assist the

³ Decision taken at the 78th Plenary Meeting of GRECO held in Strasbourg on 4-8 December 2017.

President in carrying out the day-to-day administration of the federal government. Cabinet members are generally appointed by the President and confirmed by the United States Senate (the Senate). As of November 2022, the Cabinet includes 12 women and 12 men. This ratio is in line with [Recommendation Rec\(2003\)3 of the Committee of Ministers of the Council of Europe to members states on balanced participation of women and men in political and public decision making, and constitutes good practice.](#)

25. In addition to running major federal agencies, Cabinet members who are the heads of departments have a designated place in the Presidential line of succession: after the Vice President, Speaker of the United States House of Representatives (U.S. House or House), and Senate President *pro tempore*, the line of succession continues with the heads of departments, in the order of their creation. In order of succession to the President, the Cabinet members include:

- Vice President
- Secretary of State
- Secretary of the Treasury
- Secretary of Defence
- Attorney General
- Secretary of the Interior
- Secretary of Agriculture
- Secretary of Commerce
- Secretary of Labour
- Secretary of Health and Human Services
- Secretary of Housing and Urban Development
- Secretary of Transportation
- Secretary of Energy
- Secretary of Education
- Secretary of Veterans Affairs
- Secretary of Homeland Security

26. At the time of the evaluation, the following officials were designated by the President to be members of the Cabinet:

- Administrator of the Environmental Protection Agency
- Director of National Intelligence
- United States Trade Representative
- United States Ambassador to the United Nations
- Chair of the Council of Economic Advisors
- Administrator of the Small Business Association
- Director of the Office of Management and Budget
- White House Chief of Staff
- Director of the Office of Science and Technology Policy

Other persons exercising top executive functions

27. In addition to the Cabinet members, there are five levels of political appointees (i.e. officials not employed as career civil servants), as follows:

- Presidential Appointments Requiring Senate Confirmation (PAS). These positions require a congressional hearing and a confirmation vote in the Senate. They include heads of most federal agencies, including Cabinet secretaries, agency leadership at the Deputy Secretary, Under Secretary, and Assistant Secretary levels, heads of most independent agencies, ambassadors, and U.S. Attorneys. Some positions within the Executive Office of the President (e.g. the Director of the Office of Management and Budget etc.) also fall in this category.
- Presidential Appointments Not Requiring Senate Confirmation (PA): This category includes hundreds positions not requiring a Senate hearing or vote, and comprises several hundred officials across federal agencies. For instance, most senior White House aides and advisors, as well as their deputies and key assistants fall into this category.
- Non-Career Senior Executive Service (SES): Members of the SES serve in key positions just below the top presidential appointees. They form a corps of executives charged with running the federal government, these positions include senior management officials within most federal agencies and serve as the major link between top political appointees and the rest of the federal workforce. While the SES largely consists of career officials, up to 10% of SES officials may be political appointees. Non career-senior executive service appointments are made in close coordination between the Presidential Personnel Office and agency leadership.
- Confidential or Policymaking Positions (Schedule C (SC)): These positions consist of several thousand political appointees in policymaking positions, or positions requiring close and confidential working relationship with a principal or other appointed official. Schedule C positions are designated by the Office of Personnel Management and filled in close coordination between the Presidential Personnel Office and agency leadership.

28. In view of the GET, for the purposes of this report, the scope of officials considered as PTEFs includes Cabinet members (PASs), presidential appointees (PAs) and most of the senior non-politically appointed civil servants (SES), depending on their tasks and powers and insofar as these persons have a role in decision/policy making. It has been self-evident from the onset of the evaluation that, along with the President and the Vice-President, senior officials in the Administration of the President (the White House Administration), would also be covered by the report.

29. As to appointees under Schedule C, the GET observes that while not all such appointees can be seen as PTEFs, some of them may be entrusted with such functions, as determined by their respective pay grade. In this regard, the GET considers that greater clarity as to which Schedule C appointees perform top executive functions would be beneficial for legitimate public interest. Finally, the GET does not consider Special Government Employees⁴, as well as members of Federal Advisory Committees⁵ established by the Congress or the President, as PTEFs for the purposes of this report.

⁴ Individuals engaged in a federal function and appointed to a full-time or special Government employee (SGE) position. This may include experts and consultants appointed by Federal Agencies, as well as other individuals to provide services to the Government. SGEs are federal employees that serve for 130 days or less in a 365-day period and are subject to the ethics laws and regulations, albeit with specific requirements for financial disclosure (for example, most SGEs are not required to publicly file public financial disclosure reports).

⁵ Federal advisory committees (FACs) established by Congress, the President, or an agency head to render independent advice or provide the federal government with policy recommendations, as per the Federal

Vetting and publicity

30. To be appointed in federal positions, every candidate must undergo a background investigation to ensure that they are “*reliable, trustworthy, of good conduct and character, and loyal to the United States.*” Background investigations are conducted by the Office of Personnel Management (OPM) and cover information about applicant's employment, criminal and personal history to investigate behavioural reliability, integrity, and personal adjustment. Background evaluations also aim to determine any historical facts that would interfere with an applicant's ability to perform the job, including violations of statutes, regulations, or laws (e.g. applicant's employment history, illegal drug use, criminal records etc.). Background information may sometimes be also collected from other sources, familiar with the applicant (former employers and co-workers, friends, neighbours etc.).

31. Regarding the appointment of PTEFs, depending on their specific post of appointment, candidates may be asked to submit a Questionnaire for Public Trust Positions (SF-85), or the Questionnaire for National Security Positions (SF-86, for positions carrying national security implications). Both forms collect information to support the investigations and continuous evaluations of public trust or national security positions, and one is required for PTEF as well as military personnel, government contractors, and career government employees in order to receive a requisite security clearance. The form includes information on colleges or universities attended over the past three years, last ten years' employment account, ties to foreign nationals and governments, overseas travel, list of past residences, etc.

32. Candidates considered for appointment by a Presidential Administration for Executive Branch positions, including Cabinet officials, who are confirmed by the Senate, are asked to complete several forms, including filing a public financial disclosure report with their home agency, the White House and the Office of Government Ethics (hereafter “OGE”). Vetting of potential nominees for PA positions is conducted by the White House, in coordination with the relevant agency. In practice, ethics officials at prospective employing agency work directly with the nominee to complete the financial disclosure form, conduct a conflicts analysis, and draft an ethics agreement. Once the President announces the individual's formal nomination, the nominee completes and submits his/her report to the employing agency, which reviews and certifies the report. A certified copy of the financial disclosure report, provided there are no unresolved conflicts, is then sent to the OGE and once certified by the latter, is transmitted to the appropriate Senate committee. Non-career and career SES also file public financial disclosures with their home agencies. These reports are reviewed and certified by the Designated Agency Ethics Official (DAEO) of the home agency. As these officials do not require Senate confirmation or Presidential appointment, their reports are not required to be reviewed by OGE or the White House.

33. Once appointed, PTEFs who are required to file public financial disclosure reports must continuously disclose the purchase, sale, or exchange of securities (such as stocks and bonds) if the amount of the transaction exceeds USD 1 000⁶ within 30 days of notification of the transaction, but no later than 45 days after the transaction occurs. In addition, PTEFs required to file public financial disclosure reports must include in their annual disclosure reports information regarding assets, income, gifts, reimbursements, and outside positions for as long as they remain in their position. Finally, they must also file a report upon leaving their position

Advisory Committee Act and its Implementing Regulations. FAC members may be full-time, regular government employees; SGEs; or representatives.

⁶ As per 5 U.S.C. § 13104(a)(5)(B).

covering the same information, including any agreements or arrangements for future employment. PTEFs who enter into negotiations or agreements for future employment must disclose those negotiations or agreements within three days of commencement and must file a notice of recusal.

34. The GET commends the efforts of the U.S. authorities as regards regular and substantive vetting of nearly all PTEFs, as part of their appointment procedure. However, as regards the Presidential appointees specifically, the GET notes that by virtue of §105(a) of title 3 of the U.S. Code, the President may appoint a certain number of officials⁷ without regard to any other legal provisions regulating employment of persons in the Government service, including the anti-nepotism provisions (namely, Title 5 U.S. Code § 3110 entitled “Employment of relatives; restrictions”)⁸. The Office of Legal Counsel has confirmed this entitlement in its Memorandum Opinion of 20 January 2017⁹. Regrettably, the GET did not have an opportunity to further examine this matter with the Office of Presidential Personnel Administration, or to clarify the number and functions of PTEFs currently appointed under the above provisions. The GET underlines the importance of exercising the exclusive presidential discretion to appoint senior officials in the White House with due regard to the existing safeguards applicable to the Executive Branch, including on ethics and integrity, so as to avoid potentially undermining overall public trust in the top executive office (see also paragraphs 91 and 113 below on conflicts of interest and of post-employment restrictions). **GRECO recommends taking the necessary legislative or regulatory steps to ensure that the restrictions for public officials on employment of relatives (whether paid or unpaid) under the anti-nepotism statute also apply to appointments to positions within the Executive Office of the President.**

Remuneration of persons with top executive functions

35. The President’s current salary is USD 400 000; the Vice President’s is USD 235 100. While in office, the President receives an expense allowance of USD 50 000 a year to defray official expenses and a USD 19 000 allowance for official entertainment. Additional benefits include being housed in the White House, housing staff and support, access to Camp David, travel on military aircraft and armoured vehicles, a guest house, health insurance, pensions,

⁷ In particular, §105 entitled “Assistance and services for the President” reads as follows:

(a)(1) Subject to the provisions 1 of paragraph (2) of this subsection, the President is authorised to appoint and fix the pay of employees in the White House Office without regard to any other provision of law regulating the employment or compensation of persons in the Government service. Employees so appointed shall perform such official duties as the President may prescribe.

(2) The President may, under paragraph (1) of this subsection, appoint and fix the pay of not more than—

(A) 25 employees at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5; and in addition

(B) 25 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(C) 50 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS–18 of the General Schedule of section 5332 of title 5; and in addition

(D) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS–16 of the General Schedule of section 5332 of title 5.

⁸ The Anti-Nepotism Statute (Title 5 U.S. Code § 3110 entitled “Employment of relatives; restrictions”) prohibits public officials from taking actions to “appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official.”

⁹ The issue concerned appointing the son-in-law of the former President of the U.S. to a position in the White House. The full text of the Memorandum Opinion of the Office of Legal Counsel is accessible via the following link: <https://www.justice.gov/d9/opinions/attachments/2018/08/06/2017-01-20-anti-nepo-stat-who.pdf>

and funeral expenses. They and their families also receive protection by the Secret Service. The Vice President is provided housing, transportation on military aircraft and armoured vehicles, and Secret Service protection. Cabinet members and some high-level appointees are provided some transportation and security. All PTEFs (along with many federal employees) are provided a pension commensurate with their federal service.

36. Salaries of other PTEFS is set as follows:

- Level I: Cabinet-level officials – USD 203 500
- Level II: Deputy secretaries of departments, secretaries of military departments, & heads of major agencies – USD 183 100
- Level III: Undersecretaries of departments & heads of middle level agencies – USD 168 400
- Level IV: Assistant secretaries & general counsels of departments, heads of minor agencies, members of certain boards & commissions – USD 158 500
- Level V: Administrators, commissioners, directors, & members of boards, commissions, or units of agencies – USD 148 500

37. The average Gross Annual Salary in the United States as of May 2021 is USD 58 260; the average salary of a federal career employee is USD 108 538.

Anticorruption and integrity policy

38. The anti-corruption regulatory and policy framework of the United States consists of several acts, regulations and policy documents promoting accountability, transparency, and integrity in the public sector. These include bribery and conflict of interest laws; limitations on use of government equipment, time, and resources; financial disclosure requirements; on-going ethics training requirements; ethics advisory services; and post-employment restrictions (as discussed in relevant sections of the report below).

39. In December 2021, the United States issued its first ever [Strategy on Countering Corruption](#), which places particular emphasis on better responding to corruption threats of transnational dimensions, reducing the ability of corrupt actors to use the domestic and international financial systems to hide assets and launder the proceeds of corruption. The Strategy focusses anti-corruption through five main pillars: (i) modernizing, coordinating, and resourcing U.S. Government efforts to fight corruption; (ii) curbing illicit finance; (iii) holding corrupt actors accountable; (iv) preserving and strengthening the multilateral anti-corruption architecture; and (v) improving diplomatic engagement and leveraging foreign assistance resources to achieve anti-corruption policy goal. Federal agencies are to report annually to the President on progress made against the Strategy's objectives. The implementation of the Strategy is coordinated by the National Security Council and focal points at respective agencies, such as the Department of State's Coordinator on Global Anti-Corruption (appointed in July 2022).

40. In the view of the GET, the publication of the United States' first Strategy on Countering Corruption represents a significant step in aligning and coordinating the United States's world leading efforts to tackle corruption. However, the GET notes that the strategy is focused almost entirely on tackling corruption overseas, and does not address corruption risks within

the U.S., as confirmed by the March 2023 factsheet on the implementation of the Strategy¹⁰. The GET is of the view that there would be much benefit in a similarly strategic approach to tackling domestic corruption and integrity risks. With particular regard to the scope of the present evaluation, **GRECO recommends that an overarching anti-corruption strategy for the Executive Branch be drawn up, based on a risk analysis, aimed at promoting the integrity of persons entrusted with top executive functions and that it be made public.**

Legal framework, ethical principles and rules of conduct

41. All employees of the Executive Branch, including PTEFs, are subject to various ethics and conflict of interest rules. A fundamental principle of the ethical framework governing the federal Executive Branch is that “*public service is a public trust*” (Title 5 of the Code of Federal Regulations, or C.F.R. § 2635.101). The key ethics rules and laws consist of criminal conflict of interest statutes, civil statutes, and administrative regulations known as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct)¹¹. A full compilation of all statutory ethics-related laws has been published by the OGE in January 2023¹². The OGE also issued regulations implementing the Ethics in Government Act and some of the criminal conflict of interest statutes¹³. In addition, the OGE publishes advisory opinions that describe the legal, program, and training requirements applicable to government employees, with written guidance on the interpretation and application of the ethics laws and regulations, policy guidance applicable across the Executive Branch, as well as guides describing the ethics laws that can be used in ethics training.

42. At the start of a new administration, Presidents issue Executive Orders¹⁴ such as the most recent Executive Order 13989 issued by President Biden on 20 January 2021, that contain an ethics pledge and other ethics requirements for certain Executive Branch personnel, including PTEFs at the White House. Pursuant to this Executive Order, political appointees are subject to additional, more stringent limitations (notably in relation to contacts with lobbyists and revolving doors) compared to those established for civil servants of the Executive Branch in general.

43. All full-time, non-career political appointees in the Executive Branch are also subject to the ethics pledge contained in the Executive Orders, signed upon entry into employment with the respective agency, which includes additional recusal obligations, post-employment restrictions, and a ban on accepting gifts from lobbyists or lobbying organisations. Further,

¹⁰ FACT SHEET: Implementing the United States Strategy on Countering Corruption: Accomplishments and Renewed Commitment in the Year of Action, accessible via the following link: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/29/fact-sheet-implementing-the-united-states-strategy-on-countering-corruption-accomplishments-and-renewed-commitment-in-the-year-of-action/>

¹¹ The Standards of Ethical Conduct for Employees of the Executive Branch Standards of Conduct at 5 C.F.R. Part 2635 were first issued by OGE in 1993 and have been regularly updated since.

¹² Compilation of Federal Ethics Laws published on 1 January 2023 is accessible via the following link: [https://www.oge.gov/Web/oge.nsf/0/3D3B3F1EE20BA918852585BA0063A592/\\$FILE/Compilation%20of%20Federal%20Ethics%20Laws%20\(2023\).pdf](https://www.oge.gov/Web/oge.nsf/0/3D3B3F1EE20BA918852585BA0063A592/$FILE/Compilation%20of%20Federal%20Ethics%20Laws%20(2023).pdf) The OGE also maintains other public data on its website, including program reviews of agency ethics programs, annual surveys of agency compliance etc. For example, the OGE collects ethics program data from each of the more than 130 Executive Branch agencies through its Annual Agency Program Questionnaire (Annual Questionnaire).

¹³ Such as 5 C.F.R. Part 2636, 5 C.F.R. Part 2640, 5 C.F.R. Part 2641.

¹⁴ The principles of ethical conduct were first issued by President George H. W. Bush, by Executive Order 12674 (April 1989), as amended by Executive Order 12731 (October 1990).

senior politically appointed officials are subject to civil statutes governing outside activity and employment restrictions carrying various disciplinary and civil sanctions.

44. The GET notes with satisfaction that the United States has put in place a wide-ranging spectrum of laws, regulations, and policies to promote ethics and integrity applicable across the Executive Branch. In the view of the GET, the requirement for PTEFs to sign a contractually binding ethics pledge could be an effective means of establishing a clear and enforceable set of ethical rules, going beyond those established for federal civil servants in general; the GET considers this framework to be good practice.

45. The GET also takes note that all senior officials appointed in the White House are among the officials bound by an ethics pledge (under the Presidential Executive Order), with more stringent provisions, which they must sign when taking up employment. These ethics pledges last until and unless they are rescinded (this has occurred more than once¹⁵). This for the GET is a missed opportunity since ethics pledges present great potential to further advance integrity standards for top executive officials. When they are revoked by a departing president, or should they be diluted by an incoming administration, what is a promising development may turn into a deception or a mere window-dressing exercise in citizens' eyes, undermining trust in the highest executive office. While the GET understands that revoking executive orders is the authority of Presidents under the Constitution, concrete steps are necessary to ensure that integrity requirements established in respect of PTEFs, including by executive orders, are more enduring. In going forward, **GRECO recommends taking the necessary steps to ensure that integrity rules and restrictions established by ethics pledges in respect of persons entrusted with top executive functions are made permanent for those who have signed them.** In this regard, consideration could be given to codifying the additional restrictions and the provisions they establish on ethics and conflicts-of-interest.

Institutional framework

46. The Office of Government Ethics (OGE), set up in 1978 under the Ethics in Government Act following the Watergate scandal, supervises compliance with financial disclosure and conflict of interest obligations of officials, including those in top executive functions, in up to 140 executive branch agencies. The OGE has a full-time staff of approximately 75 people and manages a USD 19 million annual budget (USD 23 million requested for 2024). The OGE is vested with responsibility of providing “overall direction of Executive Branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency.” In particular, the OGE promulgates, maintains, and advises on enforceable standards of ethical conduct for over 2.7 million employees of the Executive Branch agencies, including the White House; offers education and training to more than 5000 ethics officials in the federal agencies; operates and maintains a public financial disclosure management application; oversees a financial disclosure system covering over 26 000 public and nearly 390 000 confidential financial disclosure reports; monitors Executive Branch agency ethics programs and senior leaders' compliance with applicable ethics laws and regulations; prepares for presidential transitions and provides assistance to the President and the Senate in the

¹⁵ President Donald Trump revoked, by the [Executive Order 13983 of 19 January 2021](#), the ethics commitments by Executive Branch Appointees, approved under the Executive Order 13770 of 28 January 2017. Further, President Clinton revoked, by the [Executive Order 13184 of 28 December 2000](#), [Executive Order 12834 of 20 January 1993](#), which imposed special post-employment restrictions on senior appointees of his Administration by requiring senior officials and trade negotiators to sign a pledge as a condition of holding a covered position.

presidential appointments process; conducts outreach to the general public, the private sector, and nongovernmental organisations; and makes ethics documents publicly available.

47. The OGE is headed by a Director, appointed by the President with the consent of the Senate for a five-year term, who may be dismissed at the discretion of the President with the consent of the Senate. The Director of the OGE provides overall direction of Executive Branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency. The OGE Director develops rules and regulations pertaining to conflicts of interest and ethics in the Executive Branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the Executive Branch; develops rules and regulations pertaining to the identification and resolution of conflicts of interest; and monitors compliance with the financial disclosure requirements by officers and employees of the Executive Branch and executive agency officials responsible for receiving, reviewing, and making available financial statements.

48. As per its Strategic Plan for 2022-2026, the OGE priority is addressing known or potential ethics risks. As the ethics program is decentralised, assessing ethics and corruption risks in federal agencies is the responsibility of relevant ethics officials in these agencies. To assist them with this task, the OGE provides on-demand training and assistance tools when developing additional procedures, communications, and training¹⁶.

49. Beyond the overarching supervision by the OGE, each federal agency appoints a Designated Agency Ethics Official (DAEO), responsible for overseeing the ethics program within their respective agency. The DAEO, acting directly or through other officials, must be an employee who has demonstrated the knowledge, skills, and abilities necessary to manage a significant agency program, to understand and apply relevant legal requirements, and to generate support for building and sustaining an ethical culture in the agency. Further, the DAEO is responsible for ensuring that all officials performing ethics duties are properly qualified and trained. Besides the DAEO, each agency also employs additional ethics staff needed to ensure that the ethics program responsibilities entrusted to the agency are conducted effectively and efficiently. As a result, over 5 000 employees are assigned ethics programme responsibility throughout the Executive Branch agencies.

50. Other bodies with the task of supervising compliance and sanctioning of violations, as well as auditing the executive branch agencies have also been set up (e.g. Inspectors General, Public Integrity Section, Office of Professional Responsibility, Government Accountability Office etc.). In addition, agencies focussing on institutional integrity in the Executive Branch agencies include the Merit Systems Protection Board (ensuring merit system protections in the civil service), the Office of Federal Procurement Policy (competition in procurement); and the Department of Justice and the Office of Special Counsel (criminal, civil, and administrative enforcement). While not all Executive Branch agencies have an inspector general, all agencies are responsible for investigating potential ethics violations and must refer any potential criminal violations to the Department of Justice.

51. The GET notes the robust institutional framework put in place and ensure observance of ethics and integrity in the Executive Branch. The GET notes that the White House Office has

¹⁶ By way of example, the OGE has created a number of tools for identifying at-risk operations that would benefit from increased or tailored training, including a risk questionnaire, maturity model, and sample feedback evaluation forms.

a DAEO and an Alternate DAEO. The GET did not have an opportunity to clarify the mandate and the *modus operandi* of this official, and the scope of PTEFs covered under his/her authority (see paragraph 34 above). Additionally, various components within the Executive Office of the President also have a DAEO and an Alternate DAEO and many employees of the White House are subject to the criminal conflict of interest statutes, civil ethics laws, and the Standards of Ethical Conduct. Finally, the GET notes that there is no Inspector General in the White House.

Awareness, training and advice

52. The OGE aims at increasing public awareness of standards and mechanisms in place to hold government officials accountable in various ways. First, the OGE makes a wide array of ethics information publicly available (see paragraph 41 above) to facilitate public scrutiny of senior leaders. Further, the OGE provides access to public financial disclosure reports, ethics agreements and compliance certifications. In addition, the OGE publishes correspondence to agencies and responses to congressional inquiries related to holding agencies and officials accountable for ethics challenges. Finally, the OGE regularly publishes guidance, interpreting and clarifying ethics rules through various advisories, oversight reports concerning each Executive Branch agency and Executive Branch ethics program overall, and compliance data.

53. As to training, since 1981, OGE has required that all agencies in the Executive Branch establish effective ethics and integrity education programs for their employees, consisting of, at a minimum, initial ethics orientation for all employees focussing on ethics laws and regulations (including matters of conflicts of interest, impartiality, misuse of position, and gifts) as determined by respective DAEOs, and annual ethics training for specified categories of employees occupying sensitive positions. Following the establishment of 14 General Principles of Ethical Conduct in 1992, the OGE implemented regulatory measures to ensure that agencies provide uniform ethics education to employees as part of the Executive Branch-wide ethics program management regulations. An extensive library of ethics training resources is available to all federal employees via the OGE Institute for Ethics in Government (IEG), which produces video training guidance on ethics laws and responsibilities. Although these trainings are primarily created for ethics officials, they are also accessible to the public. The GET notes that the data collected by the OGE regarding the number of officials that received training is not disaggregated. Therefore, it is not possible to indicate the number of PTEFs who underwent training on ethics and integrity. Some of the questions regarding training of the OGE Annual Questionnaire¹⁷ cover information on “agency leaders”, which is said to include most of the PTEFs.

54. Within three months of entry into service, all Executive Branch employees are to receive instructions on the ethics laws and regulations within, including a summary of the Standards of Conduct, relevant agency standards; and contact information for the ethics office. Senior PAS-appointed officials are also required to receive a “live” (in-person or through electronic means) ethics briefing within 15 days of taking office. Agencies must track how many PAS were required to receive the ethics briefing, and whether they received training within the established period. Individual ethics briefings cover the appointee’s basic recusal obligations and recusal mechanisms, the commitments made in the appointee’s ethics

¹⁷ By way of example, the authorities refer to the responses to the Annual Questionnaire provided by different federal agencies (e.g. Department of State, Department of Justice, the White House Office), where Part 5 of the Questionnaire contains information about education and training provided. These documents are public and can be consulted on the OGE website.

agreement, and the potential conflicts of interest arising from any financial interests acquired after the filing of the financial disclosure report by the nominee. In addition, all federal employees in at-risk positions must receive yearly ethics training, delivered through interactive written, oral, and electronic means. Other employees may be required to complete additional training, determined by the type of position held, on an annual basis¹⁸.

55. As to the advice and counselling, each agency is required by the OGE to provide advisory services to its employees, as agency ethics officials are considered more apt to have a direct understanding of their responsibilities and the ethics programs administered by the agency. A DAEO or another designated official is expected to answer questions from employees with regard to potential conflicts of interest, application of the provisions of the Standards of Conduct, civil ethics statutes, or criminal conflict of interest statutes.

56. The OGE's regulations also establish that employees must seek prior approval before engaging in certain conduct that poses increased risk¹⁹ of a conflict of interest. Advice and counselling are available to all PTEFs, generally upon request. However, in some circumstances the OGE regulations and criminal laws require pre-approval by an ethics official prior to an employee, including a PTEF, takes action. For instance, outside employment, authorisation for waiver of certain conflict of interest laws when appropriate, or accepting certain gifts would require a pre-approval by the agency.

57. The OGE has established a "safe harbour" whereby disciplinary action may not be taken against any employee, including PTEFs, who *"engage[s] in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances."* Although this does not exclude liability for criminal violations of conflict-of-interest laws, the DOJ gives fair consideration when determining whether to prosecute an individual for violation of a criminal or civil statute as to whether they sought and followed guidance from an ethics official. Upon request, the OGE provides advisory services regarding ethics-related issues to ethics officials in federal agencies through its Desk Officer program, which may include guidance on the interpretation and application of the ethics laws and regulations and policy guidance applicable across the Executive Branch.

58. Each federal agency must maintain a program for providing advice and counselling to prospective, current, and former employees regarding the government ethics laws and regulations and their application to specific activities. Employees are encouraged to seek advice from agency DAEOs, and in some instances are required to receive prior authorisation from an agency designee prior to engaging in certain activities. The manner in which agencies implement this program element varies depending on agency size, structure, mission, and other factors. Accordingly, the OGE sought to better understand how agencies integrated ethics advice and counselling into their day-to-day agency operations by conducting a data call in 2019. The OGE's report from this data call synthesises the most common agency

¹⁸ This includes interactive presentations on topics that the DAEO deems appropriate, but must touch upon financial conflicts of interest, impartiality, misuse of position, and gifts. Moreover, agencies are authorized to provide for additional ethics education requirements, as they see fit and in accordance with their agency-specific risk-assessment.

¹⁹ For example, employees are required to receive advance authorization to attend private events for free when the waiver of attendance fees is made because of the employee's official position or by a person who is a prohibited source. They are likewise required to receive advance authorization to receive certain awards, serve as an expert witness in litigation involving the United States, or engage in certain teaching, speaking, and writing activities.

practices, as well as some unique agency practices. The 2021 Annual Agency Ethics Program Questionnaire summary report²⁰ indicates that employees most frequently sought ethics guidance on: (1) outside employment/activities, (2) financial disclosure reporting and (3) gift acceptance.

59. The GET notes with satisfaction the existing wide-ranging mechanisms for providing initial and continuous training and advice on ethics and integrity to public officials of various positions in the Executive Branch. The GET was told that PTEFs are also subject to training on these matters, even though no statistical information is currently being collected in this regard. In the course of the on-site visit, the GET was told that more resources were needed to ensure that most senior officials receive in-service integrity training systematically. The GET encourages the authorities to pursue their efforts to this end.

Transparency and oversight of executive activities of central government

Access to information

60. Access to public information is mainly governed by the Freedom of Information Act (hereafter "FOIA") of 1966, as amended, which establishes a statutory right of public access to information in the federal government²¹. According to the FOIA (Article (a)1), federal agencies must proactively disclose information such as descriptions of agency organisation, functions, and rules of procedure; substantive agency rules; and statements of general agency policy. The FOIA also requires that other types of records be routinely made "*available for public inspection in an electronic format*" (on respective agency websites). Further, the FOIA also grants any person a right, enforceable in court, to obtain access to federal agency records subject to the Act. In this regard, the Fifth U.S. Open Government National Action Plan²², launched in December 2022, aims, *inter alia*, at improving access to Government data, research and information, and at countering corruption and ensuring government integrity and accountability to the public. This Action Plan is expected to serve as a new impulsion towards greater transparency of the federal government and therefore greater accountability.

61. Information not subject to proactive disclosure can be requested from federal agencies according to the rules published by agencies. An information request must contain a reasonable description of the information sought and the agency receiving such a request must make the records "promptly available" unless the requested information or parts thereof are exempt from mandatory disclosure. The statutory time for processing requests for information is generally 20 working days. However, in the case of certain complex requests, and if specific circumstances are met, this timeframe may be extended²³. A recently launched

²⁰ All OGE Annual Questionnaire Summary Reports are accessible via the following link: https://www.oge.gov/web/oge.nsf/accessdocs_summary-reports

²¹ The U.S. Supreme Court has repeatedly stressed that the fundamental principle of public access to Government documents animates the FOIA (see *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 150 (1989)).

²² The full text of the Fifth U.S. Open Government National Action plan is accessible via the following link: <https://open.usa.gov/assets/files/NAP5-fifth-open-government-national-action-plan.pdf>

²³ According to the Department of Justice Guide to the Freedom of Information Act, Under the FOIA, an agency may extend the twenty-day response time when "unusual circumstances" exist. Unusual circumstances exist when: (i) the agency needs to collect responsive records from separate offices; (ii) the request involves a "voluminous" amount of records that must be located, compiled, and reviewed; or (iii) the agency needs to consult with another federal agency or other DOJ agencies that have a substantial interest in the responsive information.

National FOIA Portal²⁴ (part of the DOJ's government-wide FOIA website) simplified the process by enabling the public to make information requests to any federal agency from a single website.

62. The FOIA provides for nine exemptions (Section (b), Articles (1) to (9)), allowing not to disclose or to disclose only partly, the requested information, as follows: 1: information classified to protect national security; 2: information related solely to the internal personnel rules and practices of an agency; 3: information prohibited from disclosure by another federal law; 4: trade secrets or confidential or privileged commercial or financial information; 5: privileged communications within or between agencies, including those protected by law: i) deliberative process privilege (provided the records were created less than 25 years before the date on which they were requested); ii) attorney-work product privilege; iii) attorney-client privilege; 6: information that, if disclosed, would constitute a clearly unwarranted invasion of an individual's personal privacy; 7: information compiled for law enforcement purposes that: 7(A). could reasonably be expected to interfere with an ongoing enforcement proceeding; 7(B). would deprive a person of a right to a fair trial or an impartial adjudication; 7(C). could reasonably be expected to constitute an unwarranted invasion of personal privacy; 7(D). could reasonably be expected to disclose the identity of a confidential source (this exemption also protects information provided by certain confidential sources and, in some circumstances, all information provided by a confidential source); 7(E). would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; 7(F). could reasonably be expected to endanger the life or physical safety of any individual; 8: information that concerns the supervision of financial institutions; 9: geological information on wells.

63. The Office of Information Policy (hereafter "OIP") oversees agency compliance with FOIA and encourages the mission of informed citizenry. The OIP is responsible for developing government-wide policy guidance on all aspects of FOIA administration and provides legal counsel and training to agency personnel. To assist agencies in understanding the substantive and procedural requirements of the FOIA, the OIP publishes and regularly updates the Department of Justice Freedom of Information Act Reference Guide²⁵, which addresses all aspects of the FOIA. The OIP also provides a range of other resources to agencies to guide them in the implementation of the Act. All agencies are required by law to report to the DOJ each year on their FOIA compliance by submitting Annual FOIA Reports and Chief FOIA Officer Reports²⁶. The Annual Reports contain information on requests received, processed and determined, including detailed statistics, such as how often the nine exemptions from the FOIA have been applied during the reporting period. According to statistical information, in the course of 2022, federal agencies received over 900 000 requests for information and processed over 800 000 such requests. In addition to the OIP, the National Archives and Records Administration's Office of Government Information Services (OGIS) also provides

²⁴ Accessible on www.FOIA.gov. The public can learn about the FOIA from this website, access material that is already publicly available, review FOIA data, and obtain details about each agency. The public can readily access each agency's FOIA Reference Guide, which describes how to make requests to that agency, as well as access each agency's FOIA regulations.

²⁵ Accessible via the following link: <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide>

²⁶ Both types of reports accessible via the following link: <https://www.justice.gov/oip/reports-1>

requesters with mediation services and reviews agency policies, procedures, and compliance with the FOIA to identify methods for improvement.

64. Further, the OIP provides annual training for up to 6 000 people responsible for processing requests for information, employed in 120 federal agencies, aiming at having at least 90% of all staff trained on processing information requests at all times.

65. The GET takes note of the extensive rights of access to government documents under the Freedom of Information Act (FOIA). The exemptions provided for under the statute appear to be reasonable. There is a dedicated government entity (OIP) in charge of supervising its implementation by public bodies. During the on-site visit, the GET heard a number of challenges relating to the effective implementation of the FOIA, including practice varying depending on the discretion and benevolence of the responding agency, their resource, and the impact of any backlog. In terms of clarity and timeliness of the information provided, the GET heard reports of denial of information on the basis of a broad interpretation of the exemptions with little justification provided, and responses not being received within the stipulated timeframe. Representatives of the media highlighted that the transparency of various federal agencies, as well as the White House, had a decreasing tendency in recent years.

66. The U.S. Government Accountability Office (GAO) has carried out analysis of implementation practices regarding FOIA and has issued recommendations in this respect, which the respective federal agencies are in the process of implementing²⁷. Further, the GET commends the efforts of the OIP to speed up timeliness and consistency in the processing of FOIA applications. Even so, the backlog of unresolved requests remains unsustainably high (over 206 000 unprocessed requests across the Executive Branch according to the 2022 Annual Report). Long delays in responding to FOIA requests reduces the value of the information provided and has the potential to deter future requests.

67. Further, the GET also notes that the publication requirements under FOIA do not apply in the same manner to the President-in-office or staff who advise and assist the President. Access to records of previous Presidents and their respective staff are governed by the Presidential Records Act of 1978 and allows, subject to certain restrictions, public access to archived information of former Presidents and Vice-Presidents, under the custody and management of the National Archives and Records Administration (NARA). The GET was told that should any interested party wish to obtain information regarding the activities of the President-in-office or the Presidential Administration, the only FOIA avenue would be to transmit a request for information to another federal agency in relation to its interaction with the White House on a particular matter of interest. In the view of the GET, this substantially limits access to information from and transparency of the White House.

68. In light of the foregoing considerations, **GRECO recommends that (i) measures be taken to significantly reduce the backlog of outstanding Freedom of Information Act requests; (ii) practical steps be taken to facilitate access to public information as regards the White House administration.**

²⁷ See for example latest GAO report in this respect: [Freedom of Information Act, Actions Needed to Improve Agency Compliance with Proactive Disclosure Requirements \(2021\)](#).

Transparency of the law-making process

69. The legislative power in the U.S. is vested in Congress. Executive Branch agencies issue legally binding regulations, but only under the authority of laws enacted by Congress. Draft legislation may be submitted by Executive Branch agencies to Congress; however, the examination and decision-making on the proposed legislation takes place in Congress. Once draft laws are introduced to Congress, they are made available to the public pursuant to the established procedures. Transparency of the law-making process in Congress has been assessed by GRECO in its Fourth Evaluation Round²⁸ of the U.S.

70. The Administrative Procedure Act (APA) (5 U.S.C. § 551 et seq.) governs the process of developing and issuing regulations by federal agencies. The APA requires the agencies to publish notices of proposed and final rulemaking in the Federal Register and to provide opportunities to the public to comment on proposed rules. Section § 553 (b) of the APA requires any notice of proposed rulemaking to include a statement of the time, place, and nature of public rule making proceedings; reference to the legal authority under which the rule is proposed; and either the terms or substance of the proposed rule or a description of the subjects and issues involved.

71. The APA (§ 553 (c)) requires the agency to give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. Further, the law requires agencies to give an interested person the right to petition for the issuance, amendment, or repeal of a rule²⁹. During the notice-and-comment phase, comments may be submitted³⁰ on any part of the proposed rule, at the end of which the agency must present its reasoning and conclusions on the rulemaking record. In recent years, most agencies prefer to receive comments electronically so that inputs on proposed rules or other document are readily available to the public³¹. The proposed rule and the public comments received on it are to form the basis of the final rule.

72. The APA (§ 553 (d)) requires most rules to have a 30-day delayed effective date, except when: (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.

²⁸ Paragraphs 23-33 of the Fourth Evaluation Round Report on the U.S. (<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dc0f7>). In particular, GRECO recommended “to consider increasing the transparency of the legislative process leading up to the introduction of new bills in Congress.” According to the Second Compliance Report on the U.S. (<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a20c27>), adopted by GRECO on 25 March 2021, this recommendation has been dealt with in a satisfactory manner.

²⁹ If an agency receives a “Petition for Rulemaking” from a member of the public, it may decide to announce the petition in the Federal Register and accept public comments on the issue. Interested individuals or groups may respond to the Advance Notice by submitting comments aimed at developing and improving the draft proposal or by recommending against the rulemaking. Some agencies develop proposed rules through a negotiated rulemaking, whereby an agency invites members of interested groups to meetings in an attempt to reach a consensus on the terms of the proposed rule.

³⁰ Comments may be received in a variety of ways, such as written submissions online, public hearings, including through webcasts and interactive Internet sessions.

³¹ Practical information on using the federal e-Rulemaking portal, including submission of comments, is available on the following website: <https://www.regulations.gov/>.

73. Federal agencies are also required to publish a “regulatory Plan” once a year in the fall and an “agenda of Regulatory and Deregulatory Actions” in the spring and fall (in conjunction referred to as “Unified Agenda”), to announce future rulemaking activities and update the public on pending and completed regulatory actions. Agencies publish most of their regulatory plans in the Federal Register³². The GET notes with satisfaction a variety of ways envisaged for the public to take part in consultations regarding the rulemaking by federal agencies.

Third parties and lobbyists

74. The activity of lobbying has a significant presence in the Legislative and Executive Branch in the U.S. and is regulated by a well-developed legislation, including the Lobbying Disclosure Act (LDA), the Foreign Agents Registration Act (FARA) and other legislation setting out disclosure obligations on lobbyists and restrictions on public officials’ interaction with lobbyists.

75. In particular, the LDA (2 U.S.C. § 1603) requires a lobbying company to register within 45 days of concluding a lobbying contract and file regular financial and activity reports thereafter. As per LDA (2 U.S.C. § 1602(10)) “lobbyist” is defined as “*any individual (1) who is either employed or retained by a client for financial or other compensation (2) whose services include more than one lobbying contact; and (3) whose lobbying activities constitute 20 percent or more of his or her time in services for that client over any three-month period.*” The lobbying firm (2 U.S.C. § 1602(9)) is defined as “*a person or entity that has one or more employees who are lobbyists on behalf of a client other than that person or entity. The term also includes a self-employed individual who is a lobbyist.*” The LDA also applies to all officers and employees of the Executive Office of the President, other senior leaders in the Executive Branch defined in the LDA and “Schedule C” political appointees, as well as senior military officials and Members of Congress.

76. Anyone falling under the definition of “lobbyist” must file quarterly activity reports³³ (January, April, July, and October), as well as semi-annual reports of campaign contributions to federal candidates and events honouring federal officeholders, referred to as LD-203 reports.

77. The FARA requires certain agents of foreign principals who are engaged in political activities or other activities specified under the statute to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts, and disbursements for those activities³⁴.

³² Unified Agendas are accessible to the public on the following website: <https://www.reginfo.gov/public/do/eAgendaMain>.

³³ The lobbyist activity reports must include the following information: for each general issue in which the organisation is engaged in lobbying, a list of the specific issues on which the lobbyists are working. This should include a list of bill numbers and references to specific Executive Branch actions “to the maximum extent practicable”; a list of the houses of Congress (Senate and House) and federal agencies contacted by any employee acting as a lobbyist; the names of the employees who acted as lobbyists during the semi-annual period; a disclosure of the interests of any foreign entity listed in the registration statement; and a “good faith” estimate of the organisation’s total expenses relating to lobbying activities during the semi-annual period.

³⁴ The Counterintelligence and Export Control Section (CES) of the Department of Justice’s National Security Division (NSD) operates a FARA Unit responsible for the administration and enforcement of FARA, with a public office in Washington, DC, providing public access to information regarding “foreign agents” and their registration.

78. In addition to the above provisions, some criminal law statutes (18 U.S.C. §§ 201, 203, and 205) are also of relevance to interactions between public officials and third parties, which includes lobbyists (in spite of no explicit reference to “lobbyists” or “lobbying”). Thus, 18 U.S.C. § 201 prohibits corruptly offering or giving anything of value to a public official with intent to, *inter alia*, influence any official act. 18 U.S.C. § 203 prohibits federal employees from receiving, agreeing to receive, or soliciting compensation for representational services, rendered either personally or by another, before any court or federal agency or other specified federal entity, in connection with any particular matter in which the United States is a party or has a direct and substantial interest. 18 U.S.C. § 205 prohibits federal employees from personally representing anyone before any court or federal agency or other specified federal entity, in connection with any particular matter in which the U.S. is a party or has a direct and substantial interest. Moreover, the ethics pledge under President Biden’s Executive Order No. 13989 (see paragraph 42 above) prohibits all PTEF from accepting gifts from registered lobbyists or lobbying organisations for the duration of their service.

79. Finally, the OGE Standards of Conduct (see paragraph 41 above) concerning misuse of position for private gain, misuse of non-public information and government resources, impartiality, and favouritism also apply to interactions with lobbyists, as they cover interactions with any member of the public who is seeking official action with the government.

80. The GET is mindful that the public may access information about the federal agencies in the Executive Branch under the FOIA, and some routinely requested information is published by the White House and agencies proactively. However, it appears that no provisions exist as regards routine disclosure by PTEFs to the public of their interaction with lobbyists and other third parties aiming to influence the decision-making in the Executive Branch. Interlocutors met on-site informed the GET that little insight is provided into the meetings between PTEFs and lobbyists, or representatives of foreign and transnational corporations, including with senior White House officials. When prompted on the subject, representatives of the authorities mainly referred to the lobbyist disclosure legislation and restrictions described above, but not to any rules warranting disclosure of contacts between PTEFs and lobbyists, or other third parties. Some officials met by the GET confirmed that such information is not subject to routine disclosure, but could be requested under the FOIA.

81. The GET notes the significance of lobbying in the United States, a well-developed activity, extensively regulated through stringent registration and disclosure requirements with the aim of providing greater transparency regarding lobbyists’ activities. This is to be welcomed. However, the focus of this Evaluation Report is on the rules of conduct applicable to PTEFs in their relations with lobbyists, rather than the lobbying as activity *per se*. While a broad range of rules and restrictions apply to PTEFs in the Executive Branch (e.g. restrictions on receiving gifts, negotiating and post-employment restrictions etc.), no such rules or guidance are in place as regards the disclosure of PTEFs interaction with lobbyists and other third parties. The GET is concerned that such important transparency data as details of meetings between senior members of the Executive Branch and lobbyists or external stakeholders, is not subject to automatic and routine publication. Considering the impact of lobbying on public decision-making in the United States, the GET believes that making such information available would increase trust in Government and significantly improve transparency. Therefore, **GRECO recommends that a register of meetings between persons entrusted with top executive functions and registered lobbyists and other third parties who**

seek to influence government decision-making on particular matters be published online in a proactive and timely manner, including sufficient information about the purpose of these contacts, such as the identity of the person(s) with whom (and on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.

Control mechanisms

82. The power of public officials is limited under the Constitution and their actions must conform to the Constitution and to the laws made in accordance with the Constitution. The Constitution provides that the *“President shall take Care that the Laws be faithfully executed”*. The Executive Branch officials appointed by the President, by and with the advice and consent of the Senate, generally serve at the pleasure of the President may be removed at any time, although some statutes provide that specific Executive Branch officials may be removed only for stated cause. The Constitution also provides for the removal of a public official from office for certain types of misconduct or malfeasance, by impeachment³⁵.

83. Congressional oversight of the Executive Branch is an integral part of the system of checks and balances, stemming from the Constitution, laws and House and Senate rules. It is considered fundamental to making sure that laws are implemented in an effective, efficient, and economical manner³⁶. Congressional oversight includes the review and monitoring of federal agencies, programs, and policy implementation, and it provides the legislative branch with an opportunity to inspect, examine, and review the Executive Branch and its agencies. In particular, Congressional oversight includes:

- evaluating executive compliance with legislative intent.
- improving the efficiency, effectiveness, and economy of governmental operations.
- evaluating program performance.
- assessing possible executive encroachment on legislative prerogatives and powers.
- investigating alleged instances of poor administration, arbitrary and capricious behaviour, abuse, waste, dishonesty, and fraud.
- assessing an agency or official's ability to manage and carry out program objectives.
- reviewing and determining federal financial priorities.
- evaluating whether executive policies reflect the public interest.
- protecting individual rights and liberties.
- reviewing agency rule-making processes.
- acquiring information useful in future policymaking.

84. In addition, the Congress may inspect the conduct of public offices and investigate the activities and conduct of personnel and officials in the other branches. While the President is responsible for seeing that the laws are faithfully executed, the Congress oversees their implementation and the President’s stewardship through its inquisitorial powers by requesting information in writing and documents and oral briefings by Department, agencies,

³⁵ Article II, Section 4 reads: “The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanours.” Impeachment is a charge of misconduct brought against a government official by a legislative body; it does not refer to conviction on such charges. As set forth in the Constitution, the House of Representatives must bring charges of misconduct by voting a bill of impeachment. The accused official is then tried in the Senate.

³⁶ In affirming Congress' oversight powers, the Supreme Court stated that *“the power of inquiry with process to enforce it is an essential and appropriate auxiliary to the legislative function”* (See *McGrain v. Daugherty*, 273 U.S. 135 (1927)).

and other public offices. Department heads and other Executive Branch officials may also be called to provide testimony at Congress-convened hearings.

85. A considerable function of oversight over the Executive Branch is carried out by the Offices of Inspectors General (hereafter “OIG”). Inspectors General are independent, nonpartisan officials, appointed for unlimited term of office, without regard to political affiliations. The OIGs aim at preventing and detecting waste, fraud, abuse, and misconduct in the Federal Government. To execute their mandate, OIGs conduct various reviews of agency programs and operations (e.g. including audits, investigations, inspections, and evaluations) and provide findings and recommendations for improvement. OIGs investigate allegations of breaches of the public trust and hold officials accountable when such failures occur. They have broad authority to carry out their respective missions, including to independently hire staff, access relevant agency records and information, compel testimony from agency employees, subpoena documents and records from third parties, and report findings and recommendations directly to Congress. The OIGs’ dual reporting both to agency heads and Congress enables them to advise agencies on improving their policies and to advise Congress on monitoring and facilitating such improvements. Inspectors General can also refer matters for criminal prosecution. Out of a total of 74 statutory IGs currently operating across the federal government³⁷, about half are appointed by the President and confirmed by the Senate, while the other half are appointed by heads of respective federal agencies.

86. The Council of the Inspectors General on Integrity and Efficiency (CIGIE) unites the OIGs of the U.S. in an independent entity within the Executive Branch established by statute³⁸ to address integrity, economy, and effectiveness issues transcending Government agencies and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General. The CIGIE is comprised of all Inspectors General established under section 2 or section 8G of the Inspector General Act of 1978 (5 U.S.C. App.), whether Presidentially-appointed/Senate confirmed or appointed by heads of designated federal agencies. Currently the CIGIE has 13 statutory members³⁹.

87. The Executive Branch is also held accountable by the Government Accountability Office (GAO), established in 1921 to investigate matters related to the use of public funds. The GAO reports on its findings and recommendations on ways to increase economy and efficiency in government spending and supports Congress in meeting its constitutional responsibilities and helps improve the performance and ensures the accountability of the federal government by providing Congress with objective, nonpartisan, information. The GAO carries out its work at

³⁷ Statutory IGs can be grouped into four types: (1) establishment, (2) designated federal entity (DFE), (3) other permanent, and (4) special. Establishment (33 of 74) and DFE (31) IGs are governed by the Inspector General Act of 1978, as amended, whereas other permanent (7) and special (3) IGs are governed by separate statutes. Statutory authorities and requirements can differ among the four IG types, resulting in varied levels of independence, transparency, and accountability.

³⁸ Under “The Inspector General Reform Act” of 2008 P.L. 110-409.

³⁹ Along with the Chair and Vice-Chair, the statutory members of the CIGIE include: the Inspectors General of the Office of the Director of National Intelligence and the Central Intelligence Agency, the Controller of the Office of Federal Financial Management, a senior level official of the Federal Bureau of Investigation designated by the Director of the Federal Bureau of Investigation, Director of the Office of Government Ethics, Special Counsel of the Office of Special Counsel, the Deputy Director of the Office of Personnel Management, the Inspectors General of the Library of Congress, Capitol Police, Government Publishing Office, Government Accountability Office, and the Architect of the Capitol

the request of congressional committees or subcommittees, or as statutorily required by public laws or committee reports, per their Congressional Protocols.

88. As already mentioned (see paragraph 46 above), the Executive Branch ethics program is overseen by the Office of Government Ethics (OGE), which aims at preventing financial conflicts of interest and ensuring that government decisions are free from personal financial bias.

89. Federal agencies and officials are also subject to judicial oversight through the independent federal justice system. Federal judges (district and appeals courts throughout the United States) can check the actions of the legislature and the executive when adjudicating cases to ensure observance of constitutional prerogatives and limits. Injured parties may sue federal agencies to ensure their actions conform to the law. In addition, States often sue the federal government for asserted violations of federal law. Federal courts may also adjudicate cases related to criminal and civil statutes and regulations regarding ethics and conflicts of interest, applicable to PTEFs.

90. The GET was pleased to note the holistic approach to oversight which is followed in the United States to provide for adequate checks and balances in the exercise of power and to ensure that commitments are followed-up and abided by. This undoubtedly constitutes good practice.

Conflicts of interest

91. All employees of the Executive Branch, including PTEFs (apart from the President and the Vice-President) are bound by standards and principles of ethical conduct set out in several pieces of legislation (while the President and the Vice-President are not covered by this legislation, they are expected to act as if they were bound – see paragraph 137 below). Title 5 C.F.R. § 2638.101 establishes that the primary mission of the Executive Branch ethics program is to prevent conflicts of interest on the part of Executive Branch employees. A conflict of interest is defined as a situation where one's personal, family or other private interests or activities may conflict or appear to conflict with the impartial conduct of duties.

92. Subpart D of the Standards of Conduct (entitled "Conflicting Financial Interests") regulates conflicting financial interests, setting out disqualifying financial interests (§ 2635.402) and prohibited financial interests (§ 2635.403). As to the criminal statutes, Title 18 U.S.C. § 208 entitled "Acts affecting a personal financial interest" is the primary criminal law provision regarding conflicts of interest, which stipulates in § 208(a) that employees of the Executive Branch are prohibited from participating personally and substantially in an official capacity in any particular matter in which, to their knowledge, they or any person whose interests are imputed to them have a financial interest, if the particular matter will have a direct and predictable effect on that interest. In addition, over 20 federal agencies adopted supplemental agency regulations prohibiting the holding of assets and financial interests that might pose a conflict with the mission of the agency.

93. Further, Title 5 C.F.R. § 2635.502 entitled "Personal and business relationships" provides that an employee may not participate in a specific party matter that will directly and predictably affect the financial interest of a member of the employee's household or in which

someone with whom the employee has a “covered relationship”⁴⁰ is or represents a party to the matter, when it is determined that a reasonable person would question their participation.

94. Actual or apparent conflicts of interest situations are to be determined and resolved by ethics officials, or the OGE, as appropriate, through directed recusals, divestitures, reassignments, waivers, authorisations, and other appropriate means, depending on the analysis of specific circumstances. For instance, should the review of financial disclosures reveal a potential conflict of interest, the agency (and if applicable, the OGE⁴¹) is to intervene to determine steps that the official in question must take to avoid or remedy conflicts of interests, outside positions, relationships, and other incompatible activities revealed as a result of the report. Such steps may include one of or a combination of the following: divestiture of conflicting assets; resignation from positions; a limitation on certain outside activities; a public agreement to recuse from taking actions on certain specific matters that may come before the individual; and/or an agreement to ask for a waiver in certain limited circumstances. The OGE regularly conducts in-depth reviews⁴² of its regulations to ensure that they are effective tools for preventing conflicts of interest. The OGE and agencies may waive a disqualification if considered that financial interests are not likely to affect the services of the employee.

95. The GET observes with satisfaction that the United States has a strong legal and institutional framework to prevent conflicts of interest, covering the vast majority of the Executive Branch, and requiring all office holders to declare their interests and divest from any potential financial interests that may come into conflict with their public service duties (including stepping down from positions in external organisations), as well as in situations arising in the course of their employment (*ad-hoc* disclosure). The proactive enforcement in this regard constitutes best practice.

96. However, the GET noted that, while these measures apply to all senior executives at Cabinet level and below, no such restrictions apply to the President or Vice President. There is therefore no effective means of preventing conflicts of interest at Presidential level, which has a potential to considerably undermine public trust in the Executive as a whole. The GET further observes that in the vast majority of cases, U.S. Presidents have indeed divested their financial interests upon taking office. However, recent cases where such divestiture did not take place may give rise to legitimate concern as to the efficiency of the current conflict of

⁴⁰ As per § 2635.502 (b), covered relationships include: person with whom the employee has or seeks a business, contractual, or other financial relationship that involves other than a routine transaction; person who is a member of the employee’s household; relative with whom the employee has a close personal relationship; person for whom the employee’s spouse, parent or dependent child is, to the employee’s knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, employee, agent, attorney, consultant or contractor; or organisation, other than a political party, in which the employee is an active participant.

⁴¹ The OGE also has a public dashboard, updated quarterly with agency notifications of potential violations of a criminal conflict of interest statute that have been referred to a U.S. Attorney or the Department of Justice’s Public Integrity Section. In addition, information about Inspector General reports and investigations can be found at [Oversight.com](https://www.oversight.gov)

⁴² Gifts and travel reimbursement reporting thresholds are updated every three years. For example, in fiscal year 2020, OGE published a final rule updating the gifts and travel reimbursements reporting thresholds for both public and confidential financial disclosure reports, and in fiscal year 2018, OGE published a final rule amending its regulations that govern Executive Branch financial disclosure, qualified trusts, and certificates of divestiture, found at 5 C.F.R. part 2634.

interest framework relating to the President and the Vice-President. In this regard, the GET refers to remarks of the former Director of the OGE of 11 January 2017 at the Brookings Institution⁴³, whereby the OGE's recommendation was that the President "divest his conflicting financial interests". To the GET's knowledge, no such divestiture took place and indeed there continued to be a significant number of well-documented apparent conflicts of interest.

97. The GET notes the unique position of the President, as Head of State and the only directly elected member of the Executive, with a role encompassing the broad range of responsibilities in the Executive Branch that constitutionally only the President may fulfil (and from which he/she can therefore not recuse⁴⁴). This unique position means that there are limits as to what is possible or appropriate in terms of supervisory or enforcement mechanisms for the period a President is in office, noting that the process of impeachment is provided for under the Constitution. That said, the GET heard of no constitutional barrier to the President being subject to the same principles in respect of external positions and divestiture from conflicts of interest as the rest of the executive. While taking an enforcement action against President-in-office in respect of any breaches would be challenging, the GET believes that there would still be value in establishing the principle for a President to take active efforts to divest from conflicts of interest and sees the need in introducing a possibility for retrospective action (once a President leaves office) in cases where rules have been breached.

98. In view of the above, **GRECO recommends that, in addition to declaring their interests, the President and Vice President (i) be required to resign from any external positions prior to assuming office; (ii) be required to divest potentially conflicting assets or putting them into a qualified (blind/diversified) trust as soon as practically possible in order to avoid the appearance of a conflict of interest; (iii) be subject to the accountability mechanisms set in the applicable statutes, including after leaving office, with any necessary exemption deriving from the former president's legal obligations upon departing office.**

Prohibition or restriction of certain activities

Incompatibilities, outside activities and financial interests

99. The Standards of Conduct set out limitations on federal employees outside activities, which may raise a potential conflicts of interest (see paragraphs 91-93 above), or the appearance thereof. By way of example, employees may not engage in outside activities that conflict with their official duties, may not receive compensation for teaching, speaking, or writing related to their official duties, with limited exceptions, and must satisfy their just financial obligations. Employees also face limitations on fundraising in a personal capacity.

⁴³ The full text of the Remarks of Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics, as prepared for delivery at 4:00 p.m. on January 11, 2017, at the Brookings Institution is available via the following link: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiv5_aDzvCAAxV77LsIHcCNCMMQFnoECA0QAQ&url=https%3A%2F%2Fwww.brookings.edu%2Farticles%2Foge-director-warns-trumps-plan-insufficient%2F&usg=AOvVaw1ee49pL44LTSdWtnYvF8Q8&opi=89978449

⁴⁴ Even upon departing office, former presidents have certain legal obligations to fulfil. For example, they are expected to review presidential records and enable their transfer to the National Archives and Records Administration.

100. Subpart H of the Standards of Conduct regulates outside activities, in conjunction with criminal law provisions contained in Title 18 U.S.C. §§ 203, 205 and 209 covering compensation to officers in matters affecting the government, activities of officers and employees in claims against and other matters affecting the government, and salary of government officials and employees. As a general principle, under Title 5 C.F.R. § 2635.101 entitled “Basic obligation of public service”, employees shall not engage in outside employment or activities, including seeking or negotiating for employment that conflict with official Government duties and responsibilities.

101. To address risks of and vulnerability to conflicts of interest, the OGE reviews, prior to formal nomination of persons to some senior positions (in particular, PAS officials such as agency heads, their deputies, Inspectors General etc.) candidates’ public financial disclosure reports⁴⁵. This early review allows identifying potential conflicts of interest and determine their appropriate resolution before the nominee’s public consideration for the position. Following the review, the nominee is required to enter into an “ethics agreement” (see also paragraphs 32, 52 and 54 above) with the prospective agency, which is a statement of relevant specific commitments that the nominee will undertake to avoid conflicts of interest in case of appointment. Such commitments include resignations from outside positions, divestiture of conflicting assets, recusal from matters that may come before them in their government role, and other specific steps. Ethics agreements are concluded in writing and cannot be changed or rescinded without OGE’s approval.

102. Title § 2635.403 (d) provides for a “reasonable period to divest or terminate”, should an agency direct a divestiture of a financial interest, the employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. To ensure compliance, the OGE requires that most senior officials complete and sign a “Certification of Ethics Agreement Compliance”, requiring the official to declare whether they have met all requirements set forth in their ethics agreement, including any resignations, divestitures, or recusals. A completed form is transmitted to the DAEO and then to the OGE.

103. Finally, the Hatch Act of 1939 contains certain prohibitions on political activity applicable to employees of the Executive Branch with the purpose of ensuring that the federal workforce is free from partisan political influence or coercion. In particular, prohibitions under the Hatch Act include being a candidate for nomination or election to public office in a partisan election; using his or her official authority or influence to interfere with or affect the result of an election; knowingly soliciting or discouraging participation in any political activity of anyone who has business before their employing office; soliciting, accepting, or receiving a donation, or contribution for a partisan political party, candidate for partisan political office, or political group; using any e-mail account or social media to distribute, send, or forward content that solicits political contributions etc.

Contracts with state authorities

104. In addition to restrictions related to interaction with lobbyists and conflicts of interest (see paragraphs 74-79 and 91-93 above), Federal Acquisition Regulation (FAR), which governs acquisitions by all executive agencies, sets out a policy intended to avoid conflicts of interest

⁴⁵ These reports are to be filed with the White House, the OGE, and the nominees’ future agency.

that might arise between the employees' interests and their official duties, and to avoid the appearance of favouritism or preferential treatment by the government toward its employees in that context. Subpart 3.6⁴⁶ of the FAR prohibits awarding a contract to a government employee or to a business concern or other organisation owned or substantially owned or controlled by one or more government employees.

Gifts

105. Basic principles of the Standards of Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635) state that an employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or non-performance of the employee's duties. 5 C.F.R. § 2635. 203(b), defines "gift" as any gratuity, favour, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. Modest items of food and non-alcoholic refreshments, such as soft drinks, coffee and donuts (offered other than as part of a meal), greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended primarily for presentation, are not considered as "gifts".

106. Subparts B and C of the Standards of Conduct regulate gifts from outside sources and gifts between employees, respectively. There are detailed and extensive exceptions on gifts that may be accepted, starting with the most basic exception of unsolicited gifts having an aggregate market value of USD 20 or less per source per occasion, capped at USD 50 per year from the same person. Another exception allows accepting a gift motivated by a family relationship or personal friendship, rather than the position of the employee. Factors in making such a determination include the history and nature of the relationship and whether the family member or friend personally pays for the gift. Other exceptions on gifts that may be allowed include certain discounts and similar benefits; awards and honorary degrees; meals, lodgings, transportation and other benefits resulting from the business or employment activities of an employee's spouse, when such benefits have not been offered or enhanced because of the employee's official position; gifts (including meals, lodgings, transportation, and other benefits, including free attendance at events) in connection with political activities, provided the Hatch Act allows the employee to participate in political activities etc.

107. As to the President and the Vice-President, Title 5 C.F.R. 2635.204(j) stipulates that owing to considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his or her own behalf or on behalf of any family member, provided that such acceptance does not violate § 2635.205(a) or (b), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States. Very detailed rules for storage and disposal of gifts received from foreign governments and international organisations are set out in 41 C.F.R. part 102-42⁴⁷.

⁴⁶ Entitled "Contracts with Government Employees or Organizations Owned or Controlled by Them".

⁴⁷ The full text of 41 C.F.R. Part 102-42 is accessible via the following link: <https://www.ecfr.gov/current/title-41/subtitle-C/chapter-102/subchapter-B/part-102-42>

108. Detailed regulations are in place as regards the disposal of prohibited gifts (5 C.F.R. § 2635.206). In particular, regarding tangible items, the employee must promptly return any such item to the donor, or pay the donor its market value. In the case of a tangible item with a market value of 100 USD or less, the employee may destroy the item. As to the intangibles, employee must promptly reimburse the donor the market value for any entertainment, favour, service, benefit or other intangible. Perishable items, where it's not practical to return them may, at the discretion of the employee's supervisor or the agency designee, be given to an appropriate charity, shared within the recipient's office, or destroyed.

109. The GET notes that a strong regulatory framework covering a broad range of officials in the Executive Branch is in place to prohibit the receipt of gifts above a nominal value (USD 20), with certain permissible gifts from foreign governments and international organisations being subject to a higher threshold (currently USD 480). The GET also notes detailed guidance and examples provided in the Standards of Conduct, and clearly articulated exemptions from general prohibition on gifts, subject to determinations by DAEOs of respective agencies. However, in the course of the on-site visit, several interlocutors expressed the view that some provisions regarding gifts were overlapping, and many were placed in several pieces of legislation, leading to difficulties in their application in practice. It would appear that officials frequently resorted to advice and guidance from DAEOs in this regard. While the GET recognises the comprehensive framework in place for preventing inappropriate gifts, it encourages the US government to consider streamlining the relevant rules to make them more comprehensible.

Misuse of public resources

110. Subpart G of Title 5 C.F.R. 2635 contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment. In particular, § 2635.702 prohibits federal employees from using their public office for private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom employees are affiliated in a non-governmental capacity, including non-profit organisations of which employees are an officer or member, and persons with whom they have or seek employment or business relations. Further, employees are duty-bound to protect and conserve government property⁴⁸ and not to use such property, or allow its use, for other than authorized purposes (5 C.F.R. § 2635.704). Unless otherwise authorized by legislation, employees must use their official time in an honest effort to perform official duties (5 C.F.R. § 2635.705).

Misuse of confidential information

111. Title 18 U.S.C. § 1905, entitled "Disclosure of confidential information generally", prohibits the disclosure of various forms of confidential government information including

⁴⁸ As per 5 C.F.R. § 2635.704 (b)(1) Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles; (2) Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

trade secrets, processes, operations, style of work or apparatus by federal employee. In addition, Title 5 C.F.R. § 2635.703 regulates the use of non-public information, including confidential information. Under this provision, employees are prohibited from engaging in a financial transaction using non-public information⁴⁹, or allowing the improper use of non-public information to further their own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

112. Furthermore, classified information is subject to additional protections and prohibitions and may only be handled in special facilities and processed on special networks contained within such facilities (as per Title 32 C.F.R. Subpart E, regulating classified national security information). The mishandling of classified information may be dealt with through administrative sanctions, including reprimand, suspension without pay, removal, termination of classification authority, or loss or denial of access to classified information pursuant to section 5.5. of the President's Executive Order No. 13526 of 29 December 2009.

Post-employment restrictions

113. There is no blanket prohibition of employment in a certain positions or sectors after leaving government service. Section 17, subsection (a) of the STOCK Act, which extends to Executive and Judicial Branches, prohibits officials subject to filing financial disclosure reports under Title 5 U.S.C. §13103⁵⁰ of the Ethics in Government Act from directly negotiating or having any agreement of future employment or compensation, unless such officials, within three business days after the commencement of negotiations or agreements of future employment or compensation, file with their respective ethics offices a signed statement regarding such negotiations or agreement, including the name of the entity/ies involved, and the date of commencement of such negotiations or agreements. According to Section 17, subsection (b), officials covered under subsection (a) must recuse whenever there is a conflict of interest, or appearance of a conflict of interest with respect to the subject matter of their statements, and must notify the respective ethics office of such recusal.

⁴⁹ As per § 2635.703 (b) non-public information is information that the employee gains by reason of Federal employment and that he/she knows or reasonably should know has not been made available to the general public. This includes information that he/she knows or reasonably should know: (1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation; (2) Is designated as confidential by an agency; or (3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

⁵⁰ Title 5a U.S. Code § 101 entitled "Persons required to file" defines, under subsection (f) a broad range of officials, which includes, inter alia, the President; the Vice President; officers or employees in the Executive Branch as defined in U.S.C. Title 18, section § 202, occupying positions classified above GS15 or positions for which the basic paygrade equals or is greater than 120 percent of the minimum basic pay for GS-15; officers or employees in any other position determined by the Director of the OGE to be of equal classification; employees in the Executive Branch excepted from the competitive service by reason of being of a confidential or policymaking character, unless excepted by the regulation of the OGE Director, provided such exclusion would not adversely affect the integrity of the Government or the public's confidence in the integrity of the Government; the Director of the OGE and Designated Agency Ethics Officials; employees of the Executive Office of the President (other than a special government employees) holding a commission of appointment from the President.

114. Subpart F⁵¹ of the Standards of Conduct provides further detailed rules on recusal of federal employees seeking outside employment⁵² in case their financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially in their official capacity, implementing the prohibition set out in Title 18 U.S.C. 208(a) for such employee not to participate personally and substantially in any particular matter that, to their knowledge, will have a direct and predictable effect on the financial interests of a person “with whom the employee is negotiating or has any arrangement concerning prospective employment.” In addition to this statutory requirement, Subpart F also addresses recusal from particular matters affecting the financial interests of a prospective employer, when an employee's actions in seeking employment fall short of actual employment negotiations. In addition, Subpart F establishes notification requirements applicable to broad range of officials in the Executive Branch regarding their negotiations or agreements of future employment or compensation.

115. A considerable range of restrictions is provided under Title 18 U.S.C. § 207 with a purpose of preventing former government employees from leveraging relationships established in the course of their government service by resorting to unfair use of influence and information gained through government employment to assist others dealing with the Government. In particular, former employees are prohibited from providing certain services to, or on behalf of, non-federal employers or other persons, whether or not done for compensation. Some categories of former “senior” and “very senior” federal officials are subject to more stringent restrictions in this regard. For instance, Section 207(a)(1) establishes a lifetime ban on former government employees from making, with the intent to influence, any communication to or appearance before a federal employee on behalf of another regarding a “particular matter involving specific parties” in which they participated personally and substantially as government employees. Further, Section 207(a)(2) sets out a two-year ban on former government employees from making, with the intent to influence, any communication to or appearance before a federal employee regarding a “particular matter involving specific parties” even if they were not personally involved in the matter, but it was pending under their “official responsibility” during their final year of government service. Violations of these provisions carry criminal and civil penalties.

116. In addition, the Ethics Pledge under the President’s Executive Order No. 13989 prohibits former appointees from engaging in lobbying with respect to their former agency for two years after terminating employment. They are also prohibited from engaging in lobbying activities with a covered Executive Branch official or other senior political appointee for the remainder of the Presidential Administration. Former political appointees are also prohibited from engaging in any activity on behalf of any foreign government or foreign political party, which would require the appointee to register as a “foreign agent”.

117. The Vice President is subject to 18 U.S.C. § 207(d), preventing former high-level officials from contacting any person within their former agency or department, or any person of the Executive Schedule, for two years from the date they terminate the covered position.

⁵¹ In particular, the following provisions of 5 C.F.R. Subpart F: § 2635.604 Recusal while seeking employment; § 2635.605 Waiver or authorization permitting participation while seeking employment; § 2635.606 Recusal based on an arrangement concerning prospective employment or otherwise after negotiations; and § 2635.607 Notification requirements for public financial disclosure report filers regarding negotiations for or agreement of future employment or compensation.

⁵² A person would be considered to be seeking employment if he/she sends resume to companies or is approached about a position with a company and responds that he/she is interested.

The Vice President is also subject to the one-year restriction under 18 U.S.C. § 207(f) on representing, aiding, or advising any foreign entity (foreign government or political party) before any officer or employee of any agency or department of the U.S. with the intent to influence any official decision. As to the President, no post-employment restrictions are currently in place. While the GET acknowledges the unique nature of the President's position in the Executive Branch, it heard no compelling arguments as to why having suitable post-employment safeguards for the President would be impractical or inappropriate, or why the President should be subject to any different post-employment regime from that of the Vice President. Therefore, **GRECO recommends that the President of the United States be subject to similar post-employment restrictions as the Vice President, with any necessary exemption deriving from the former president's legal obligations upon departing office.**

118. The GET notes that there are comprehensive post-employment rules applicable to the Executive Branch and covering nearly all categories of PTEFs. In the view of the GET, the U.S. administration benefits from the presence in Government of individuals with recent business experience, and interchanging between business and government is not in itself unhealthy, as it can bring additional benefits to all involved. That said, the GET observes that in a system where a considerable number of senior and very senior officials in the Executive Branch are appointed for the term of office of the President, it is inevitable that with every change of the President, many such officials will be looking for external employment. In this regard, the GET noted that few safeguards exist to prevent the challenges of revolving doors, whereby officials may take official decisions with a view to future employment and/or be hired by a future employer based on their insider government contacts. Restrictions and cooling-off periods only prohibit contacting the former agency or seeking for official action, which is without doubt one of the main integrity risks of revolving doors, but not the only one.

119. In the course of the on-site visit, the GET received allegations that some PTEFs from previous administrations had, within two years of leaving office, entered business or employment relationships with external parties with which they had had official dealings while in office. In particular, reference was made to the fact that the cooling-off periods prohibited working with or for foreign governments, but not private businesses. The GET heard of several cases where senior officials involved in granting considerable subsidies to industries would see themselves employed in those industries upon termination of government office. Further, some former senior officials⁵³ allegedly negotiated business agreements with foreign governments, which later benefited their private businesses and funds. If these allegations were accurate, they clearly represent potential conflicts of interest and should be addressed (see also investigations relating to senior officials in paragraph 139 below).

120. In view of the above, **GRECO recommends that (i) an independent audit of post-employment restrictions and other risks relating to revolving doors in the Executive Branch be conducted; and (ii) in view of its results, the system of post-employment restrictions be further strengthened.**

⁵³ See, in particular, the following reports in the media: <https://democracy21.org/news/press-releases/d21-crew-request-oge-investigation-into-kushners-apparent-financial-conflicts-of-interest>; <https://www.nbcnews.com/politics/congress/house-oversight-investigating-2b-saudi-investment-jared-kushners-firm-rcna31805>

Declaration of assets, income, liabilities, and interests

Declaration requirements

121. The Ethics in Government Act establishes the public and non-public (confidential) financial disclosure requirements, defining persons required to file, contents of disclosure reports, timeframe of filing, consequences for failure to file or filing false reports, and the review procedure. More specifically, § 13103(a) of the Ethics in Government Act requires that individuals subject to declaratory requirements must file their respective report within 30 days of assuming a position. These provisions are further elaborated under Title 5 CFR §2634, entitled “Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture”.

122. There are two categories of reports to be filed, depending on the position in the Executive Branch: the OGE-278 form, for public disclosures, covering most senior positions, and OGE 450 – for confidential disclosures. The OGE-278 is to be filed *inter alia* by the following officials: the President and the Vice President; officials in positions paid under a system other than the General Schedule (e.g., SES) at a rate of basic pay equal to or greater than 120% of the minimum paygrade for GS-15; members of the uniformed services with paygrade of O-7 or above; and officers or employees in any other positions determined by the Director of the OGE to be of equal classification; administrative law judges; officials in positions excepted from the competitive service due to their confidential or policy-making character (unless excluded from the public financial disclosure requirements by the OGE Director); the OGE Director and each DAEOs; and civilian employees in the Executive Office of the President, appointed by the President.

123. Under the OGE-278 (and pursuant to §13104 of the Ethics in Government Act), officials are required to provide information according to nine substantive chapters, as follows: positions held outside the U.S. Government; employment assets and income and retirement accounts; employment agreements and arrangements; sources of compensation exceeding USD 5000 in a year; spouse’s employment assets and income and retirement accounts; other assets and income; transactions; liabilities; gifts and travel reimbursements.

124. Candidates for election to the office of President or Vice President must file public disclosure reports (1) within 30 days of becoming a candidate, or on or before May 15 of the calendar year in which the person becomes a candidate, whichever is later, and in any event not later than 30 days before the election; and (2) on or before May 15 of each successive year they remains candidate. New entrants on senior positions are to file public disclosure reports within 30 days of assuming office. Prospective Presidential appointees to an Executive Branch, requiring Senate confirmation may, following a public announcement of the intention to nominate them, file a public financial disclosure report, which must be filed in any event within five days after the transmittal of their nomination to the Senate. Senior officials must also file public disclosure reports upon termination of office.

125. As to OGE-450 disclosure form, each agency designates officials required to file confidential reports, based on the criteria set out in Title 5 C.F.R. § 2634.904⁵⁴. This includes,

⁵⁴ According to Title 5 C.F.R. §2634.904, “confidential filer” includes: officers of the Executive Branch in positions classified at GS–15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of

inter alia, positions classified at GS-15 or below (or the equivalent in other pay systems) and uniformed service officers below 0-7, where the agency has determined that the official participates personally and substantially in decisions regarding contracting or procurement; administering or monitoring grants, subsidies, licenses, or other Federal benefits; regulating, auditing, or other duties directly and substantially affecting non-Federal entities. In addition, the agency may determine that officials occupying any other positions should file confidential reports to avoid actual or apparent conflicts of interest.

126. The OGE-450 form consists of five substantive parts, covering assets and income; liabilities; outside positions; agreements or arrangements; and gifts and travel reimbursement. It also includes information regarding spouses and dependent children. Newly appointed officials are to file the OGE-450 reports within 30 days of assuming position, unless the agency requests the report earlier, or grants a filing extension. Thereafter, the reports are to be filed annually and are due no later than 15 February, unless the agency grants a filing extension.

127. As of 2015, the OGE operates a web-based electronic filing system⁵⁵ for the Executive Branch, allowing officials to enter their data directly into the system, and providing direct access to this data to reviewing authorities, including the OGE.

Review mechanisms

128. Both public and confidential financial disclosure reports are subject to technical and a conflict-of-interest reviews to ensure compliance with the disclosure and ethics legislation, in particular to identify any potential conflicts of interest.

129. Financial disclosure reports are primarily reviewed and certified by the official's employing agency DAEO or other designated ethics official. The technical review involves several rounds of checks, during which the official is interviewed to clarify entries on the report and to ensure that all required information is properly disclosed. To ensure accuracy of the reported information, the agency also cross-checks information against publicly available information sources, such as financial websites, search engines, as well as government data

basic pay for GS-15 of the General Schedule; officers or employees of the U.S. Postal Service or Postal Rate Commission with basic paygrade of less than 120% of the minimum basic pay for GS-15; members of uniformed services with paygrades less than 0-7 under 37 U.S.C. 201; and officers or employees in any other position determined by the designated agency ethics official to be of equal classification; if:

(i) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially (as defined in §§ 2635.402(b)(4) and 2640.103(a)(2) of this chapter) through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a Government action regarding:

- (A) Contracting or procurement;
- (B) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;
- (C) Regulating or auditing any non-Federal entity; or
- (D) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(ii) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, or to carry out the purposes behind any statute, Executive Order, rule, or regulation applicable to or administered by the employee.

⁵⁵ The online filing system "Integrity" (<https://integrity.gov/login>), operated by the OGE.

sources. In case of any inaccuracies established in the process, the agency and the OGE may request additional information to complete the report.

130. The technical review is followed by a conflict of interest review, which focuses on financial disclosures and the duties of the official's position to identify any potential conflicts of interest under the ethics statutes and regulations. It is geared towards establishing whether the official may have holdings or outside positions and relationships, which could not be in conformity with the ethics regulations, and devising remedial measures to prevent such conflicts of interest from arising.

131. In order to certify a disclosure report, a review must determine that:

- all required parts are completed; and
- no interest or position disclosed on the report violates or appears to violate:
 - any applicable provision of chapter 11 of title 18, United States Code (i.e., criminal conflict of interest statutes);
 - the Ethics in Government Act of 1978, as amended, and the implementing regulations;
 - Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations (i.e., Standards of Conduct);
 - any other applicable Executive Order in force at the time of the review (e.g., Ethics Pledge); or
 - any other agency-specific statute or regulation that governs the filer.

132. An agency should review public financial disclosure reports within 60 days upon receipt. Should any remedial measures be required, their implementation should be initiated before the expiry of this period. In such cases, agencies must make reasonable efforts to complete the review as soon as practicable following the expiration of the 60-day period, and, in cases requiring remedial action, no later than three months from the date on which the filer is notified of the need for remedial action. The OGE provides a second-level review of the public financial disclosure reports of certain senior officials, including DAEOs, high-level White House officials, and high-level officials in the Office of the Vice President, and the Postmaster General. The reports of these officials are initially reviewed and certified by the employing agency, and then forwarded to the OGE for a second level of review and certification or closure.

133. Financial disclosure reports of candidates for PAS positions are reviewed by the respective agency, the OGE, and the White House prior to appointment. In principle, disclosures are to be taken at "face value", except when there is a patent omission or ambiguity, or the reviewing agency (or the OGE) becomes aware of erroneous reporting. The GET was told that in practice, reviewers are generally proactive and aim at clarifying all issues with the filing officials to ensure accuracy. Once the official is appointed, the OGE, along with the employing agency, monitors the official's compliance with the "ethics agreement" concluded with the agency, which typically must be fulfilled within 90 days of appointment. In some cases, agencies may determine to waive certain financial conflict-related ethics requirements, but must consult the OGE on such occasions. Compliance with the ethics agreement commitments is confirmed through a written certification to be presented to the agency and the OGE, which is made public. Should an official fail to file a compliance certification within designated time, the OGE notes on its website that such certificate has not

been received. A material misrepresentation or omission on the certification form may be subject to disciplinary or criminal sanctions.

134. The OGE's Annual Questionnaire gathers data on the rate of compliance with filing requirements, as well as on corrective or disciplinary action taken in response to violations of ethics rules or laws and referrals to the Department of Justice concerning potential violations of the criminal conflict of interest statutes. This Questionnaire also collects information on most frequently sought ethics guidance from agency DEAOs and publishes advice and counsel information as part of the annual summary report. Further, the OGE annually publishes surveys of prosecutions⁵⁶, indicating penalties imposed, involving the conflict-of-interest criminal statutes (18 U.S.C. §§ 202-209) and other related statutes illustrating the Department of Justice enforcement of the criminal conflict-of-interest laws.

135. In addition, the Office of Management and Budget of the Executive Office of the President provides guidance to federal managers on improving the accountability and effectiveness of federal programs and operations by identifying and managing risks, establishing requirements to assess, correct, and report on the effectiveness of internal controls.

136. The GET notes with satisfaction that all public office holders in the Executive Branch are subject to extensive declaratory obligations and scrupulous reviews regarding their financial interests, as well as an obligation to divest from them, should any such interests be, or appear to be, in conflict with their official duties (also those arising in the course of employment through *ad-hoc* disclosures). All these measures apply to all senior executives at Cabinet level and below. In the view of the GET, this comprehensive framework and proactive enforcement constitute best practice. The key (and crucial) improvements that ought to be made in the current system refer to the highest executive positions, the President and Vice-President; a recommendation has already been made to this effect (see paragraph 98).

Accountability and enforcement mechanisms

Non-criminal enforcement mechanisms

137. Violation of the Standards of Conduct Regulations is administrative misconduct, subject to disciplinary measures up to termination of employment, as well as other sanctions, such as fines. The President and Vice President are also not subject to the Standards of Ethical Conduct, except for those provisions concerning the acceptance and solicitation of gifts. Nonetheless, the OGE and the Department of Justice (DOJ) have long advised that as a matter of policy, the President and the Vice President should conduct themselves as if they were so bound⁵⁷.

138. The Standards of Conduct also require that employees implement the criminal statute prohibitions relating to integrity, impartiality, conflicts of interest, misuse of official position and misuse of confidential information (as described in relevant sections above). The Annual Questionnaire transmitted by the OGE to federal agencies also collects information on

⁵⁶ Specific reports are accessible via the following links: [2021](#), [2020](#), [2019](#), [2018](#) and [2017](#).

⁵⁷ See in particular the OGE Informal Advisory Opinion 83x16 of 1983, accessible via the following link: [https://oge.gov/web/oge.nsf/0/7C412A858FF0CF9B852585BA005BEF6D/\\$FILE/64ed9ad9bd294b45a88ac8729a97968a3.pdf](https://oge.gov/web/oge.nsf/0/7C412A858FF0CF9B852585BA005BEF6D/$FILE/64ed9ad9bd294b45a88ac8729a97968a3.pdf)

disciplinary and civil actions taken in response to violations of the Standards of Conduct Regulations. However, such information is not disaggregated according to categories of officials, including PTEFs. The Annual Questionnaire, published online⁵⁸, also indicates data on proceedings initiated for failure to file or filing false public financial disclosures (5 U.S.C. app. § 13106) carrying a fine of up to USD 50 000, violations of rules regarding outside earned income (5 U.S.C. app. § 13143) or outside activities (5 U.S.C. app. § 13144), violation of which carries a fine of up to USD 10 000. In 2022, agencies reported 675 disciplinary actions based wholly or in part upon violations of the Standards of Conduct and 18 disciplinary actions based wholly or in part on violations of criminal or civil statutes. Disciplinary actions can include corrective action up to and including suspension, reassignment, or removal.

139. By way of example, the authorities refer to several cases of PTEFs found in violation of integrity and ethics-related statutes. Thus, in 2017, Health and Human Services Secretary resigned after criticism related to the misuse of public funds for luxury and personal travel⁵⁹. Further, in 2018, Veteran Affairs Department Secretary was replaced following a report of the Inspector General regarding his use of a subordinate to handle personal travel plans during an official trip to Denmark and England and for improperly accepting tickets to the Wimbledon tennis tournament⁶⁰. In 2018, the Interior Secretary resigned following several federal investigations related to his use of office for personal gain⁶¹.

Criminal proceedings and immunities

140. All PTEFs, except for the President and the Vice President, are subject to the ethics and conflict of interest laws and may be pursued for criminal and civil liability to the same extent and in the same manner as other officials. PTEFs are generally subject to the same substantive and procedural rights during criminal investigations, prosecutions and proceedings as all other citizens when under investigation for corruption-related and other offences.

141. More particularly, the criminal statutes regarding conflicts of interest and bribery for federal officials include, in particular, Title 18 U.S.C §§ 201-209. Section 201, which also covers the President and the Vice-President, prohibits bribery of public officials and witnesses, punishable by up to 15 years of imprisonment, which may also result in disqualification “*from holding any office of honour, trust, or profit under the United States*” (18 U.S.C. §201(b)). The President and Vice President are not subject to the criminal conflict of interest laws under 18 U.S.C. §§ 203, 205, 208, and 209. A recommendation on due accountability of the President

⁵⁸ Reports regarding specific cases are contained in the Conflict of Interest Protection Surveys, accessible via the following links: [2022](#), [2021](#), [2020](#), [2019](#), [2018](#) and [2017](#).

⁵⁹ According to the Audit Report of the Inspector General of Health and Human Services. See also the following news reports: <https://www.politico.com/story/2018/07/13/tom-price-auditor-travel-685778>, <https://abcnews.go.com/Politics/watchdog-report-hhs-secretary-tom-prices-travel-wasted/story?id=56564897>, <https://www.foxnews.com/politics/hhs-secretary-tom-price-resigns-over-private-plane-trips>

⁶⁰ See Administrative Investigation regarding the Veterans Affairs Secretary and Delegation Travel to Europe by the Office of Inspector General, accessible via the following link: <https://www.va.gov/oig/pubs/vaoig-17-05909-106.pdf>

⁶¹ See the Investigation Report by the Office of Inspector General of the U.S. Department of the Interior, accessible via the following link: <https://www.oversight.gov/sites/default/files/oig-reports/DOI/WebReactFormerSecretaryEthicalNoncompliance.pdf>

and Vice-President for conflict of interest related breaches has been made earlier in this report (see paragraph 98).

142. The President enjoys the “executive privilege”⁶², which protects records and information solicited and received by the President or the President’s immediate White House advisors that reflect presidential decision-making and deliberations⁶³. This privilege is not necessarily “absolute” and, under appropriate circumstances, may give way to “the fundamental demands of due process of law in the fair administration of criminal justice”⁶⁴ and, according to the authorities, is rarely invoked in criminal proceedings. Its application varies depending on the facts and circumstances of both the privilege’s invocation and the particular criminal investigation or prosecution. The GET has not been made aware of any investigations in recent years regarding corruption related offences, where the executive privilege would be invoked.

143. As regards the immunities, the President in office does not enjoy immunity from criminal investigation. However, the Office of Legal Counsel within the DOJ, which provides legal interpretations to the Attorney General, ruled: “*that by virtue of his unique position under the Constitution, the President cannot be the object of criminal proceedings while he is in office*”, thus establishing the inviolability of the President in office⁶⁵. This issue has not been addressed by the Supreme Court. If, however, the President were impeached and removed from office, there would be no barrier to criminal prosecution.

144. As already mentioned, the OGE Annual Questionnaires (see paragraph 138 above) provide information and examples of prosecutions and penalties resulting from violations of criminal statutes related to conflict of interest, post-employment restrictions and unauthorized representation of claims against the government (18 U.S.C. §§ 202-209) and other related statutes. In 2022, some 47 referrals for violations of criminal conflict of interest laws were made to the Department of Justice. By way of example, the authorities referred to charges brought against former President Trump for unlawful retention of national defence information in U.S. v. Trump, Nauta, and De Oliveira⁶⁶ and for the conspiracy to defraud the

⁶² Executive privilege, a legal doctrine recognized more than 200 years ago, allows presidents to defy requests by members of the legislative and judicial branches for information the administration deems sensitive. The privilege ensures that the president receives candid advice from aides without fear of intrusion by Congress or the courts. Although the privilege is not explicitly mentioned in the Constitution, the U.S. Supreme Court first found in the 1974 Watergate case, *United States v. Nixon*, a constitutional basis for the doctrine in “the supremacy of each branch within its own assigned area of constitutional duties” and in the separation of powers principle. A similar provision exists in the federal Freedom of Information Act Exemption 5 and permits an executive agency to withhold from disclosure certain documents on which executive officials rely. The privilege was first used by George Washington, who said that the president is justified in withholding information only when doing so is in the service of the public interest and not an attempt to protect the political interests of the president and his administration. See more at: <https://www.rcfp.org/journals/fast-furious-and-executive-pr/>

⁶³ See *Trump v. Thompson*, 20 F.4th 10, 25-26 (D.C. Cir. 2021) accessible via the following link: <https://casetext.com/case/trump-v-thompson-1>

⁶⁴ See *United States v. Nixon*, 418 U.S. 683, 713 (1974) affirming denial of President’s motion to quash subpoena duces tecum requesting records for use in criminal trial, accessible via the following link: <https://supreme.justia.com/cases/federal/us/418/683/>.

⁶⁵ See Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, Re: Amenability of the President, Vice President and other Civil Officers to Federal Criminal Prosecution while in Office (Sept. 24, 1973).

⁶⁶ The superseding indictment is accessible via the following link: <https://www.justice.gov/storage/US-v-Trump-Nauta-De-Oliveira-23-80101.pdf>

United States, conspiracy to obstruct an official proceeding and related charges in U.S. v. Donald J. Trump⁶⁷.

⁶⁷ The indictment is accessible via the following link:
https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf

V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

Organisation and accountability of law enforcement

Overview of various law enforcement authorities

145. Law enforcement describes the local, state, and federal agencies and employees responsible for enforcing laws, maintaining public order, and managing public safety. The primary duties of law enforcement include the investigation, apprehension, and detention of individuals suspected of criminal offences. Federal law enforcement officers (LEOs) have duties similar to those of state and local police officers. Agents enforce the law, investigate crimes, collect, and preserve evidence, write reports for government prosecutors, apprehend criminals, and testify in court.

146. There are several federal law enforcement agencies (LEA): Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Immigration and Customs Enforcement (ICE), U.S. Marshals Service (USMS), United States Secret Service (USSS), United States Coast Guard, Transport Security Administration (TSA), U.S. Customs and Border Protection (CPB), Homeland Security Investigations (HSI), United States Department of Defence Police (DOD).

147. This report focuses on the Federal Bureau of Investigation (FBI). As the primary investigative arm of the federal government, the FBI is both the most recognizable of the nation's many law enforcement agencies and the agency with the broadest investigative authority.

Organisation and accountability of selected law enforcement authorities: the Federal Bureau of Investigation (FBI)

148. The FBI has unlimited jurisdiction across the entire nation and can involve itself in almost any criminal matter. The investigative jurisdiction of the FBI extends to most federal criminal laws across more than 200 categories, most of which fall under the broad areas of terrorism, cybercrime, counterintelligence, civil rights, public corruption, weapons of mass destruction, organised crime, violent crime, and white-collar crime. Federal law gives the FBI authority to investigate all federal crime not assigned exclusively to another federal agency. The FBI is uniquely situated between both intelligence-gathering and domestic law enforcement spheres. In this framework, it often acts as a sort of clearinghouse for domestic security information and is responsible for collecting intelligence and disseminating it to other federal agencies.

149. The FBI (nor any of the other above-listed federal law enforcement agencies) is not a national police force. The FBI is first and foremost a national security organisation that works closely with many partners around the country and across the globe to address the most serious security threats facing the nation. State and local law enforcement agencies are not subordinate to the FBI, and the FBI does not supervise or take over their investigations. Instead, the investigative resources of the FBI and state and local agencies are often pooled in a common effort to investigate and solve the cases. Such collaboration is considered the keystone to the FBI's mission. A significant number of FBI investigations are conducted in concert with other law enforcement agencies or as part of joint task forces.

150. The FBI is a semi-autonomous agency supervised by the Department of Justice. It is a civil organisation led by a Director, who is appointed by the U.S. President and confirmed by the Senate for a term not to exceed ten years. As part of the Department of Justice, the head of the FBI is answerable to the Attorney General of the United States. Internally, the FBI is structured as follows: the Director, Deputy Director (DD), Associate Deputy Director (ADD), Executive Assistant Directors (EADs), Assistant Directors (ADs) who lead the FBI Headquarters branches, divisions, and programs, and Assistant Director in Charge (ADIC) and Special Agents in Charge (SAC) leading its field offices.

151. While headquartered in Washington, DC, the FBI operates 56 field offices located in major cities throughout the United States, about 350 smaller satellite offices called resident agencies in cities and towns, and more than 60 international offices called legal attachés in U.S. embassies worldwide.

152. As of November 2022, there are more than 37,000 FBI employees, including approximately 14,000 full-time law enforcement officers (hereinafter LEO) or special agents. Diversity is one of the FBI's Core Values and part of the Director's Priority Initiatives. The Office of Diversity and Inclusion develops and executes diversity and inclusion strategies. Out of the total number of FBI employees, there are: 54.72% male (20,597), 45.28% female (17,041), 72.66% white (27,346 - overall U.S. population is 61.3% white), and 27.15% all minorities (10,219). Out of the total FBI Senior Executive Service (SES) and Senior Level (SL) employees, 73.99% are male (242) and 26.01% female (84).

153. The FBI has a policy of diversity and inclusion supported by a dedicated institutional set-up. The GET notes a male (55%) to female (45%) ratio of employees in the FBI. Women make up only 26% of the persons occupying top management positions in the FBI and 22% of special agents. Women lead seven of the 56 FBI field offices. The GET was also made aware of an evaluation of the U.S. Department of Justice Office of the Inspector General (DOJ OIG) on gender equity in the training processes for new special agents and intelligence analysts at the FBI Academy (December 2022). This evaluation followed complaints of former trainees regarding alleged gender discrimination at the FBI Academy and resulted in seven recommendations for improvement⁶⁸. The GET understood that steps are being taken by the FBI to address these recommendations; the DOJ OIG considers the status of all recommendations to be resolved⁶⁹.

⁶⁸ [Evaluation of the U.S. Department of Justice Office of the Inspector General \(DOJ OIG\) on Gender Equity in the Training Processes for New Special Agents and Intelligence Analysts at the FBI Academy](#). In 2019, several former New Agent Trainees (NATs) and New Intelligence Analyst Trainees (NIATs) filed a lawsuit against the FBI, alleging gender discrimination at the FBI Academy. Following a request from the U.S. House of Representatives Committee on the Judiciary, the U.S. Department of Justice Office of the Inspector General (OIG) initiated this evaluation of policies and practices, trends, and patterns for male and female trainees, as well as perceptions of gender equity at the FBI Academy. OIG found that positive training outcomes, such as graduation rates, were generally equitable; however, it also found that female NATs received a disproportionate number of Suitability Notations (SN) in several areas and were dismissed at rates higher than their overall representation in the FBI Basic Field Training Course (BFTC) population. OIG also identified concerns in the disparity of treatment in several areas of the BFTC curriculum, especially the Academy's handling of tactical and defensive tactics training. Finally, it determined that women have been underrepresented as tactical and defensive tactics instructors.

⁶⁹ "Resolved" does not necessarily mean that the recommendations have been fully implemented, but rather, that the agency to which the recommendations were made has agreed to implement the recommendations or has proposed actions that will address the recommendations.

154. As GRECO has repeatedly underscored in the Fifth Evaluation Round, LEOs should represent, as much as possible, society as a whole. Seeking a better gender balance is not only a requirement of equality under international law, but diversity in the LEA in general, including at managerial level, can have positive effects on the profession as a whole (e.g. in contacts with the public, in creating a more heterogeneous environment which could counter a possible code of silence, further developing multiple-eyes routines etc.). In addition to better representation of women in managerial posts, it would also be important that consideration is paid to work-life balance measures that would allow female colleagues to stay and build a career in the force. The GET further considers that greater efforts could be made at all levels of the FBI, not just as regards women but also other underrepresented groups. The GET encourages the authorities to think expansively in this domain so to ensure that merit-based processes include positive policies and practices contributing to an appropriate level of diversity within the FBI. Consequently, **GRECO recommends that further measures be taken to strengthen the representation of women and other underrepresented groups at all levels in the Federal Bureau of Investigation.**

Access to information

155. FBI records (such as investigative or personnel files and policy guides) are provided to the public, including the media, in accordance with the Freedom of Information (FOIA) and Privacy Acts, collectively referred to as FOIPA. Frequently requested documents are available at: [FBI FOIA Vault](#).

156. Additionally, the Office of the Government Ethics (OGE) makes available to the public an online system of ethics records for about 1,000 of the approximately 26,000 public filers in the Executive Branch, including the FBI Director. The public may also use the OGE-201 form to request copies of public financial disclosure reports and other specified records of certain Executive Branch officials including FBI Senior Executives and Senior Level officials. These records are available under the Ethics in Government Act of 1978 ("the Act") and amendments thereto (5 U.S.C. app. 103, 105 and 402), the STOCK Act, and OGE's implementing regulations.

157. The Act imposes restrictions on the use of the records. They cannot be used for:

- any unlawful purpose;
- any commercial purpose, except by news and communications media for dissemination to the general public;
- determining or establishing a credit rating; or
- direct or indirect use in the solicitation of money for any purpose, including political and charitable purposes.

158. Individuals may also request other "covered records" from OGE, such as qualified blind trust and qualified diversified trust instruments, other OGE Form 201 requests, cover letters for approved gifts reporting waiver requests, and cover letters for approved public reporting waiver requests for certain less than 130-day special Government employees.

Public trust

159. In the [McCourtney Institute for Democracy's Mood of the Nation Poll](#), which was conducted in November 2022, 40% of respondents answered "most of the time" to the question, "how much of the time do you think you can trust the FBI to do what is right?". The

survey also found that generational differences in perceptions of FBI bias are also fairly pronounced. Only 31% of Generation Z (age 18-25) indicated that they feel FBI agents are fair, compared with 50% of the Silent Generation (age 77+). Thirty-eight percent of Generation Z indicates that FBI agents are biased against groups on the left, an option chosen by none of the respondents from the Silent Generation, who instead perceived bias against former President Trump. A higher proportion of those with at least a college degree indicate trust in the FBI than is the case among those with some college but no degree.

Trade Unions and Professional Organisations

160. As mentioned before, the FBI is both a law enforcement and intelligence agency. As such, it is among the agencies exempted by law from labour organisations (or unions). Instead, FBI special agents may voluntarily choose to become members of professional associations, such as the FBI Agents Association ([FBIAA](#)) or the Society of Former Special Agents of the FBI ([SOCXFBI](#)). Since those and other professional associations are non-federal entities, though closely affiliated with the FBI, a current FBI Special Agent's activity may be limited (e.g. representational activities before the Department of Justice regarding compensation or workplace issues that focus on the Special Agents or another discrete and identifiable class of persons or entities).

Anti-corruption and integrity policy, regulatory and institutional framework

Anti-corruption and integrity policy

161. The FBI has several policies dedicated to the prevention of corruption and the promotion of integrity. The Office of Integrity and Compliance (OIC), Security Division, Inspection Division (INSD), and the Office of Professional Responsibility (OPR) implement programs and policies to ensure the integrity of FBI's workforce and mission. The newly formed Office of Internal Audit (OIA) also plays a critical role for corruption prevention purposes (see also section on oversight and control). The FBI Ethics and Integrity Program Policy Guide is also essential in this respect (see section on ethical principles and rules of conduct).

162. From the recruitment process through onboarding, career advancement, and eventually termination of employment, the FBI undertakes measures to prevent corruption and promote integrity. The FBI conducts thorough, full-scope background investigations before employees enter on duty – this includes pre-employment polygraph examinations of all employees. Once on board, the FBI engages in continuous employee vetting, to identify potential risks (see also section on vetting and re-vetting). The FBI also has an Insider Threat Program that monitors systems and other data to identify potential insider threats.

163. To promote effective documentation of policies and procedures, the FBI's Internal Policy Office assists in the creation of detailed, clear policies governing all aspects of FBI activities. One such policy is the [Domestic Investigations and Operations Guide \(DIOG\)](#). This policy provides detailed requirements relating to the FBI's use of its investigative authorities, among other things. In addition, individual programs develop policy guides to further delineate proper procedures in their respect.

164. The FBI has also developed information technology systems to promote robust decision-making processes with appropriate approval requirements embedded into system workflows. For example, in 2014 the FBI converted from a paper-based file system to an electronic system named SENTINEL, which provides management for cases, records, tasks, workflow, and collected items, as well as search and reporting capabilities. SENTINEL maintains an auditable record of all transactions. It documents and manages cases from inception to closure.

165. The GET notes that the FBI has built strong policies and mechanisms inside the Bureau to promote ethics and integrity and to prevent misconduct and crimes, including corruption, fraud, mishandling of information and many others. The numerous divisions and offices inside the FBI and outside of it, in the executive branch of government, dedicate significant resources to ensure that the FBI complies with the highest standards of excellence. Each and every of the FBI employees met on-site from different structural units of the Bureau, including its Security Division, Insider Threat Office, Inspection Division, Office of Integrity and Compliance, Office of Professional Responsibility and the newly built Office of Internal Audit, repeated the FBI motto “do the right thing, the right way”, believing it has been deeply engrained in the organisation. There is a strong risk deterrence, detection and mitigation mechanism built inside the Bureau, making sure that the staff members of the FBI, current or former, do not inflict any material or reputational damage to the Bureau. There are comprehensive rules and regulations in place as well as regular training programmes dealing with integrity, ethics and risk (threat) assessment for the employees, especially on the low and mid-level, serving both in the headquarters as well as its field offices or overseas.

166. For almost a decade the FBI has been using an electronic record system, SENTINEL, for managing cases, records, tasks and workflows. It contains investigative, intelligence, personnel and administrative data collected by the FBI in the course of conducting its mission. For information relating to FBI employees in SENTINEL, the system includes their personal data, security clearance, as well as the names of employees’ supervisors. For verifying current and former employees, the FBI generally relies on employee self-reporting and financial declarations that are overseen by the FBI Security Division. Information on FBI employees is generally collected directly from them unless the FBI employee becomes the subject of an investigation. In that case the employee is considered the same as any other individual under investigation and all inside, as well as outside, sources of information are used to conduct it thoroughly.

167. Regarding the threats and risks across the organisation, regular field office inspections are conducted, involving the Inspection Division as well as peers from other field offices. This mandatory activity serves, as believed by the FBI’s staff met on-site, not only as an important risk prevention mechanism but also a good learning exercise and also an important leadership development tool. For external evaluation, the FBI relies on the assessments and recommendations made by the Government Accountability Office (GAO) and the U.S. Department of Justice Office of the Inspector General (OIG) to which the FBI’s Inspection Division reports on progress.

168. The GET was impressed to see so many resources spent, and attention paid to the risk/threat management system, as well as the emphasis on prevention and promotion of integrity. All the different units, divisions, and officers from those with whom the GET met on-site, were confident about the individual functions they perform according to their unit’s

individual strategies. However, it was not clear how coordination and communication among them is ensured, whether they all share the same understanding of risks and the situation in place and if they have a common FBI-wide strategy on anti-corruption and promotion of integrity. For instance, for some an FBI whistleblower questioning the efficacy of methods used in handling cases by the Bureau may be considered as a brave FBI agent of integrity serving the rule of law and protecting it against accusations of alleged abuses, while the others might consider it as a threat to an organisation and constituting a serious national security risk. While those dilemmas and disagreements are unavoidable, it is important to seek to have a common understanding of them.

169. It was not clear to the GET what senior leader in the organisation visibly has responsibility for coordinating countercorruption activity across the different units. The GET understands that corporately such responsibility is ultimately vested in the Director of Bureau. However, it is of the view that the vesting of this responsibility in a single senior leader, with a holistic view of anti-corruption activities across business units, would strengthen governance around the prioritisation and coordination of organisational actions and resources focused on preventing corruption. It would also mitigate against potential silos of countercorruption activity within the FBI.

170. In law enforcement, and in the FBI in particular, coordination and communication is best ensured when it is done regularly, when it is institutionalised, with genuine ownership and dedication, not only at division level, but also having someone in the leadership steering such coordination, so that it is acknowledged as a key priority and guided towards achieving commonly agreed objectives. Further, the development of an operational document for the FBI to use, its own internal corruption prevention strategy, would be beneficial in terms of providing clear direction, and a roadmap, in the development of counter corruption activities, integrity, and accountability, within the organisation and can further contribute to public confidence. Therefore, **GRECO recommends (i) that a dedicated anti-corruption strategy be adopted by the Federal Bureau of Investigation, in consultation with the Office of Government Ethics (OGE), Office of Special Counsel (OSC), and other appropriate oversight bodies, accompanied by an action plan for its implementation; and (ii) that a top senior leader within the organisation be appointed to drive such strategy, enhancing cooperation and information sharing of the units with competences in this domain, including through an institutionalised mechanism of coordination.**

Risk management measures for corruption prone areas

171. Every FBI division (field and headquarters) through its management, is required to focus on enterprise risk, which includes risk of non-compliance. Each Division Head must prioritize the identified risks and select from the highest priority risks the ones that will be analysed and mitigated during a particular fiscal year. OIC manages this process and reports every six months to each of the six Executive Assistant Directors, the ADD, DD and the Director on the status of the identified risk during that time period. The authorities highlight that this has proven an effective tool for ensuring that the FBI minimizes non-compliance across all programs.

Handling undercover operations and contacts with informants and witnesses

172. The United States Attorney General has issued [Guidelines governing undercover operations](#), referred to as the AGG-UCO. The authorities highlight that while these techniques are very effective for anti-corruption purposes, they need to be carefully considered and monitored. The FBI relies upon various oversight and enforcement mechanisms to ensure compliance with the Attorney General Guidelines. In particular, the Criminal Undercover Operations Review Committee (CUORC), comprised of FBI employees and DOJ attorneys, reviews, approves, and provides continuing oversight of certain criminal undercover operations.

Ethical principles and rules of conduct

173. Federal LEO are subject to the same criminal and civil conflict of interest laws, standards of ethical conduct, and ethics laws that are applicable to other federal employees, including principles of ethical conduct established by Executive Order 12674, as amended, and OGE's regulations. These rules refer, *inter alia*, to loyalty, honesty, integrity, conflict of interest prevention, confidentiality, impartiality, corruption reporting, etc. Some federal LEO are also subject to additional agency-specific ethics regulations. For example, the Department of Justice, which includes the FBI, has established supplemental regulations requiring officials to seek prior approval before engaging in certain outside activities.

174. More specifically, FBI employees are expected to act in accordance with the highest standards of personal honour and integrity. The [FBI Ethics and Integrity Program Policy Guide](#) establishes and describes the FBI Ethics and Integrity Program and implements for FBI employees the Standards of Ethical Conduct for Employees of the Executive Branch and related requirements. In a nutshell, FBI employees shall:

- Ascertain and understand what laws, regulations, and rules govern their official activities and conform their professional conduct accordingly.
- Apply the Principles of Ethical Conduct, the FBI motto (Fidelity, Bravery, Integrity), and the FBI Core Values in the daily conduct of their personal and professional activities.
- Obey the Standards of Ethical Conduct for the Executive Branch and pertinent DOJ and FBI regulations and policies.
- Conduct their personal activities in a manner that does not impede their professional performance or tarnish the reputation of the FBI.
- Report to proper authority any violations of law and regulation by themselves or others.
- Refrain from retaliating against employees who, reasonably believing them to be true, report the violation of laws and regulations.
- Tell the truth in all matters.

Advice, training, and awareness

175. The FBI's Office of Integrity and Compliance (OIC) promotes integrity within the ranks. The program is designed to create an environment where all employees are capable of readily recognizing and resolving ethical issues. This is accomplished by making available effective [training and advice](#) and by providing correct, consistent, and authoritative determinations when needed. OIC programs are designed to promote a culture of compliance, where individuals feel comfortable raising concerns. A significant factor in the success of this program

has been the “tone from the top.” Under the current leadership, the FBI has emphasized the importance of “doing the right thing the right way.”

176. All special agents begin their career at the FBI Academy in Quantico, Virginia, for approximately 18 weeks of intensive training. Additionally, all new FBI employees (including special agents) receive ethics training in their first week at ONE training which also takes place at the FBI Academy and is organized by the Training Division, with participation of subject matter experts for each training topic. For the ethics training, the OIC provides instruction live and in person. Although the OGE ethics regulations require training on only four topics: (1) financial conflicts of interest; (2) impartiality; (3) misuse of position; and (4) gifts, the FBI ethics training covers nine topics, thus, adding to the curricula: (5) fundraising; (6) use of Government resources, including vehicles; (7) partisan political activity (Hatch Act); (8) outside employment and activities; and (9) post-Government service employment restrictions.

177. Moreover, under FBI policy, all employees must complete ethics training every calendar year by attending a live (in-person or virtually presented session) or via an interactive online course that requires watching a video on those topics and passing a test (with a score of 80%). In the majority of cases, this training is provided live (in person or virtually) by OIC or by Chief Division Counsels. In limited cases, employees may fulfil the requirement by viewing an interactive video developed by OIC. The live ethics training includes “black letter” laws, regulations, and policy, as well as anonymized real cases or lessons learned – particularly to help illustrate some of the more complex or counterintuitive provisions.

178. The initial or new employee training is organized by the FBI’s Training Division (TD). Thereafter, all annual training is decentralized and arranged by the training coordinator in the FBI Headquarters Division or Field Office to which the employee is assigned. The Office of Integrity and Compliance (OIC) manages the legal compliance and ethics programs. OIC works with TD to ensure all FBI employees receive their annual ethics training or were exempt (e.g., on parental leave or other valid exemption).

179. FBI employees are encouraged to seek advice in the framework of training activities, and more generally, at any time when confronted with an ethical dilemma. The Standards of Ethical Conduct have a “safe harbour” regulation that is designed to incentivize an employee asking his/her ethics official, since if the employee provides full disclosure of the relevant information and follows the ethics official advice, the employee may not be disciplined even if the advice was in error in whole or part.

180. As for advice on ethics, although FBI Headquarters and Field Office employees may contact any FBI ethics official, the 56 Field Offices Chief Division Counsel (CDCs) are generally considered as primary legal advisors and ethics officials. Depending on the size of the field office, the CDCs are supported by Assistant Division Counsels (ADCs) and Paralegal Specialists (PLSs). Notwithstanding, CDCs are also required to consult with the OIC Ethics Unit (which consists of a Unit Chief and five ethics attorneys) who advise on the most complex matters or for which the regulation requires certain written determination. Likewise, CDCs and the Ethics Unit will consult the OIC Assistant Director (AD) who is the FBI’s Chief Ethics Official, also known as the Alternate Designated Agency Ethics Official (ADAEO).

181. On average, there are approximately 3 000 ethics questions, advisories, and related products (such as formal memoranda) provided just from the OIC AD and the Ethics Unit each

year. The questions asked and advice given span the full spectrum of ethics topics (conflicts of interest, impartiality, gifts, and misuse of position) including partisan political activity (Hatch Act) or expressive speech. One of the hallmarks to encourage more questions is to provide thorough and timely advice, so on average a question will be answered in approximately two days, or the employee will be apprised of its complexity that will require further consultation with either other ethics officials or other FBI stakeholders (e.g. Office of General Counsel, Fiscal Contract Law Unit, Employment Law Unit, etc.), as well as any FBI program subject matter experts (SMEs) or other agencies.

182. Each year, OIC partners with the Society of Corporate Compliance and Ethics to bring 50 compliance officers from around the country to FBI Headquarters to share information about its ethics and compliance program, and to provide other information which may be useful to the attendees. The FBI also leads the Working Group of Federal Compliance Professionals, where best practices are shared among federal compliance programs. The FBI also takes part in national and international conference on the topics of ethics, compliance, and anti-corruption. Substantial portions of the FBI's ethics guidance have been made public through the FBI's FOIA reading room (e.g. [FBI Ethics Pocket guide](#), [FBI Ethics and Integrity Program Policy Guide](#)).

183. Moreover, OGE publishes an annual summary report which is a compilation of 139 agencies' responses, including the FBI, to OGE's Annual Agency Ethics Program Questionnaire. The report provides insight into the resources used to implement the Executive Branch ethics program, as well as the aggregate numbers and compliance rates for each of the main program areas designed to prevent, detect, and resolve conflicts of interest. Specifically, the Annual Agency Ethics Program Questionnaire collects data on disciplinary actions based wholly or in part upon violations of the Standards of Conduct regulations, including the number of violations of regulations related to gifts, conflicting financial interests, misuse of position, and outside activities. This data includes the number of disciplinary actions taken based wholly or in part upon violations of specific parts of the Standards of Conduct; it does not include examples, nor information on the sanctions applied nor is information disaggregated in gender or by rank.

184. The GET notes that FBI employees are subject to a wide range of ethical standards (those applicable to all federal employees, as well as those developed further in the FBI Ethics and Integrity Programme Policy Guide). The GET received ample information regarding the nature and the frequency of in-service training programmes/briefings provided to FBI employees in the subject areas of integrity, ethics, and professional responsibility. The evidence furnished signposts a well-developed ethics and integrity awareness programme with embedded learning in the organisation. Tangible evidence of this culture was visible to the GET in the guise in the number of FBI employees met, who referenced the importance of considering their actions through a lens of "*Doing the right thing, in the right way, at all times*" and the mission of the FBI" i.e. "*Protect the American people and uphold the Constitution of the United States*". Moreover, a well-developed system of institutionalised advice is available. There is also a compliance helpline and regular reminders are sent via e-mail to employees on ethics and integrity matters, including at key moments where the respect of certain rules acquires greater importance. For example, personnel are reminded of the "Hatch Act" before elections, or on the applicable rules of gifts prior to holidays.

185. A so-called “ethics tracker” was established in 2012. It is a database on cases and questions received by the Office of Integrity and Compliance (OIC), but the search tool is only enabled for Headquarters’ use. The GET considers this a good practice, the added value of which can be further enhanced if made accessible also for field offices. This will serve as a corporate vehicle to communicate organisational learning to employees and importantly ensure consistency in messaging in terms of queries raised by FBI personnel on issues of integrity, ethics and the practical import of FBI anti-corruption policies, practices, and procedures. Effective communication is a critical component in contributing to organisational learning and reaffirming expected standards of behaviour by employees. To be effective information must be clear, sufficiently detailed, and accessible. Therefore, **GRECO recommends developing a database/knowledgebase of the topics addressed by the Federal Bureau of Investigation’s Office of Integrity and Compliance that is made available for the whole organisation, including its field offices.**

Recruitment, career, and conditions of service

Recruitment requirements and appointment procedure

186. The [FBI Jobs Eligibility Guide](#) details the required standards to apply to the job. In particular, applicants must fulfil the following requirements: be a U.S. citizen, have a public record of good standing with no felony convictions (special agent candidates only: no conviction of a domestic violence misdemeanour or more serious offence), adherence with FBI drug policy, pass urinalysis and background investigation, student loan repayments in good standing, file all required annual, federal, state and local taxes, current on court ordered child support payments, no engagement with organisations designed to overthrow the U.S. government, no engagement in prostitution or bestiality, register with the U.S. Selective Service (for male candidates only).

187. As to the hiring process, it is carried out through the following phases: eligibility and qualifications review, interview and testing, conditional job offer, background investigation (in order to receive an FBI top security clearance), final job offer, entrance on duty on a scheduled date. New recruits attend orientation during the first week in the job, and some positions (e.g. special agents) require training at the FBI Academy in Quantico.

188. Job Analysis Panels are responsible for reviewing position descriptions (e.g. experience, qualifications, competence, etc.), developing validated rating instruments (e.g. candidate questionnaires and structured interview guides, rating tools), and ensuring the content-validity of the selection process. Interview Panels are responsible for carrying out interviews.

189. Moreover, the FBI has developed a career development program for special agents called the Employee Development and Selection Program (EDSP). The Special Agent Mid-Level Promotion Policy Guide (PG) sets forth the policies and procedures governing SA midlevel management selections and development. SA candidates for midlevel positions must be selected for advancement based on merit, in a fair and equitable manner, and through the use of a standard application process and rating system.

Vetting and re-vetting

190. The FBI has a strict hiring policy (see paragraphs 165 and 186 on specific requirements to join the service and prove highest standards of integrity). All FBI employees must undergo an FBI background investigation to receive an FBI Top Secret security clearance. Once an applicant receives and accepts a conditional job offer, the FBI will initiate an intensive background investigation. Adjudicative personnel evaluate candidates by using the “whole person concept⁷⁰.”

191. The preliminary employment requirements include a polygraph examination; a test for illegal drug use; credit and records checks; and extensive interviews with former and current colleagues, neighbours, friends, and professors. The FBI is committed to a drug-free workplace. Interested applicants who are currently using illegal drugs, misusing, or abusing legal drugs or other substances for illicit purposes at the time of the application process will be found unsuitable for employment.

192. As for regular vetting, employees are subject to ongoing suitability checks and background investigations to maintain their FBI Top Secret security clearance. This process may include polygraph examinations and random drug tests. Credit checks and interviews of associates, family members, and co-workers, and neighbours may be part of these background investigations. Foreign travel for work and leisure is documented as are regular and ongoing foreign contacts. Financial disclosures are required. Regular ethics training is provided to ensure an understanding of any potential conflict of interest.

193. Strong evidence of a robust framework supporting the vetting of FBI employees, both pre-employment and in service, was provided to the GET. As a result of the strict recruitment checks in place, the GET was told that around 35-40% of applicants are not considered fit for the job. It is noted that the FBI’s vetting model has moved from periodic vetting (every five years) to continuous vetting (every year) and the implementation of this model strongly leverages technology and data in support of a risk assessment process. The system in place for self-reporting (e.g. financial disclosure, reporting on foreign travel, etc.) is also a valuable tool for risk prevention and assessment purposes. Such an organisational approach to vetting is indicative of international best practice and facilitates an ongoing assessment of an individual’s security risk thus facilitating early intervention to mitigate against potential corruption risks and vulnerabilities.

194. The FBI’s Insider Threat Office is positioned as an important element of the FBI’s efforts to deter, detect, and mitigate against insider threats. The GET was positively impressed by its conscious and through work, which not only supports a policy of early intervention, but also contributes to an evidence based approach to identifying, understanding, and responding strategically to corruption risks. Automation has been central in recent years to be able to identify red flags. The GET was told that work was underway to improve data analytics, including for compliance purposes; the successful completion of this endeavour requires resources. The GET trusts that the FBI continues to proactively invest in its internal ICT infrastructure and comprehensive monitoring capacities to mitigate against and prevent corruption risks.

⁷⁰ The assessment is not centred on any one particular area that may raise a flag, but rather looks at a person as a ‘whole’ and determines his/her suitability and whether s/he meet the FBI security standards.

Promotions, transfers, and rotation

195. Throughout their careers, FBI agents are provided with opportunities to move between offices and assignments. In order to advance in the management ranks, Special Agents must serve in a variety of roles and locations, including assisting with the Inspections processes conducting oversight of FBI field offices.

196. The Assistant Director (AD) for the Human Resources Division (HRD) is responsible for administering and overseeing the implementation of promotions. The Merit Promotion and Placement Plan Policy Directive and Policy Guide applies to all positions and organisational elements of the FBI and to all employees except special agents⁷¹. Supervisors/hiring managers are responsible for applying the principles, policies, and procedures of this plan, in filling vacancies, making selections, and working cooperatively with HRD on the implementation of this Plan. All promotions are advertised (see above on how post descriptions are prepared by Job Analysis Panels) and interviews are carried out by Interview Panels.

197. The Director of the FBI has the authority to transfer FBI employees when it is in the best interest of the United States government. All employees are subject to transfer at any time to meet the organisational and program needs of the FBI.

198. Because a level of expertise and experience is gained with longevity within a position, the FBI does not systematically rotate all personnel. The experience gained as a subject matter expert is especially important for certain types of investigations, such as public corruption and national security. In contrast, rotation is required for advancement towards higher level positions which may require multiple transfers and promotions.

Performance evaluation

199. Performance appraisals are carried out on a yearly basis through an electronic performance and development tool. The Practical Applications Unit (PAU) serves as the subject matter experts on performance and development. It provides guidance to supervisors on how to conduct appraisals. In the case of performance issues, the employee's supervisory chain works with the Human Resources Division's Performance Appraisal Unit to ensure appropriate processes are followed.

200. Positive (fully successful) performance evaluation result in the granting of the next Within-Grade Increase (WGI) when the employee is eligible. A WGI is an increase in an employee's basic rate of pay because of the employee's advancement from one step in grade to the next, based on length of service and satisfactory performance.

201. A Performance Improvement Plan (PIP) is a tool used to address "unacceptable" performance. The employee is given a 90-calendar-day opportunity to raise his/her performance. The FBIHQ division or Field Office head must submit a document that provides details of the employee's "unacceptable" performance during the rating period, articulating the ways in which the employee was counselled and provided opportunities to improve, and

⁷¹ Special agents are covered through a specific set of rules: Special Agent Career Ladder Policy Guide 1160PG, Special Agent Midlevel Management Selection Systems Policy Guide 1101PG, as well as Hiring Policy Guide 1244PG.

make a recommendation for one of the following performance-based actions to be taken against the employee: demotion to step 1 of the lower grade, reassignment to a different job role with a demotion to step 1 of the lower grade, removal from the FBI.

202. Appraisal decisions may be contested by the concerned employee through a grievance process before the FBIHQ division of Field Office head. If the division head was the employee's rating or reviewing official during the performance period, the grievance must be submitted to the Human Resources Division deputy assistant director instead.

203. Besides the annual appraisal exercise, regular check-ins are required of direct supervisors to ensure employees are aware of their performance and provide opportunities for direct communication of concerns by either party.

204. Members of the Senior Executive Service (SES) and Senior Level (SL) employees are exempt from the regular Performance and Development Program Policy. Nevertheless, they are covered by a separate performance and development system which includes an in-depth review of leadership, experience, and communication skills to gauge the employee's ability to manage and lead at a higher level of responsibility within the FBI.

Termination of service and dismissal from office

205. Dismissal of employees is conducted with the utmost consideration of all facts and circumstances that have been fully evaluated and reviewed. Dismissal may occur for misconduct, unacceptable performance, excessive unapproved absences, or the revocation of a security clearance.

Salaries and benefits

206. Positions at the FBI offer competitive salaries, benefits, and the potential for rapid promotion. Salaries are based on government-regulated pay scales, according to the General Schedule (GS)⁷². GS Grade Levels: GS-3 or GS-4: internships, student jobs, or lower-level administrative work; GS-5 to GS-7: entry-level and administrative positions; GS-8 to GS-12: mid-level technical and first level supervisory positions; GS-13 to GS-15: top-level technical and supervisory positions.

207. FBI agents begin at GS-10 in a career ladder job in which agents and staff can go up to GS-13. The highest-earning agents within the Bureau who progress to high-level supervisory positions can climb far past that and all the way to GS-15 in the best cases. In 2022, this means that a starting agent at GS-10, Step 1, will earn USD 51 864 per year. At the top of the non-supervisory range, GS-13, Step 10, an agent can earn USD 105 579 per year. The salary for a GS-15-10, the highest paid GS position for the most experienced supervisors, is USD 146 757 per year.

208. Positions beyond GS-15 are part of the Senior Executive Service (SES). Members of the SES lead the federal workforce and serve in the key positions just below the top presidential

⁷² The GS system has 15 grades, starting at GS-1 and going up to GS-15. There are 10 steps within each grade. A Within-Grade Increase is an increase in an employee's basic rate of pay because of the employee's advancement from one step in grade to the next, based on length of service and satisfactory performance.

appointees. SES pay is based upon performance with salaries ranging from USD 120 000 to USD 165 000 per year.

209. Most GS employees are also entitled to locality pay, which is a geographic-based percentage rate that reflects pay levels for non-Federal workers in certain geographic areas. In addition, employees may receive additional pay for language proficiency and deployment overseas or in hazardous work areas. Further, special agents may earn additional compensation through “availability pay” for after-hours or weekend responses.

210. Moreover, FBI policy implements various incentives including those for retention and relocation, which are meant to “incentivize” employees of high value to come on board, remain within the FBI, or relocate within the FBI. For example, certain employee transfers allow for the government to pay for shipping and storage costs of household goods, paid transportation for the employee and family, and in some circumstances, the payment of related fees such as closing costs on the sale and purchase of primary residences. Once employment is terminated, there are no ongoing allowances outside the normal retirement/pension.

211. A Continuing Service Agreement is required of each employee who receives an incentive. Employees subject to a service agreement must: serve for a period of employment with the FBI as specified in the service agreement in return for payment of the incentive; adhere to all terms and conditions of the service agreement; and repay a terminated service agreement on a prorated basis for violation of any of the terms and conditions.

212. Additional monetary allowances are provided under limited circumstances. For example, Executive Order 13150 mandates that eligible employees be provided a transit subsidy equal to the amount of their commute, not to exceed the maximum monthly tax-free amount of USD 280. The provided subsidy is available for eligible FBI employees who utilize public modes of transportation or a commuter highway vehicle as a means of daily commute.

Conflicts of interest, prohibitions, and restrictions

Conflict of interest prevention and management policy

213. FBI employees are subject to the conflicts of interest prevention rules that apply across the line to all federal executive employees (see first chapter of this report on PTEF for details on this). As explained before, the mechanisms aimed at preventing conflicts of interest in the Executive Branch are written, enforceable standards, financial disclosure and training and counselling.

Recusal and routine withdrawal

214. The U.S. Department of Justice has a regulation at 28 C.F.R. § 45.2 that applies to all Department employees, which includes all FBI employees. This regulation requires employees who have either a personal or political relationship with the subject of a criminal investigation

or prosecution, or with someone who would be directly affected by the investigation or prosecution, to recuse themselves from the investigation unless a waiver is granted.

215. There is also a provision in the Federal Employee Standards of Conduct, at 5 C.F.R. § 2635.502, that deals with the appearance of a conflict of interest or loss of impartiality. This regulation generally requires an employee to recuse themselves from a matter, such as a contract or investigation, if the matter would impact a member of their household, or if they have a “covered relationship” with someone who either is, or represents, a party to the matter, if by participating their impartiality would be questioned by a reasonable person with knowledge of the facts. The covered relationships include a relative with whom the employee has a close personal relationship, their spouse’s employer, and an outside organisation in which the employee actively participates.

216. The FBI does not track the number of ad hoc declarations of conflicts of interest or abstention from acting in a case. DOJ OIG provides information about its misconduct investigations on its public webpage, independent of the FBI (see [Investigative Findings in Cases Involving Administrative Misconduct](#))⁷³. For example, in April 2022, the Department of Justice Office of the Inspector General (DOJ OIG) posted on its public website an investigative summary related to findings that a senior FBI official had a financial interest in the senior official's former spouse’s FBI employment based on the terms of a consent order regarding custody and child support, and that the senior official violated federal ethics regulations and related FBI policy when the senior official participated in a matter related to the former spouse’s FBI vetting and hiring process and did not seek authorization to participate in this matter despite the financial interest.

217. Likewise, in a February 2022 Management Advisory Memoranda, the DOJ OIG identified concerns with the way in which the FBI was delegating Internal Affairs investigations of FBI personnel. Specifically, the DOJ OIG determined that delegated Internal Affairs investigations presented potential conflicts of interest and appearance issues when they were conducted by an FBI employee within the same division or field office in which the subject of the Internal Affairs investigation was employed, or when they were conducted by an FBI employee with a current or previous professional relationship or friendship with the subject or witnesses of the Internal Affairs investigation. The FBI has since modified its policies to address these concerns and the recommendation contained in the MAM was closed in July 2022.

Outside employment and activities

218. OGE’s regulations establish that employees are required to obtain written approval before engaging in any outside employment that involves a subject matter that relates to their responsibilities. Outside employment includes any form of employment, business relationship

⁷³ The page contains summaries of DOJ OIG investigative findings in cases involving administrative misconduct that meet either of the following criteria: (i) cases in which no criminal prosecution resulted but the OIG found misconduct by a member of the Senior Executive Service, an employee at the GS-15 grade level or above, or an Assistant U.S. Attorney; or (ii) cases involving high profile investigations, or in which there may otherwise be significant public interest in the outcome of the investigation. A summary of investigative findings is posted following issuance to the component of the relevant DOJ OIG final report of investigation, after the Department, the affected component, and the subject (when appropriate) have been provided with the opportunity to review and comment on the proposed summary.

or activity involving the provision of personal services, whether paid or unpaid. An employee may not be paid by anyone but the Government for performance of his/her official duties.

219. No employee may engage in the practice of law unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself/herself, his/her parents, spouse or children. The Department interprets "uncompensated and in the nature of community service" to include matters traditionally falling within *pro bono publico* representation on behalf of indigent clients, as well as activities such as preparing a will for a neighbour, representing a cousin in a divorce proceeding or writing a letter for a friend with a grievance against a private employer would be excepted from the ban. However, an employee must obtain written approval from his/her supervisor before engaging in any outside practice of law, which will take into consideration a range of factors. While uncompensated activities may be permissible, an employee is prohibited from engaging in any practice of law which involves a criminal matter, be it Federal, state, or local, or any matter in which the Department is or represents a party. The paid practice of law is also prohibited. These prohibitions may be waived by the Deputy Attorney General if the restrictions will cause undue personal or family hardship, unduly prohibit an employee from completing a professional obligation entered into prior to Government service, or unduly restrict the Department from securing necessary and uniquely specialized services. All requests for a waiver of these prohibitions should be made through the Departmental Ethics Office.

220. An employee seeking to engage in pro bono work must comply with the Department's supplemental regulations on outside activities and employment and receive the appropriate approvals. Certain pro bono programs, such as legal clinics for the poor, may be given general approval by the Component Head. If an employee takes a case through such a program, s/he will also need approval for each case s/he handles which may be given by a supervisory official below the Component Head.

221. Generally, an employee may not be compensated for speaking or writing on what relates to his/her official duties. This means that an employee would only be prohibited from accepting compensation for speaking or writing on a subject matter related to the policies, programs, or operations of his/her component, not the entire Department. There is an exception for teaching certain courses, even if the course relates to an employee's official duties, provided the course requires multiple presentations and is offered as part of a regularly established curriculum of an institution of higher education; an elementary or secondary school; or a program sponsored and funded by the Federal Government or by a state or local government which is not offered by an entity described above. An employee may accept compensation for teaching a course provided it meets these requirements. An employee in a non-career position above GS-15 must have advance authorization before engaging in teaching for compensation. When engaging in teaching, speaking, or writing in a private capacity, an employee may not use non-public information, nor should there be any use of his official title except as part of other biographical information or for an article in a scientific or professional journal where there is a disclaimer. An employee may not use official time or that of another employee to prepare materials. Some components require advance review and clearance for certain written work and speeches.

222. An employee may not receive compensation for the representation of anyone before an agency of the Federal Government or court on a matter in which the United States is a party or has a substantial interest. This prohibition applies regardless of whether the

employee renders the representation himself/herself or shares in compensation from someone else's representation. An employee also may not represent anyone before an agency of the Federal Government or court, with or without compensation, on a matter in which the United States is a party or has a substantial interest. This provision does not prohibit employees from joining or serving in a leadership position in an outside organisation, though employees should ensure that any such participation complies with the Department's policy on participation in outside organisations. In addition, this provision does not prohibit an employee from recommending federal colleagues as speakers to an outside organisation or from representing an outside organisation before the federal government in connection with a broad policy matter directed to the interests of a large and diverse group of persons. There are exceptions to the above statutes for representing an employee's immediate family, testifying under oath, representing another employee in personnel administration proceedings, and representing a non-profit organisation if a majority of the members are federal employees or their families.

223. An employee may engage in fundraising in his/her personal capacity as long as s/he does not solicit from subordinates or persons having business with the Department and s/he does not use his/her official title or position. In addition, soliciting should not be done on government property, or on government time. An employee may not engage in fundraising, including active participation in a fundraiser, in her official capacity unless authorized by statute, executive order, regulation or agency determination. The only authorized fundraising in the Department is on behalf of the Combined Federal Campaign. However, an employee may be authorized to give an official speech at a fundraising event, if the circumstances are appropriate, even though this constitutes participating in a fundraiser.

224. An employee may not serve as an expert witness in her private capacity in any proceeding before the United States in which the United States is a party or has an interest, unless specifically authorized.

225. Full-time presidential appointees may not receive earned income for any outside activity performed during that appointment. The outside earned income of other non-career officials in positions classified above GS-15 is limited to 15% of the salary for Executive Level II. These officials also have other restrictions mainly related to providing fiduciary services for compensation.

226. Without written approval, an employee may not purchase or use property that has been forfeited to the Government and offered for sale by the Department of Justice or its agents. No employee of the United States Marshals Service, Federal Bureau of Investigation or the Drug Enforcement Administration shall purchase or use property formerly used by his/her component.

227. Finally, all FBI employees are in the "further restricted" category under the Hatch Act and thereby prohibited from engaging in many types of partisan political activity. Accordingly, they are prohibited from taking an active part in partisan political management or partisan political campaigns. Specifically, these employees may not engage in political activity on behalf of a political party or partisan political group (collectively referred to as "partisan groups") or

candidate in a partisan election. Political activity refers to any activity directed at the success or failure of a partisan group or candidate in a partisan election.

Statistics on secondary activities FBI (2018-2022)

	2018	2019	2020	2021	2022
Fundraising	84	100	68	91	106
Outside employment/activities	328	476	371	351	361
Political activities (Hatch Act)	54	70	111	54	50
Teaching, speaking, writing	79	94	102	97	114
Widely attended gatherings		31	12	56	74
Grand Total	545	771	664	649	705

Post-employment restrictions

228. Government post-employment restrictions also apply to employees of the FBI. They do not contain an outright prohibition on employment with any entity. Instead, the restrictions apply to communications or appearances on behalf of another, made with the intent to influence the public service. In general terms, these restrictions are focused on protecting governmental processes from misuse of former government positions in matters or venues in which the former official was involved or held a senior position. The restrictions apply in principle to all Executive Branch officers regardless of rank.

229. The applicable rules are found at 18 U.S.C. § 207 and § 208, and are explained in greater detail in OGE’s interpretative regulations in 5 C.F.R. part 2641. Pursuant to 18 U.S.C. § 208, prohibits a federal Executive Branch employee from taking any action in a government matter in which any person with whom s/he is negotiating for employment has a financial interest. Under 18 U.S.C. § 207(a)(1), employees are restricted from representing others on particular matters involving specific parties in which s/he had personally and substantially participated as a public official. This restriction lasts for life of the matter.

230. Similarly, there is a two-year restriction on a former employee if they know or reasonably should know that a particular matter involving a specific party or parties was actually pending under their official responsibility within the one-year period prior to the termination of their employment with the U.S.

231. In addition, for 30 months following termination of employment an intelligence employee may not work for a foreign government unless the Director of Office of the Director of National Intelligence (ODNI) approves a waiver based on national security interests and for five years following their separation, employees must report their employment activities annually if the former employee works for, represents, or provides advice to a foreign government or an entity controlled, financed, or supervised partially or fully by a foreign government pursuant to 50 U.S.C. § 3073a.

232. All employees are subject to prepublication review of “FBI Information” as described in the Prepublication Review Policy Guide and their employment agreement. After separation, other laws prohibit the disclosure of information gained during employment, including laws governing the disclosure of classified information per the Classified Information Procedures Act.

233. For appointees who signed the Ethics Pledge under President's Biden Executive Order 13989, additional restrictions apply (see first chapter of this report, under PTEF).

234. The FBI has been an attractive employer for decades, winning awards of one of the top employers in the U.S.⁷⁴ The talented workforce attracted by the FBI and further trained by the Bureau on the job has been also on demand in the private sector. With that in mind, the FBI has developed and applied strict post-FBI employment rules, ranging from one year (on aiding or advising), two-years (communication) or permanently, i.e. for the life of the same particular matter (regarding a contract or investigation). There are also rules applied regarding employment in foreign entities of the former intelligence community employees. Additional rules are applied regarding the obligation of the FBI employees to notify the FBI designated ethics official within three days of beginning to "negotiate" for post-government service. All of these rules are covered by trainings conducted by-the Office of Integrity and Compliance.

235. Yet, movements from the FBI to private sector become more regular and there have been several instances reported by the media about the growing number of FBI employee moves to such big corporations like Amazon and "X" (formerly Twitter⁷⁵). The attractiveness of the FBI staff is their skills and knowledge gained in the cyber security area and awareness of threats and risks that they can handle. From the discussions on-site it was not clear whether this constitutes a genuine current or potential issue for the organisation and whether the practice of former staff moves is sufficiently monitored. With that in mind, **GRECO recommends (i) that a study be conducted examining risks of conflict of interest faced by employees leaving the Federal Bureau of Investigation and taking employment, or offering services thereafter, to assess whether this may constitute a vulnerability for the force requiring additional rules/guidance; and (ii) that an effective supervision mechanism be established.**

Gifts

236. Gifts are, in addition to provisions in criminal law, addressed through administrative Standards of Conduct. The (federal) Executive Branch Standards of Ethical Conduct contain two sub-parts dealing with the subject of gifts, gifts from outside sources, and gifts from other employees.

237. The basic restriction for gifts from outside sources provides that an employee must not, directly, or indirectly, solicit or accept a gift from a prohibited source (or a gift given because of the employee's official position). A gift includes any gratuity, favour, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. Services such as gifts of training, transportation, local travel, lodgings, and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred, would fall under the notion of gift.

⁷⁴ In the recent [Universum Talent Survey](#), out of 207 companies the FBI ranked No. 2 Most Attractive Employer among humanities studies, No. 16 among computer science students.

⁷⁵ <https://therealnews.com/twitter-is-hiring-an-alarming-number-of-fbi-agents>;
<https://www.motherjones.com/politics/2021/03/amazon-has-become-a-prime-revolving-door-destination-in-washington/>.

238. A prohibited source means any person or organisation who is seeking official action by the employee’s agency; does business with or seeks to do business with the employee’s agency; conducts activities regulated by the employee’s agency; or has interests that may be substantially affected by performance or non-performance of the employee’s official duties. Employees would thus be prohibited from soliciting or accepting gifts from contractors, subjects of an investigation, victims, witnesses, or reporters.

239. There are specific written exceptions to the ban on gifts. One basic exception allows for an unsolicited gift that has a market value of USD 20 or less per source per occasion so long as the aggregate market value of individual gifts received from any one person shall not exceed USD 50 in a calendar year. Another exception, narrowly drawn, applies to gifts based on a personal relationship, such as a gift from a family member or close friend. Employees may also exchange gifts among themselves as long as there is not a supervisor-subordinate relationship. Subordinates are prohibited from giving gifts to their supervisors and individuals who make more pay are prohibited from accepting gifts from those who make less pay, except for individual gifts worth no more than USD 10. The employee of a company with a government contract is deemed to represent the company, and the gift limits apply to the company.

Statistics on gifts FBI (2018-2022)

	2018	2019	2020	2021	2022
Gifts between employees	48	27	41	44	39
Gifts from domestic/private sources	188	220	117	140	119
Gifts from foreign governments	35	13	14	13	14
Gifts to the FBI	88	51	62	46	110
Grand Total	359	311	234	243	282

240. If a gift is prohibited, it may be returned, the employee may pay fair market value, and certain gifts, such as perishables, may be shared within the recipient’s office, or destroyed.

Misuse of public resources

241. Generally, an employee should recognize his/her responsibility to make an honest effort to use government property and official time for official business only. An employee may not use the official time of another employee for anything other than official business. 5 C.F.R. § 2635.704 regulates the use of government property and 5 C.F.R. § 2635.705 regulates the use of official time.

242. Federal employees are prohibited from using their public office for their own private gain, for the endorsement of any product, service or enterprise, private gain of friends, relatives, or persons with whom they have an affiliation in a nongovernmental capacity which includes non-profit organisations pursuant to 5 C.F.R. 2635.702. Federal employees are also prohibited from using any government resources to assist them in a job they may hold outside of federal employment, engaging in lobbying or partisan political activity, accessing pornography, gambling, or fundraising for private interests. Employees are also subject to a Government Vehicle Use Policy which prohibits the use of a government vehicle for nonofficial business or other reasons.

Third party contacts, confidential information

243. As noted in the first chapter of this report for PTEF, 18 U.S.C. § 1905 prohibits the disclosure of various forms of confidential government information including trade secrets, processes, operations, style of work or apparatus by an employee of the United States.

244. Furthermore, classified information is subject to additional protections and prohibitions. Classified information may only be accessed and handled in secure environments, with the level of security depending on the level of classification. In general, classified information may only be handled in special facilities and may only be processed on special networks contained within such facilities pursuant to 32 C.F.R. Subpart E. The mishandling of classified information may be dealt with through administrative sanctions, including reprimand, suspension without pay, removal, termination of classification authority, or loss or denial of access to classified information pursuant to EO 13526 section 5.5. Criminal penalties are also applicable in abuses of handling of classified information. Section 1924 of Title 18 imposes penalties for knowingly removing classified material without authority and with the intent to keep it in an unauthorized location.

245. In addition, 5 C.F.R. § 2635.703 regulates the use of non-public information. Section 3 of the STOCK Act also prohibits the use of non-public information for private profit. Employees are prohibited from using non-public information, nor allow the use of non-public information, to further their own private interests or that of another per 5 C.F.R. 2635.703. In addition, Senior Executive Service and Senior Level employees are subject to the STOCK Act prohibits employees from using non-public information derived from their positions or gained from the performance of official responsibilities for private gain, with the intent of prohibiting insider trading and identifying potential conflicts of interest regarding prospective future employers with whom they are seeking or negotiating employment. Misuse of non-public information by improperly accessing FBI recordkeeping systems is also a misuse of government time, may violate the Privacy Act, and may result in disciplinary action.

246. All FBI employees are provided mandatory training in connection with security and insider threat concerns. Employees are directed to contact their Chief Security Officer or Security Division in the event they are contacted by a third party seeking to obtain protected information in a manner that is inappropriate or suspicious.

Declaration of assets, income, liabilities, and interests

Declaration requirements

247. All FBI presidentially appointed, Senate-confirmed (PAS), Senior Executive Service (SES) and Senior Level (SL) employees are required under the Ethics in Government Act to file public financial disclosure reports, known as the OGE-278. This includes new entrants, upon appointment to a PAS, SES or SL position; annual reports, due each May; transaction reports, for disclosing the purchase, sale or exchange of stocks or commodities valued above USD 1 000 or the filer received more than USD 200 during the reporting period; and termination reports, due when a filer leaves their position. There are around 300 persons under the obligation to file these reports. All OGE-278 reports are filed in the OGE “Integrity” on-line filing system. The majority of reports of FBI officials are only available from DOJ. The reports of FBI PAS officials that come to OGE for second-level review would be available from

DOJ and OGE. Employees who fail to file a required report on time are subject to a USD 200 fee.

248. FBI employees in non-SES/SL positions who have a significant degree of discretion relating to oversight, management, or procurement as part of their positions are required to file confidential financial disclosure reports, known as the OGE-450. This includes new entrant and annual reports. There are around 4 000 persons under the obligation to file this type of reports, which are still filed on paper and are confidential.

249. Both the OGE-278 and OGE-450 reports are used by FBI management to assess whether a particular employee has any financial conflicts of interests pertaining to their FBI duties. As to the contents of the relevant forms, they are the same as described in the first chapter of this report for PTEF.

Review mechanisms

250. With respect to public financial disclosure (OGE-278 filers), the reports are reviewed by OIC staff and certified by the OIC. The public financial disclosure reports of the Director of the FBI and other officials requiring presidential appointment and Senate confirmation are further reviewed by OGE. Further, depending on the assets held by the filer, they receive a cautionary letter, warning them to avoid participation in FBI matters which would financially impact their assets. These letters are also sent to the filer's supervisor, to ensure the supervisor is aware of potential conflicts and can take such concerns into account when assigning work to specific employees.

251. With respect to confidential financial disclosure (OGE-450 filers), the filer's supervisor conducts the initial review of their report, and a further final review is conducted by either the filer's Chief Division Counsel in field offices, or the Assistant Director or their designee at HQ.

Oversight and control mechanisms

Internal control within the FBI

252. The FBI's Inspection Division (INSD) conducts regular, detailed inspections of FBI field offices, including an in-depth review of files to ensure compliance with a variety of policies and procedures. The Office of Integrity and Compliance (OIC) manages an enterprise-wide compliance risk identification and mitigation process to ensure that attention is paid to those high-risk areas where the FBI is at risk of non-compliance with law, rule, regulation, or policy. The newly formed Office of Internal Audit (OIA) also fulfils a vital role in the oversight process.

253. The Insider Threat Office (InTO) is the FBI's central strategic coordinating component for insider threat issues. InTO works with other stakeholder divisions, such as the Security Division, Information Technology Branch, Human Resources Division, Office of the Chief Information Officer, and others to obtain data and share information in furtherance of addressing the risk presented by corruption. It has built a community of practice as it meets at regular intervals with other federal law enforcement agencies to discuss best practice, trends, monitoring, etc.

Department of Justice Office of the Inspector General (DOJ OIG)

254. The Department of Justice's Office of the Inspector General (DOJ OIG) is a statutorily created independent entity whose mission is to promote integrity, efficiency, and accountability within DOJ, including the FBI and the DOJ's other law enforcement components. The DOJ OIG investigates alleged corruption and other misconduct involving violations of laws, regulations, rules, and policies, including criminal statutes, by DOJ law enforcement personnel as well as non-law enforcement employees and audits and inspects DOJ programs. The DOJ Inspector General, who is appointed by the President subject to Senate confirmation, reports to the Attorney General and Congress.

255. Inspectors General of other agencies with law enforcement components, such as the Department of Homeland Security, perform the same function as described above with respect to investigating corruption and misconduct by personnel in its agency's law enforcement components. Additionally, the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency receives, reviews, and refers for investigation, as appropriate, allegations of wrongdoing made against, among others, Inspectors General, and designated staff members of an Office of Inspector General.

Other mechanisms for external oversight and control

256. The FBI's activities are closely and regularly scrutinized by a variety of entities. Congress (through several oversight committees in the Senate and House) reviews the FBI's budget, appropriations, and programs. The steps taken during – and results of – FBI investigations are often reviewed by the judicial system during court proceedings. Within the U.S. Department of Justice, the FBI is responsible to the Attorney General, and it reports its findings to U.S. Attorneys across the country. The FBI's intelligence activities are overseen by the Director of National Intelligence.

Enforcement procedure and sanctions

Complaints system

257. Within the FBI, all written complaints are processed by FBI's Inspection Division (INSD) Internal Processing Unit (IPU). IPU accepts written complaints from any source, whether a member of the public, an employee, or anonymous. Complaints are free of charge. After reviewing the complaint, IPU forwards those necessitating further investigation to the INSD's Internal Investigations Unit (IIU) – see later under disciplinary system for details on investigation process that follows.

258. In addition, OIG has a compliance helpline where concerns can be submitted. In approximately 25% of cases, such complaints are referred to INSD/IPU for review. The FBI also has an Ombudsman's office where issues can be raised. The Office of Equal Employment Opportunity is another avenue for redress, in certain cases.

259. Citizens may also report complaints of waste, fraud, abuse, or misconduct relating to an FBI employee, program, contract, or grant to the DOJ OIG, which is the independent entity responsible for receiving and investigating complaints of corruption by LEOs. Complaints may be submitted via an online DOJ OIG Hotline, by email, by telephone, by fax, or by mail.

Anonymous complaints are accepted but are difficult to investigate. They are processed by OIG personnel experienced in assessing complaints and determining an appropriate disposition. The DOJ OIG has a large red electronic button prominently placed at the top of its public web site that links to the web page for making an online complaint and provides specific information about other ways to submit a complaint.

Disciplinary proceedings

260. All reported allegations of misconduct – which include violations of the rules of conduct, conflicts of interest, and other ethical guidelines – are initially reviewed by DOJ OIG.

261. If DOJ OIG declines to investigate the complaint, INSD reviews to determine if it is sufficiently specific and credible to warrant an investigation. Complaints that meet this threshold are investigated by INSD's Internal Investigations Unit (IIU). Supervisory special agents are assigned to IIU to lead investigations.

262. Subsequently, the results of IIU's investigation are forwarded to OPR for adjudication. OPR is composed of two adjudication units. During the adjudication phase, an attorney in one of OPR's adjudication units reviews the investigative record and determines whether the misconduct is substantiated⁷⁶. If substantiated, the attorney reviews the facts of the matter, as well as the *Douglas factors*⁷⁷, relevant mitigating and aggravating factors, and precedent to recommend an appropriate sanction. The attorney sends his/her recommendation to an OPR Unit Chief (UC).

263. The OPR UC reviews the recommendation and imposes non-adverse penalties, if warranted. Non-adverse penalties consist of oral reprimands, letters of censure, and suspensions of 14 days or less. If the recommended sanction is adverse - meaning it is a suspension of 15 days or more, demotion, or dismissal - then the recommendation is sent to the OPR Assistant Director (AD).

264. In adverse cases, the OPR AD notifies the employee of the proposed sanction. Thereafter, the employee can review a redacted version of the disciplinary file, submit a written rebuttal to OPR, and appear before the OPR AD for an oral hearing. After considering this information, the OPR AD issues a final decision.

265. Final disciplinary measure is imposed and documented in employees' personnel records. Discipline resulting in suspension, demotion, or removal is documented on an OPM Standard Form 50 (SF-50) in the employee's personnel file to confirm that discipline was implemented. Notices of oral reprimands and letters of censure are also documented in an employee's personnel records.

⁷⁶ FBI OPR adjudicators use the "preponderance of the evidence" standard of proof when deciding whether to substantiate allegations. Preponderance of the evidence is defined as "the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue." See (5 C.F.R. § 1201.4 (q)).

⁷⁷ The Douglas Factors include information such as the employee's performance record, past disciplinary record, and the nature and seriousness of the current offence. See *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981).

266. All non-probationary FBI employees have the right to internally appeal any suspension, demotion, or dismissal imposed by OPR to the Executive Assistant Director (EAD), Human Resources Branch (HRB). Oral reprimands, letters of censure, and summary dismissals may not be appealed.

267. The EAD/HRB serves as the final decision maker for appeals of suspensions ranging from one to fourteen days (non-adverse penalties). Suspensions of 15 days or more, demotions, and dismissals (adverse penalties) are decided by a Disciplinary Review Board (DRB). The EAD/HRB serves as the Chair of the DRB, which is comprised of four voting members. The DRB renders its decisions by majority vote. The appellate decisionmaker reviews the investigative and adjudicative records, along with any materials submitted by the appellant, and determines whether OPR's findings of misconduct and penalties are supported by the substantial evidence standard of review⁷⁸.

268. Although FBI employees are not subject to all civil service rules (they are "excepted service") some preference-eligible employees have an additional right to appeal their disciplinary sanctions to the U.S. Merit Systems Protection Board (MSPB). The MSPB is an independent, quasi-judicial agency in the Executive Branch that serves as the guardian of Federal merit systems. One of its primary statutory functions is to protect Federal merit systems against partisan political and other prohibited personnel practices by adjudicating employee appeals over which the Board has been given jurisdiction, pursuant to 5 C.F.R. §1201.3.

Sanctions, procedural rights, and protections

269. Special agents are generally subject to the same substantive and procedural rights during criminal investigations, prosecutions, and proceedings as all other citizens (there are no immunities). Consequences for violating conflicts of interest provisions under criminal law include imprisonment up to five years, fines up to USD 250 000, community service and restitution to the government. Consequences for violating regulations governing ethical conduct include loss of job or suspension, demotion, administrative reprimand and required further training.

270. FBI agents and other employees do receive procedural protections during the internal disciplinary process. For example, all employees receive notice of the allegations against them prior to OPR imposing discipline. If a proposed penalty is adverse (e.g. suspensions of 15 days or more to dismissal), then employees may also review a redacted version of the record and present written and oral arguments prior to disciplinary action. Non probationary employees who appeal their sanctions internally may also review the redacted record and submit a written argument in support of their appeal prior to a final appellate decision.

271. In addition, although special agents may face civil damages lawsuits for constitutional torts (that is, for violating someone's constitutional rights), agents receive qualified immunity from such lawsuits (known as Bivens actions) so long as the agents' actions do not violate "clearly established" law.

⁷⁸ Substantial evidence is defined as "the degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree" pursuant to 5 C.F.R. § 1201.4(p)).

Statistics

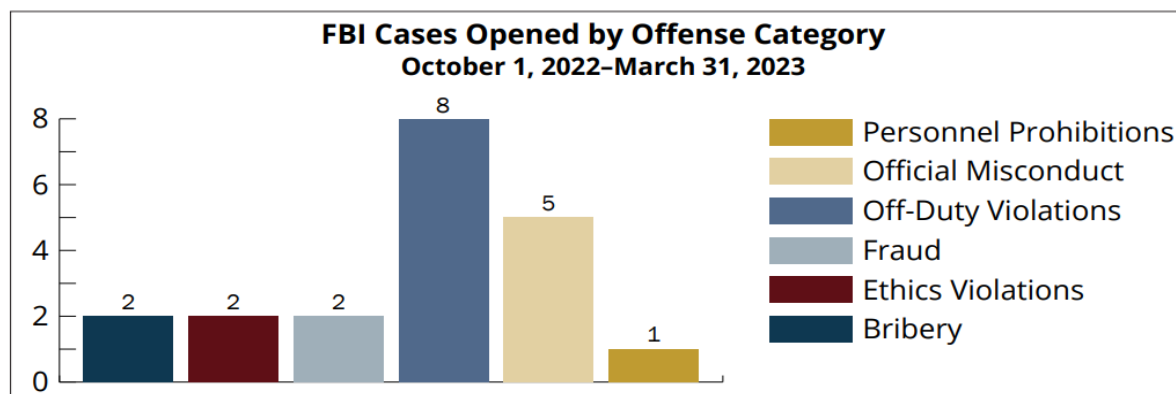
272. The DOJ OIG provides [public reporting](#) on, among other things, criminal cases and administrative misconduct findings involving senior officials of the Department of Justice, including the FBI, and other matters that are of significant public interest.

273. The FBI does not publicly release information concerning the sanctions and measures imposed on specific employees. Quarterly, to raise awareness within the workforce, the OPR issues an email summarising recent disciplinary cases, without providing identifying information.

274. Likewise, [summaries of civil and criminal cases are provided online](#) by the DOJ OIG; the related search engine allows to filter options by case action (for criminal cases: indictment/charge/arrest, plea, conviction by trial, acquittal, sentencing; for civil cases: civil complaint, civil verdict, settlement) and by date range. Summaries of investigative findings in cases involving [administrative misconduct for high ranging officials or of significant public interest](#) are also made available online by the DOJ OIG; the search engine provides for filter options by keyword and date range.

275. The interlocutors on-site assured the GET that corruption is not an issue in the Bureau and is spotted very rarely. However, the GET had no possibility to examine the statistics of disciplinary, administrative, or criminal violations committed within the FBI. The Department of Justice Annual Questionnaire responses to the OGE concerning certain aspects of their ethics program include, *inter alia*, details on the enforcement aspects (See for example, [2022 DOJ Ethics Programme Questionnaire](#), Part 10 on Enforcement of Standards of Conduct and Criminal and Civil Statutes). However, these details are not specific to only the FBI. The semi-annual reports issued by the Office of the Inspection General of the Department of Justice (DOJ OIG) provide some statistics of corruption, fraud and ethics violations detected in the FBI (see Table 1 below).

The OIG opened 20 investigations and referred 73 allegations to the FBI's Inspection Division for action or investigation. At the close of the reporting period, the OIG had 75 open criminal or administrative investigations of alleged misconduct related to FBI employees. The investigations included Official Misconduct and Off-Duty Violations.



Source: Investigations Data Management System

276. The statistics above and a short description on the cases⁸⁰ presented in the report reveal the seriousness of the crimes and misconduct committed and the GET was pleased to see that these violations were detected. One of them concerned bribery in exchange of law enforcement database inquiries by the FBI special agent to help alleged violators avoid prosecution. In this connection, the GET encourages the FBI to be on guard against the unauthorised use or abuse of its databases.

277. For the FBI to be better protected from inside vulnerabilities and be more accountable to the public, it is important that it keeps statistics of the violations of crimes and offences conducted by its staff, examines trends and emerging risks, and makes that information available. Transparency in this context is an essential component in maintaining public confidence and is also critical to allow external actors to assess the success or otherwise of initiatives and practices being implemented by the FBI to prevent, mitigate, and as appropriate, investigate wrongdoing by employees. **GRECO recommends publishing statistics on corruption and ethics related misconduct in the Federal Bureau of Investigation, including number of complaints received, actions taken (including on actions to decrease vulnerabilities), and sanctions imposed.**

⁷⁹ [US Department of Justice, Office of the Inspector General, Semi-annual report to Congress, 1 October 2022-31 March 2023](#), page 19.

⁸⁰ *Ibid*, page 20. On February 27, 2023, a former FBI Special Agent was sentenced to 72 months of imprisonment, three years of supervised released, and ordered to forfeit USD 132 309 and pay a USD 30 000 fine for conspiracy to bribe a public official, bribery of a public official, and money laundering. According to evidence presented at trial, the Special Agent accepted cash bribes, private jet flights, a motorcycle, hotel stays, escorts, meals, and other items from an organised crime-linked lawyer. In return, the Special Agent conducted law enforcement database inquiries and used those inquiries to help the lawyer and his associates avoid prosecution and law enforcement monitoring.

Reporting obligations and whistleblower protection

Reporting obligations

278. All DOJ employees, including those of the FBI, are required by regulations to report fraud waste and abuse, have a duty of professional responsibility to report, and are required to cooperate in official investigations of misconduct. FBI policy also requires employees to report misconduct when they: (1) personally witness misconduct; (2) become aware of unreported misconduct committed by another FBI employee; or (3) commit misconduct themselves.

279. Employees may report misconduct to their supervisors, INSD IAS, or DOJ OIG. Reports made to INSD IAS or DOJ OIG may be made anonymously; however, they must be in writing. FBI employees who fail to report misconduct in a timely manner are subject to discipline, with penalties ranging from an oral reprimand to dismissal.

Whistleblower protection

280. All federal LEOs are protected by law from retaliation by the U.S. government for reporting corruption or other related misconduct. The Civil Service Reform Act and the Whistleblower Protection Act, as amended, at 5 U.S.C. § 2302, set forth the regulatory framework that provides whistleblower protections for most LEOs in the U.S. government. The regulatory framework for FBI employees, including FBI LEOs, is set forth in 5 U.S.C. § 2303.

281. Under both frameworks, it is unlawful for a government agency to retaliate against a LEO for making a “protected disclosure.” A disclosure is protected if it meets two criteria: (1) the disclosure must be based on a reasonable belief that wrongdoing has occurred (i.e. suspected misconduct) and (2) the disclosure must also be made to a person or entity that is authorized to receive it.

282. For all disclosures, classified or unclassified, under section 2303, an FBI employee is only protected if the disclosure is made to: (a) supervisor in the direct chain of command of the employee, up to and including the head of the employing agency; (b) to the Inspector General; (c) to the Office of Professional Responsibility of the Department of Justice; (d) to the Office of Professional Responsibility of the Federal Bureau of Investigation; (e) to the Inspection Division of the Federal Bureau of Investigation; (f) as described in section 7211 (to Congress)⁸¹; (g) to the Office of Special Counsel; or (h) to an employee designated by any officer, employee, office, or division described in subparagraphs (a) through (g) for the purpose of receiving such disclosures.

283. Under sections 2302 and 2303, DOJ management must ensure that LEOs are not subjected to reprisal for making protected disclosures. Reprisal occurs when a DOJ employee takes (or fails to take) or threatens to take (or threatens to fail to take) a personnel action with respect to an employee for a protected disclosure. Personnel actions include appointments; promotions; disciplinary or corrective action; assignments; transfers; performance evaluations; decisions concerning pay, benefits, or awards; or any other significant change in

⁸¹ 5 U.S.C. § 7211: The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

duties, responsibilities, or working conditions pursuant to 5 U.S.C. §2302. FBI personnel who suffered an actual or threatened adverse personnel action in retaliation for a protected disclosure may file a whistleblower retaliation complaint with OPR or OIG. Appeals to the Agency decisions regarding alleged reprisals are possible before the Office of Attorney Recruitment and Management (OARM).

284. The GET notes that whistleblower protection has a long history in the U.S., dating back to 1777, when the Founding Fathers passed the law to protect sailors and marines who reported abuses by their commander. This happened just seven months after signing the declaration of independence and can therefore be considered to be engraved in the fabric of society. A more comprehensive protection of civilian federal whistleblowers from reprisal began in 1978 with passage of the Civil Service Reform Act of 1978 (CSRA) and has been expanded legislatively via the Whistleblower Protection Act of 1989 (WPA) and the Whistleblower Protection Enhancement Act of 2012 (WPEA). Most civilian federal employees are fully covered by the statutory regime and can challenge alleged reprisals via the Office of Special Counsel (OSC) and the Merit Systems Protection Board (MSPB), which were specifically created to enforce prohibitions on specified personnel practices. Their reprisals can also be challenged before court.

285. By contrast, some federal agencies that deal with intelligence, including the FBI, Central Intelligence Agency and other units engaged in foreign intelligence or counterintelligence, are expressly excluded from the whistleblower protection scheme established by these statutes. In particular, the CSRA initially limited the protection for FBI staff only to those disclosures that the FBI employee made through narrowly defined internal channels. Recently enacted legislation allows FBI employees to appeal a final determination or corrective action order to the Merit Systems Protection Board (MSPB), an administrative court that hears other appeals by government employees and whistleblowers. Yet, still contrary to other federal employees, FBI employees cannot challenge reprisals via the Office of the Special Counsel or have a judicial review.

286. Similarly, FBI whistleblowers are not offered the full range of anti-retaliation protections given to most federal employees under the CSRA or WPA. The protection afforded to FBI agents is narrower in scope. It comprises retaliation measures such as appointment, disciplinary or corrective action, transfer, or reassignment, as well as demotion, suspension, or termination. But the entities that investigate FBI reprisal claims, the DOJ OIG and OPR, do not have the same authority as OSC to seek temporary relief for individuals who believe one of these personnel actions has been taken in reprisal for a protected disclosure.

287. As stated in the Report of the Department of Justice on Regulations Protecting FBI Whistleblowers of April 2014, which analysed the efficacy of those regulations, including the advocacy for judicial review, “(i)n passing section 2303, Congress made a deliberate choice to create a closed system for FBI whistleblowers, in contrast to most civil service employees, who received the broader protections of section 2302(b), including access to judicial review. (...) Moreover, the Department believes that Congress’s choice was appropriate given the FBI’s involvement in national security work—which has increased dramatically since section 2303 was enacted in 1978—and in law enforcement”. During the on-site mission, and shortly after, the GET learned about several instances of FBI staff subject to suspension and revocation of security clearances as an alleged means of whistleblower retaliation. Although such actions of

alleged retaliation are prohibited by law (Title 50 and Presidential Policy Directive 19 (PPD 19)), neither the OSC nor the MSPB can examine this issue as it falls outside of their jurisdiction.

288. It should be noted that the Council of Europe Recommendation CM/Rec(2014)7 specifically addresses the coverage of persons working in the national security sector, and it does not allow for a modified whistleblower scheme for these persons. It is rather the category of information that they handle which may be subject to a modified scheme. With this in mind and understanding the significance of national security issues and the reasoning behind the creation of a closed system of FBI whistleblowers, the GET is concerned that this approach runs the potential risk of not always noticing and addressing the inherent issues within the system and hence failing to complement the checks and balances and accountability of that system for the well-being of all.

289. Whistleblower protection is integral to fostering transparency and promoting integrity. The GET is convinced that whistleblowers should be strongly motivated and encouraged to come forward when they reasonably believe they see a violation. They should be able to act without fear of insecurity and potential retaliation; and they should enjoy the opportunity to challenge the decisions taken against them before court if they choose so. Such decisions should also be taken within prescribed deadlines and in the shortest time possible without undermining the quality of the process. The FBI should also be encouraged to be more strategic and proactively assess how its actions against or in favour of potential and actual whistleblowers will encourage and inspire its employees to step forward when they notice a wrongdoing in the future.

290. In view of the above, **GRECO recommends that the Federal Bureau of Investigation further strengthen whistleblower protection by (i) motivating and encouraging employees to step forward when they reasonably believe they notice any violation or wrongdoing in their organisation by, *inter alia*, providing clear guidelines, with concrete examples of successful whistleblower patterns and cases in the intelligence community and analysis of unsuccessful ones; (ii) expanding the list of prohibited personnel retaliatory actions; and (iii) developing an oversight mechanism to monitor regulatory compliance and practice.**

291. Further, **GRECO recommends that the authorities provide for expedient external remedy channels, in the event of reprisal, for whistleblowers in the Federal Bureau of Investigation, including judicial review.**

VI. RECOMMENDATIONS AND FOLLOW-UP

292. In view of the findings of the present report, GRECO addresses the following recommendations to the United States:

Regarding the federal government (top executive functions)

- i. taking the necessary legislative or regulatory steps to ensure that the restrictions for public officials on employment of relatives (whether paid or unpaid) under the anti-nepotism statute also apply to appointments to positions within the Executive Office of the President (paragraph 34);**
- ii. that an overarching anti-corruption strategy for the Executive Branch be drawn up, based on a risk analysis, aimed at promoting the integrity of persons entrusted with top executive functions and that it be made public (paragraph 40);**
- iii. taking the necessary steps to ensure that integrity rules and restrictions established by ethics pledges in respect of persons entrusted with top executive functions are made permanent for those who have signed them (paragraph 45);**
- iv. that (i) measures be taken to significantly reduce the backlog of outstanding Freedom of Information Act requests; (ii) practical steps be taken to facilitate access to public information as regards the White House administration (paragraph 68);**
- v. that a register of meetings between persons entrusted with top executive functions and registered lobbyists and other third parties who seek to influence government decision-making on particular matters be published online in a proactive and timely manner, including sufficient information about the purpose of these contacts, such as the identity of the person(s) with whom (and on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion (paragraph 81);**
- vi. that, in addition to declaring their interests, the President and Vice President (i) be required to resign from any external positions prior to assuming office; (ii) be required to divest potentially conflicting assets or putting them into a qualified (blind/diversified) trust as soon as practically possible in order to avoid the appearance of a conflict of interest; (iii) be subject to the accountability mechanisms set in the applicable statutes, including after leaving office, with any necessary exemption deriving from the former president's legal obligations upon departing office (paragraph 98);**
- vii. that the President of the United States be subject to similar post-employment restrictions as the Vice President, with any necessary exemption deriving from the former president's legal obligations upon departing office (paragraph 117);**
- viii. that (i) an independent audit of post-employment restrictions and other risks relating to revolving doors in the Executive Branch be conducted; and (ii) in view of its results, the system of post-employment restrictions be further strengthened (paragraph 120);**

Regarding the Federal Bureau of Investigation (FBI)

- ix. **that further measures be taken to strengthen the representation of women and other underrepresented groups at all levels in the Federal Bureau of Investigation (paragraph 154);**
 - x. **(i) that a dedicated anti-corruption strategy be adopted by the Federal Bureau of Investigation, in consultation with the Office of Government Ethics (OGE), Office of Special Counsel (OSC), and other appropriate oversight bodies, accompanied by an action plan for its implementation; and (ii) that a top senior leader within the organisation be appointed to drive such strategy, enhancing cooperation and information sharing of the units with competences in this domain, including through an institutionalised mechanism of coordination (paragraph 170);**
 - xi. **developing a database/knowledgebase of the topics addressed by the Federal Bureau of Investigation's Office of Integrity and Compliance that is made available for the whole organisation, including its field offices (paragraph 185);**
 - xii. **(i) that a study be conducted examining risks of conflict of interest faced by employees leaving the Federal Bureau of Investigation and taking employment, or offering services thereafter, to assess whether this may constitute a vulnerability for the force requiring additional rules/guidance; and (ii) that an effective supervision mechanism be established (paragraph 235);**
 - xiii. **recommends publishing statistics on corruption and ethics related misconduct in the Federal Bureau of Investigation, including number of complaints received, actions taken (including on actions to decrease vulnerabilities), and sanctions imposed (paragraph 277);**
 - xiv. **that the Federal Bureau of Investigation further strengthen whistleblower protection by (i) motivating and encouraging employees to step forward when they reasonably believe they notice any violation or wrongdoing in their organisation by, *inter alia*, providing clear guidelines, with concrete examples of successful whistleblower patterns and cases in the intelligence community and analysis of unsuccessful ones; (ii) expanding the list of prohibited personnel retaliatory actions; and (iii) developing an oversight mechanism to monitor regulatory compliance and practice (paragraph 290);**
 - xv. **that the authorities provide for expedient external remedy channels, in the event of reprisal, for whistleblowers in the Federal Bureau of Investigation, including judicial review (paragraph 291).**
293. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the United States to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2025. The measures will be assessed by GRECO through its specific compliance procedure.

294. GRECO invites the authorities of the United States to authorize, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.