

Overall Score:

87 - Strong

Legal Framework Score:

91 - Very Strong

Actual Implementation Score:

81 - Strong

Category I. Civil Society, Public Information and Media

I-1. ⁸⁷Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

References:

The First Amendment of the U.S. Constitution protects the right of association generally, stating: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:

While some CSOs with Middle East ties claim post-9/11 security concerns have unfairly restricted their ability to raise money from domestic and foreign sources, these CSOs do not generally focus on anti-corruption/good governance issues. See, for example, Muslim Charities Say Fear Is Damming Flow of Money,” Washington Post, August 9, 2006, p. A3.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:

The U.S. Internal Revenue Service (IRS) typically classifies anti-corruption CSOs as non-profit, tax-exempt 501(c)(3) organizations. The IRS states: A tax-exempt organization is generally not required to disclose the names or addresses of its contributors on its annual [tax] return. <http://www.irs.gov/charities/article/0,,id=135015,00.html>. However, 501(c)(3) organizations are restricted in the amount of political and legislative (lobbying) activities they may conduct. For example, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. <http://www.irs.gov/charities/charitable/article/0,,id=120703,00.html>

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

92

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

References:

According to Transparency International USA's president Nancy Boswell: In the USA, there is a climate that allows civil society to thrive and be powerful watchdogs promoting government accountability. They are permitted to organize, speak freely and participate in political decision-making. However, maintaining government integrity is a constant challenge and there are thousands of NGOs working on various aspects of this problem. [The] most recent examples are their efforts to fight attempts to restrict access to information and to address corruption in political finance and in the legislature." U.S. DEPARTMENT OF STATE, Bureau of International Information Programs, "The Role of NGOs in Battling Corruption" February 8, 2007, <http://usinfo.state.gov/usinfo/Archive/2007/Feb/08-336688.html>

In 2007, there were no media reports of anti-corruption NGOs being prevented from organizing. [Lexis-Nexis search]

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | **75** | 50 | 25 | 0

Comments:

As the Boswell quote above indicates, there is a healthy civil society in the U.S. However, only a few, well-funded anti-corruption CSOs operate at the national level (The Center for Public Integrity among them). And while their investigations and advocacy efforts receive media attention from time to time, the impact of these efforts is largely muted in the long run as these efforts clash with the goals of extremely well-funded lobbyists and their corporate clients. And while recent improvements in transparency and ethics rules in Congress likely can be tied to the work of Democracy 21, Common Cause and others, the positive results have been more more likely due to well-publicized congressional scandals in which criminal charges led to the ouster of powerful members of Congress. This view was confirmed in an August 16 interview with Common Cause's Communication Director Mary Boyle. While Boyle likes to think CSOs play a central role" in ethics reform, she admitted that "more often than not they don't listen to us" and that it requires scandals to initiate real reform. She did mention, however, that Common Cause and other corruption CSOs work behind the scenes on the details of reform (e.g. the House task force currently deciding on whether to establish an independent ethics body). See also: "Ethics bill leaves some waiting for next step," Gannett News Service, August 8, 2007.

References:

An example of CSO participation in the political process can be found here: REPEALING LIMITS ON PARTY SPENDING FOR CANDIDATES, TESTIMONY-BY: FRED WERTHEIMER, PRESIDENT OF DEMOCRACY 21, US Senate Committee on Senate Rules and Administration, April 18, 2007

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

Most Americans citizens cherish the right for organizations to criticize the government, so closing down an anti-corruption CSO would be a very unwise strategy for government officials. Instead, they merely need to pretend they will clean up their act and then wait a sufficient amount of time for the concerns to die down (and hope they aren't voted out of office).

References:

No media reports of such cases. [Lexis-Nexis search]

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

In 2007, there were no media reports of civil society activists working on corruption issues being imprisoned.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

In 2007, there were no media reports of civil society activists working on corruption issues being physically harmed.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

In 2007, there were no media reports of civil society activists working on corruption issues being killed.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

National Labor Relations Act of 1935 and the Taft-Hartley Act of 1947 guarantee the right of employees to organize and to bargain collectively with their employers or to refrain from all such activity. <http://www.nlr.gov/nlr/press/facts.asp>

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

References:

U.S. trade unions have seen a steady decline in their influence. While corporate opponents of unions say this decline is due to larger economic trends related to globalization and a move to a service-oriented economy, unions and academics believe this decline is the result of concerted “union busting” efforts by corporations. See: Kris Maher, “Signs of a Possible Power Shift In Congress Have Unions Going All Out to Reach Voters,” “Wall Street Journal, August 28, 2006; p. A2; and Shaan K. Hathiramani and Amanda Shapiro, “Busting the Busters,” Harvard Political Review, August 8, 2006.”

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

The First Amendment of the U.S. Constitution and subsequent Supreme Court rulings protect the media's right to criticize the government.

An Unfettered Press”

U.S. Department of State, Bureau of International Information Programs, 1994. <http://usinfo.state.gov/products/pubs/press/>

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

The First Amendment of the U.S. Constitution and subsequent Supreme Court rulings protect the public's right to free speech and to criticize the government.

Individual Rights” <http://usinfo.state.gov/usa/infousa/society/civilrts.htm>

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

James C. Goodale, THE FIRST AMENDMENT AND FREEDOM OF THE PRESS, <http://usinfo.state.gov/journals/itdhr/0297/ijde/goodale.htm>; Krinsky, George A. et al. Hold the Press: The Inside Story on Newspapers. Baton Rouge, LA: Louisiana State University Press, 1996. According to Freedom House, the United States is home to more than 1,500 daily newspapers geared primarily toward local readerships." <http://www.freedomhouse.org/template.cfm?page=251&country=7084&year=2006>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

N/A No license required.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

N/A No license required.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

N/A No license required.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

75

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

References:

The Federal Communications Commissions (FCC) reports it received 30,000 inquiries from persons seeking to start radio broadcast stations in 2005. Less popular frequencies in the broadcast spectrum are easy to acquire. However, the FCC auctions off the most highly desired broadcast television or radio slots, thereby creating considerable financial barriers and has resulted in more highly corporatized media entities. See: "How To Apply For a Broadcast Station," FCC, <http://www.fcc.gov/mb/audio/howtoapply.html>; and Amol Sharma and Amy Schatz, "Bidders will vie for slice of U.S. airwaves," Seattle Times, August 7, 2006, p. C1.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

FCC rulings are frequently appealed through the U.S. Court of Appeals for the District of Columbia. See FCC Website for press releases of appeal decisions. <http://www.fcc.gov/headlines.html>

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

According to FCC licensing officer Hossein Hashemzadeh, application timing is difficult to estimate because of the many factors involved (e.g., how many applications have been filed during a window, if they are mutually exclusive, or if they cause

interference to existing stations). Some broadcast applications take as little as 3 months, but others take much longer. An overview of the process can be found at: <http://www.fcc.gov/mb/audio/howtoapply.html>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

For non-competitive broadcast slots, licenses and related administrative permits may be acquired at reasonable rates. See, e.g., the FCC's Mass Media Services Application Fee Filing Guide. In addition, Congress does allow the Commission to waive, reduce, or defer payment of a fee where such action would promote the 'public interest.' (e.g., state and local governments, amateur radio operator licensees and non-profit organizations)." <http://www.fcc.gov/fees/regfees.html>. Nevertheless, the auctioning of competitive broadcast licenses significantly favors moneyed interests, which relates in part to increasing media concentration in the United States. See: Norman Lear and Robert W. McChesney, "Does Big Media need to get bigger?" Los Angeles Times, August 5, 2006, p. B17; and Freedom House 2005 Freedom of the Press U.S. report.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published online.

References:

Freedom House. United States Report 2007:

The number and influence of Internet sites and blogs have expanded greatly in recent years, and blogs have proven to be an important source of information in certain political controversies. Blogs devoted to public policy questions often lean to the highly partisan, and while their proliferation adds to the richness of press diversity, it also contributes to ideological polarization. On two occasions, the U.S. Congress has tried to impose censorship legislation on Internet content, but both attempts were ruled unconstitutional by the courts. According to the Center for Democracy and Technology, proposals are pending to make internet service providers liable for removing allegedly illegal or improper content. Nearly 69 percent of the population was documented as having internet access at year's end.

Even congressional attempts to censor pornography have failed due to First Amendment concerns. U.S. judge blocks law criminalizing Web porn that reaches kids, saying filters work better," Associated Press. March 22, 2007

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

References:

The explosion of political blogs in the U.S., many of which are quite critical of presiding officials, is testament to the Internet freedoms enjoyed by Americans. For examples of blogs on both side of the political spectrum, see: <http://www.dailykos.com/> and <http://www.redstate.com/>.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons

posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

100

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

According to Freedom House, The United States has a long tradition of legal protection for press freedom,” making it “quite difficult to bring a successful libel case against a journalist in the United States.” 2005 U.S. Country Report

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

However, the current administration’s attempts to clamp down on media freedom for national security” concerns pose a risk that corruption stories could be censored. According to a recent report by Reporters Without Borders, The United States (53rd) has fallen nine places since last year, after being in 17th position in the first year of the Index, in 2002. Relations between the media and the Bush administration sharply deteriorated after some in the media accused the president of using the pretext of national security to regard as suspicious any journalist who questioned his war on terrorism. The zeal of federal courts which, unlike those in 33 US states, refuse to recognize the media’s right not to reveal its sources, even threatens journalists whose investigations have no connection at all with terrorism.” http://www.rsf.org/rubrique.php3?id_rubrique=639

Freedom House’s review of the US also exposes the potential for corruption cover ups.
<http://www.freedomhouse.org/template.cfm?page=251&country=7084&year=2006>

References:

Neither the government nor media entities encourage self-censorship about corrupt officials. Adherence to First Amendment norms (cited above) prevent the government from doing so, while financial incentives to report on corruption (which draw large audiences) compel media entities to do so. Indeed, the last two years have witnessed a significant increase in stories about corrupt politicians (from both parties).

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

While no cases of pre-publication censoring of corruption stories were revealed in 2007, the possibility that concerns about national security may be used to quell reporting unearthing corruption is of concern.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

95

10a. In law, print media companies are required to disclose their ownership.

YES | NO

References:

Hold the Press: The Inside Story on Newspapers. Baton Rouge, LA: Louisiana State University Press, 1996. As with broadcast media, there are increasing concerns about ownership concentration, especially as newspapers become increasingly less profitable with the growth of the Internet.

Why newspapers are buyout targets”, May 3, 2007, The Christian Science Monitor

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

References:

The FCC requires broadcast stations to file a report with the names of the owners and their ownership interests, any contracts related to the station that are required to be filed with the FCC, and the identities of any interests held by the station licensee in other broadcast stations. http://www.fcc.gov/mb/audio/decdoc/public_and_broadcasting.html#OWNERSHIP

Ownership disclosures reveal an increasing concern about media concentration in the United States. According to Freedom House, this controversy has intensified in recent years following the purchase of media entities, especially television networks, by large corporations with no previous experience in journalism.” <http://www.freedomhouse.org/template.cfm?page=251&country=7084&year=2006>

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

References:

Major media outlets employ ombudsmen and/or possess codes of conduct to promote ethical behavior. See, for example, The

New York Times Ethical Journalism Guidebook. Independent organizations such as the Project for Excellence in Journalism help to ensure a healthy debate about journalistic practices.

However, Freedom House notes that the Bush administration itself drew sharp criticism for having paid several political commentators who supported certain domestic policy initiatives through grants from agencies of the federal government. A report by federal auditors concluded that the administration had disseminated “covert propaganda” by paying columnist Armstrong Williams through grants from the Department of Education for columns that praised Bush’s education policies. It was also revealed that the Department of Defense had hired a public relations firm to place stories with media outlets in Iraq that were written by U.S. military officers and depicted conditions in the country in a favorable light.”

<http://www.freedomhouse.org/template.cfm?page=251&country=7084&year=2006>

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

References:

Compared to other countries, election news is largely independent of the political parties involved. In addition, most U.S. citizens enjoy access to the Internet and Blogosphere, which provide access to political news that might go uncovered in more traditional news media outlets (the Blogosphere is far more politically biased than are traditional sources such as newspapers and magazines. Nevertheless, there are signs that American media sources generally are becoming more partisan. See, for example, Red Media, Blue Media” in which the authors argue that “there is the real possibility that news will no longer serve as a “social glue” that connects all Americans; instead, the very same lines that divide voters will also divide news audiences.” By Shanto Iyengar and Richard Morin, Washington Post, May 3, 2006.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

References:

The vast majority of political media operates in the private sphere, and in the few cases where the U.S. government operates state-owned media outlets the only claims about political bias come from the party already in power. One major area of controversy, however, is the process by which aspiring presidential candidates are allowed to participate in presidential debates. The organization in charge of this decision has been criticized for being biased toward the traditional two political parties. See, for example, the NOW television special on Politics and Economy”, September 24, 2004, in which the director of Open Debates is interviewed.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Transparency International news search

No journalists were imprisoned for corruption stories, although the New York Times reporter Judith Miller spent 85 days in jail for refusing to reveal her sources in a criminal investigation.

<http://www.freedomhouse.org/template.cfm?page=251&country=7084&year=2006>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

References:

Transparency International news search

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

While no reporter investigating corruption per se was murdered in 2007, one of Oakland, California's long-time investigative journalists, Chauncey Wendell Bailey Jr., was murdered on Aug. 2 while reporting on a story regarding the suspicious activities of the Your Black Muslim Bakery.

<http://centerforinvestigativereporting.org/projects/thechaunceybaileyproject>

References:

Transparency International news search

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

96
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

References:

At the federal level, Title 5, Section 552 of the U.S. Code grants citizens the right to public information that does not fall under the nine exemptions of the code (e.g., classified information). References: Freedom of Information Act (FOIA), <http://www4.law.cornell.edu/uscode/5/552.html>. It should be noted that certain executive entities exempt from the provisions of the FOIA: White House Office; Office of the Vice President; Council of Economic Advisers; National Security Council; Office of Policy Development; Domestic Policy Council; Office of National AIDS Policy; National Economic Council; and President's Foreign Intelligence Advisory Board. <http://www.whitehouse.gov/government/eop-foia.html>

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

At the federal level, Title 5, Section 552 of the U.S. Code grants citizens the right to sue for access to records that a government agency has denied. References: <http://www4.law.cornell.edu/uscode/5/552.html>

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

References:

However, each federal agency is responsible for fulfilling its individual information requests, so there is no universal federal institution or process.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

55

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to a report from OpenTheGovernment.org and People For the American Way Foundation, government secrecy has only increased. <http://www.openthegovernment.org/otg/govtsecrecy.pdf>

References:

The law does not stipulate any limit on the amount of time an agency can take to respond, although it does require agencies to respond in some manner within 20 days (which often takes the form of notify the requesting party that the request has been received). Actual processing of the request often drags on far longer, with some information requests going unfilled for nearly two decades. The Associated Press reports backlogs are increasing at most agencies, Overall, the total number of requests pending at the 15 executive departments at the end of Fiscal Year 2004 was 147,810, a 24 percent increase over the previous year." In particular, the AP asserts agencies involved with national security are clamping down on the amount of information they release to the public. Critics contend the process remains backlogged, despite a December 2005 presidential order to repair the process. In response to mounting criticism, two House members (one Republican and one Democrat) have sponsored legislation to improve the process, although few believe the bill will pass. References: "A Report on Federal Agency FOIA Backlog," National Security Archive at George Washington University; and Martha Mendoza, "Agencies Missing FOIA Deadlines," Associated Press, March 12, 2006. Note also that each state has its own public information law, each with its own unique exemptions and process for requesting data. See: <http://www.foiadvocates.com/records.html>

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

The law prevents U.S. federal agencies from charging excessive fees for information requests. Most charge nominal fees or no fee at all. For example, see: Department of Justice Freedom of Information Act Reference Guide.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The law requires an agency to respond to any appeal within 20 days, and notify the appellant if any extension is required. Should the agency continue to deny a request (which critics charge is likely given the agency was the entity who initially denied the request), the requesting party can sue the agency in a federal court, a process that can take years.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

High legal costs are the result should the appeals process go to court. In a July 26, 2006 congressional hearing, a representative of small newspapers argued that very few newsrooms can afford to use this remedy." As such, critics support the establishment of an independent ombudsman to oversee the appeal process of each federal agency. Reference: Tonda Rush, Public Policy Director, National Newspaper Association, House Government Reform Committee hearing on Freedom of Information Act Implementation.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | **50** | 25 | 0

References:

There are nine formal exemptions typically given for why a FOIA request is denied. (See: <http://www.usdoj.gov/04foia/foi-act.htm>). Each federal agency must provide an assessment of FOIA requests and exemptions used to the Department of Justice on an annual basis. http://www.usdoj.gov/04foia/04_6.html Catherine Neilsen at George Washington University's National Security Archives notes that agencies often offer vague reasons for why a particular exemption is warranted (particularly for national security reasons).

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁸⁴Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

The U.S. Constitution and subsequent amendments guarantee the right to vote to all 18 year old adults (although some states disqualify felons and those with extreme mental disabilities). D. Grier Stephenson, Jr., The Principles of Democratic Elections," <http://usinfo.state.gov/products/pubs/democracy/dmpaper3.htm>

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Federal elections held on the Tuesday after the first Monday in November, which was initially established in 1845 (3 U.S.C. 1) for the appointment of Presidential electors in every fourth year. 2 U.S.C. 7 established this date for electing U.S. Representatives in every even numbered year in 1875. Finally, 2 U.S.C. 1 established this date as the time for electing U.S. Senators in 1914. Other elections (e.g., primary) elections take place on pre-assigned dates set by each state. U.S. Electoral Assistance Commission, <http://www.eac.gov/faq.asp?format=none>

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

92

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

References:

Economic disparities create unequal voting experiences. For example, voters in poorer neighborhoods tend to wait in far longer lines for their opportunity to vote—thereby increasing the possibility of lower turnout. And according to the nonpartisan League of Women Voters, many states have developed laws, rules or procedures that limit access to the ballot box. For example, many states have chosen to implement the statewide database requirement of the Help America Vote Act (HAVA) in ways that make it harder for eligible applicants to register. Together, these new requirements disproportionately impact those citizens who have been historically marginalized in the political process: women, low-income people, members of ethnic and racial minorities, youth, people with disabilities and seniors. Mike Slater, Laura Kyser and Jo-Anne Chasnow, New Barriers to Voting: Eroding the Right to Vote,” The National Voter, League of Women Voters, June 2006.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

References:

Ballots are almost always secret or equivalently protected. U.S. Elections Frequently Asked Questions,” Bureau of International Information Programs, U.S. Department of State. It should be noted that secret ballots have come under fire recently, because the voter is given no permanent record of his or her vote that can be used in the case of a recount, and new electronic voting software is subject to hacking.

“New voting machines failed test”, Sarasota Herald-Tribune (Florida), August 9, 2007

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

References:

As noted above, election dates have typically been predictable in the US, although states have been competing to have earlier primaries for the 2008 presidential election. Frustrated, States Try to Change The Way Presidents Are Elected, New York Times, august 11, 2007.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Citizens may form political parties, although numerous institutional and financial barriers prevent independent or third parties from challenging the dominant Republican and Democratic parties. See: John F. Bibby, "Political Parties in the United States," Bureau of International Information Programs, U.S. Department of State. <http://usinfo.state.gov/products/pubs/election04/parties.htm>

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Citizens may run for any office, although the Constitution places some restrictions on certain offices (e.g., a candidate for president must have been born in the United States). U.S. Constitution, Article II, Section 1.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

Although Democrats and Republicans dominate elections, other parties (including the Greens) participate in elections. For a list of parties, see: http://www.vote-smart.org/resource_political_resources.php?category=Political%20Parties. The most recent

significant impact by a third party in a U.S. presidential election came in 1992, when billionaire Ross Perot garnered 19% of the vote. See: John F. Bibby, "Political Parties in the United States," Bureau of International Information Programs, U.S. Department of State. <http://usinfo.state.gov/products/pubs/election04/parties.htm>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

References:

While it is extremely rare that citizens are barred from the ballot through government abuse of official rules and/or unofficial pressure, the increasingly high price of state and especially national offices effectively prohibits entry for candidates who are not themselves independently wealthy or do not enjoy access to a steady stream of wealthy contributors. See, for example, the op-ed by former Democratic senator Ernest F. Hollings, "Stop the Money Chase," Washington Post, February 19, 2006.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

References:

The high level of partisanship over the last 13 years has created a legislature in which the party in power dominates the institution, even when that party has a only slight majority control. Congressional Democrats had promised to be more conciliatory to their Republican brethren upon taking control of Congress in November 2006, but Republicans claim to have been shut out on numerous legislative processes. Still, Congress has seen a greater degree of bipartisanship on issues pertaining to Iraq and malfeasance in the Bush administration, in part driven by Bush's decreased political clout.

Pelosi proud of Dems' work in first 100 days," San Francisco Chronicle, March 29, 2007. For a fuller view of Congress' problems, see The Broken Branch: How Congress is Failing America and How to Get it Back on Track, Brookings Institution, 2006.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

While the Federal Electoral Commission enforces campaign finance rules for federal offices, administration and monitoring of all elections takes place at the state level, typically under the office of the state secretaries of state. A new agency, the U.S. Election Assistance Commission (EAC) was established by the Help America Vote Act of 2002 (HAVA) as a national clearinghouse and resource for information and review of procedures with respect to the administration of Federal elections. Currently, the EAC lacks any enforcement powers, although its budget has increased over time. [http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAI\\$docID=501867264668+22+0+0&WAI\\$action=retrieve](http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAI$docID=501867264668+22+0+0&WAI$action=retrieve)

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

55

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | **NO**

References:

The vast majority of secretaries of state are elected positions, making them highly political. http://www.nass.org/sos/duties_survey/table2.1_qualifications.pdf As the Oregon's largest newspaper editorializes, in Oregon and 36 other states, the secretary of state is both player and umpire, running elections and running campaigns at the same time. The Oregonian, February 18, 2006. This arrangement raised little controversy until recently, when the presidential election results in Florida (2000) and in Ohio (2004) became extremely controversial, in part because in each case the overseeing secretaries of state also helped direct President Bush's election campaign in those states. For an example of lingering animosity and suspicion, see: Robert F. Kennedy, Jr., "Was the 2004 Election Stolen?" Rolling Stone, June 1, 2006. The political importance of the position has made it increasingly coveted by party leaders. See: Jill Lawrence, "Top vote counter becomes prize job," USA Today, August 17, 2006.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | **25** | 0

References:

A review of secretaries of state biographies reveals many in the position lack professional election experience prior to assuming the post, beyond being elected to office. See: National Association of Secretaries of State, http://nass.org/index.php?option=com_content&task=view&id=44&Itemid=198

At the national level, Federal Election Commission appointees are typically loyal partisans. For example, President Bush's most recent appointee, Hans von Spakovsky, was a former Republican Party chairman in Georgia. Democrats Criticize Bush's FEC Nominee," Associated Press, June 13, 2007. "He failed to understand his role was not to be a representative of the Republican Party," said Joseph Rich, a former voting section chief who worked under von Spakovsky, who was then counsel to the assistant attorney general for civil rights. "Hearing on FEC Pick Could Add Fuel to Debate Over Justice Dept." Washington Post, June 8, 2007.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Nearly all offices of secretary of state have professional, full-time staff, with the number ranging from 7 in Wisconsin to 443 in California. http://www.nass.org/sos/duties_survey/table2.2_staff&salary.pdf

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

References:

The vast majority of secretaries of state file election reports. http://www.nass.org/sos/duties_survey/table3.2_electionreports&filings.pdf

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

References:

Non-financial complaints regarding federal election irregularities (as well as all state and local election issues) are overseen by secretaries of state or similar agencies. The Help America Vote Act of 2002 revised state-based administrative complaint procedures to remedy grievances (Sec. 402). However, election fraud continues to be a major concern: See, for example, Wall Street Journal columnist John Fund's Stealing Elections: How Voter Fraud Threatens Our Democracy, Encounter Books, 2004.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

92

19a. In practice, there is a clear and transparent system of voter registration.

100 | **75** | 50 | 25 | 0

References:

The registration process works effectively for the vast majority of voters, but concerns remain about barriers that affect

traditionally disenfranchised voters. See: Federal Office to Probe Vote Procedures,” Boston Globe, November 24, 2004. Numerous NGOs focus solely on improving voting conditions. See, for example, the Center for Voting and Democracy, Project Vote Smart, and the American Civil Liberties Union.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost” voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

State voting laws allow for challenging elections or reporting election fraud. Information on Florida, for example, can be found at: <http://election.dos.state.fl.us/fraud/index.shtml>

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

References:

Voting issues can be appealed through the judicial process in a timely manner, although the political affiliations of some judicial positions taints the process in some cases. See, for example, Bush v. Gore, the Supreme Court decision that effectively decided the 2000 presidential election. Congressional Research Service, Election Reform: Overview and Issues,” March 2004, <http://fpc.state.gov/documents/organization/32805.pdf>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for

resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

In both law and practice, the military are prohibited with interfering with the elections process, and polling places are unguarded. Political Activities by Members of the Armed Forces on Active Duty," Department of Defense Directive, August 2, 2004.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

There are no laws prohibiting election monitors, although their presence is rare. There are exceptions when stakes are particular high, or when problems have occurred in the past, such as in Ohio in 2004. Voters Find Long Lines and Short Tempers, but Little Chaos at Polls," New York Times, November 3, 2004.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

References:

The 2004 presidential election marked the first time that international elections monitors oversaw a U.S. election. Cold War Relic To Dispatch Observers For American Presidential Election,” New York Sun, October 28, 2004.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

82
II-3. Political Financing

20. Are there regulations governing political financing?

86

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

In 1975, Congress created the Federal Election Commission (FEC) to administer and enforce the Federal Election Campaign Act (FECA) – the statute that governs the financing of federal elections. The majority of state secretaries monitor campaign finance contributions and expenditures at the state and local level.

See: <http://www.fec.gov/about.shtml> and http://www.nass.org/sos/duties_survey/table3.4_campaignfinance.pdf.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

References:

Citizens may contribute no more than \$2,300 per federal candidate per election. Other limits exist that restrict contributions to and from political parties and political action committees. See Contribution Limits-2007-08,”

FEC, <http://www.fec.gov/pages/brochures/contriblimits.shtml>

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

References:

Federal election law prohibits any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office.” TITLE 2. THE CONGRESS, Chapter 14 Federal Election Campaigns Subchapter 1 Disclosure of Federal Campaign Funds, § 441b.

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

References:

There are no limits on expenditures by parties (although parties must disclose expenditures). TITLE 2. THE CONGRESS, Chapter 14, Federal Election Campaigns , Subchapter 1, Disclosure of Federal Campaign Funds. An exception pertains to presidential candidates who agree to accept matching federal campaign funds. However, the high cost of presidential elections means it is increasingly common for candidates to forego these funds in order to spend whatever amount they deem necessary to win. Source: Interview with Candice Nelson, co-author of *The Money Chase: Congressional Campaign Reform*,” Brookings Institution Press, 1990.

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

References:

The FEC and state election offices require financial disclosure of campaign contributions. See: <http://www.fec.gov/about.shtml> and http://www.nass.org/sos/duties_survey/table3.4_campaignfinance.pdf. According to a Center for Public Integrity report on state campaign finances, nearly half the states received a failing grade for the campaign finance disclosure required of state-level political party organizations.” “Undisclosed,” September 26, 2002

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor’s name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

References:

The campaign finance law permits the Commission to conduct an audit of any political committee. The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance. [2

U.S.C. §438(b)] The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Federal Election Campaign Act. In addition, the Commission is required by law to audit presidential campaigns and convention committees that accept public funds. FEC Enforcement Matters, http://www.fec.gov/audits/audit_reports.shtml.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

References:

As noted above, the Federal Electoral Commission monitors the political financing process. <http://www.fec.gov/disclosure.shtml>

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

38

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | **50** | 25 | 0

References:

Numerous financial loopholes exist to allow contributions to one official to be redirected through political action committees to another candidate. Source: Interview with Candice Nelson, co-author of *The Money Chase: Congressional Campaign Reform*, Brookings Institution Press, 1990. Also see: M.E. Sprengelmeyer, "Hefley aims to do away with 'leadership PACs'," *Rocky Mountain News*, July 19, 2006. Even with the new changes to congressional ethics laws, members of Congress will be able to accept invitations from lobbyists to events that are widely attended, including receptions and charity golf tournaments. "Congressman, It's (Still) on Us: The Ethics Law's Many Loopholes," *Washington Post*, August 11, 2007

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | **50** | 25 | 0

References:

The 2004 presidential election witnessed many cases of bundling", in which high-level corporate executives encourage their employees to contribute to the same candidate. See: Source: Interview with Candice Nelson, co-author of "The Money Chase: Congressional Campaign Reform," Brookings Institution Press, 1990. See also, "Office politics: banned from making political donations, companies harvest them from employees instead," CFO The Magazine for Senior Financial Executives, July 2004.

Also, a recent Supreme Court decision allows corporations and labor unions to fund political advertising leading up to an election, thwarting efforts to restrict the practice. "POLITICAL ADS; A horrible ruling; Court decision could mean a return to the days of attack ads funded by corporations and unions just before an election." Milwaukee Journal Sentinel, June 26, 2007

On a positive note, new congressional ethics rules require lawmakers to disclose the names of lobbyists who raise \$15,000 in contributions in a six-month period through the bundling of donations. CONGRESS VOTES TO TIGHTEN RULES ON LOBBYIST TIES, New York Times, August 3, 2007; "Tougher Rules Change Game for Lobbyists," New York Times, August 7, 2007

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

N/A There are no expenditure limits.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Democracy 21, an elections watchdog group, calls the FEC a failed agency.” Its report asserts “structural problems of the FEC are compounded by the extraordinarily cumbersome enforcement procedures built into the statute – what Congressional Quarterly referred to as ‘procedures mandated by Congress and designed to protect incumbents and challengers from overly aggressive investigators.’” Democracy 21 Report: “No Bark, No Bite, No Point,” 2002. Candice Nelson confirms this assessment.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

The FEC imposes fines in cases of finance irregularities in federal elections, although many have criticized the agency as being too lax (in part because its commissioners comprise an equal number of Democrats and Republicans, often leading to stalemates). Candice Nelson believes the fines offer little deterrent value, as most campaigns adopt the attitude of "If you get fined you get fined; it's the cost of doing business." She also notes that it is the campaign treasurer who gets fined, because the campaign is over and the organization has disbanded by the time the FEC acts. Also see: Jim Drinkard, "Agency that referees elections protects parties first," USA Today, November 11, 2002; and "The FEC's Reluctant Regulators; The agency's inaction means Congress ought to step in," Washington Post editorial, June 9, 2006, p. A22.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

References:

According to the Democracy 21 report, The Commission cannot make its own findings that a violation occurred, cannot seek court injunctions to halt illegal activity while it is occurring, and cannot conduct random audits of campaigns. In short, Congress created an enforcement agency that, on its own, can do little to actually enforce the law. Although the agency, by a mandated process of conciliation, can attempt to settle cases and negotiate the payment of civil penalties by respondents, it has (with limited exceptions) no power to actually adjudicate complaints itself or to require that violators face sanctions." "No Bark, No Bite, No Point," p. 13.

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

100

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The FEC requires parties and campaigns to disclose their contributions and expenditures once per quarter. Ref. §434, Reporting Requirements (<http://www.fec.gov/law/feca/feca.pdf>). It should be noted that this disclosure requirement also has a political benefit, in that campaigns can demonstrate the strength of their support through public disclosures.

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The FEC makes financial reports available on its Web site. <http://www.fec.gov/disclosure.shtml>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

The FEC makes financial reports available on its Web site. <http://www.fec.gov/disclosure.shtml>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁸⁵ Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

The First Amendment of the U.S. Constitution grants citizens the right to petition the government for a redress of grievances.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

75

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

References:

While the White House press officer holds nearly daily press briefings to explain Bush Administration policy positions, this Administration has gone to great lengths to weaken the media's ability to access information. George Bush himself address rarely makes himself available to the White House press corps for open question-and-answer sessions. A January 2004 account in the New Yorker noted that Bush had held only eleven solo press conferences, fewer than almost any modern president. Over a comparable period, his father held 71 and Bill Clinton 38." Ken Auletta, "Bush's Press Problem," January 13, 2004. When Bush himself interacts with the media, it is often with smaller, local media outlets, who are less equipped to offer well-researched questions or criticisms. Also see: Troubled ties: Godfrey Sperling, "Bush and the Press," Christian Science Monitor, May 4, 2004; Post- 9/11 security concerns provide an additional excuse to further isolate the president from the press. According to Howard Fineman, Newsweek's chief political correspondent for 20 years, "The trend line is to fewer press conferences, smaller press pools, fewer opportunities for the reporters to eyeball the president." At the same time, there's "more security, more distance, more assertiveness by the Secret Service...more isolation. The logic of security knows no limits." Quoted in Lori Robertson, "In Control," American Journalism Review, February/March 2005.

For a comparison of Bush with past presidents, see: One President Who Didn't See the Press as an Enemy; Ford Had a Warm Relationship With Many Journalists," Washington Post, January 1, 2007.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Article III of the U.S. Constitution grants authority to the Supreme Court for all cases arising under the Constitution or other laws of the United States. Section 13 of the Judiciary Act more explicitly authorizes the Supreme Court to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States." It is the 1803 Supreme Court case Marbury v. Madison, however, which most definitively established the principle of judicial review. <http://www.supremecourtus.gov/about/constitutional.pdf>; and <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/judicialrev>

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

References:

The Supreme Court hears cases on actions of the executive, but does not initiate such reviews. While the Supreme Court is formally non-partisan, there is increasing concern that the Court is becoming more partisan as a result of an increasingly partisan and highly-politicized confirmation process. According to a 2005 report in the Christian Science Monitor, Many analysts – including some of the justices themselves – have expressed concern that the increasingly partisan and ideologically driven nomination process is politicizing the court, tainting its credibility as dispassionate arbiters of the law." Warren Richey, "How a new justice could change the court," July 10, 2005.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

Comments:

In addition, a recent report by OpenTheGovernment.org and People For the American Way Foundation found that: President Bush has used executive orders to limit use of the Freedom of Information Act and Presidential Records Act, expanded the power to classify information for national security reasons, and created a range of new categories of sensitive” information. In some cases, the government has gone so far as to reclassify documents that had been available to the general public for many years. <http://www.openthegovernment.org/otg/govtsecrecy.pdf>

References:

Executive orders are commonplace in the U.S., although they rarely engender animosity from the opposition party. <http://www.whitehouse.gov/news/orders/> President Bush’s use of executive orders differs little from his predecessors, with Bush issuing 242 through August 16, 2007, compared to Clinton’s 364 during the latter’s eight year term. Executive Orders Since President Kennedy,” Associated Press, August 16, 2007.

More worrisome, however, is President Bush’s increased usage of “signing statements” which allow presidents to disregard or decline to enforce all or part of a law the president has signed. The American Bar Association’s Bipartisan Task Force calls this practice “an unconstitutional power grab,” and notes that “Bush has used signing statements to challenge more than 800 laws, more than all previous presidents combined. At the same time, Bush has vetoed just one bill – the fewest number of vetoes since the 1800s, sharply limiting Congress’s ability to override his judgments.” Charlie Savage, “ABA Urges Halt to “Signing Statements”, Boston Globe, August 09, 2006 Pg. A2.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

The Constitution grants Congress the authority to impeach the president, vice-president and all civil officers of the United States for, and conviction of, treason, bribery, or other high crimes and misdemeanors. The House of Representatives serves as a quasi-grand jury in deciding whether to impeach the president, while the Senate decides whether the impeachment proceedings warrant removal from office. In the case of President Clinton, the House determined he had committed perjury and referred the case to the Senate, but the Senate decided against removing him from office. <http://www.law.cornell.edu/background/impeach/impeach.htm>

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

The Constitution grants Congress the authority to impeach the president, vice-president and all civil officers of the United States for, and conviction of, treason, bribery, or other high crimes and misdemeanors. The House of Representatives serves as a quasi-grand jury in deciding whether to impeach the president, while the Senate decides whether the impeachment proceedings warrant removal from office. In the case of President Clinton, the House determined he had committed perjury and referred the case to the Senate, but the Senate decided against removing him from office. <http://www.law.cornell.edu/background/impeach/impeach.htm>

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

63

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Certain senior officers and employees of the executive branch are required to file a public report disclosing their financial interests as well as the interests of their spouse and minor children. These include: the President; Vice President; officers and employees

of the executive branch whose basic rate of pay meets a certain threshold amount (including Generals and Admirals of the uniformed services); Certain other less senior executive branch employees whose duties involve the exercise of discretion in sensitive areas such as contracting, procurement, administration of grants and licenses, and regulating or auditing non-Federal entities are required to file confidential financial disclosure reports. Office of Governmental Ethics site: http://www.usoge.gov/pages/about_oge/ethics_program.html; U.S. Response to OAS First Round Questionnaire, <http://www.state.gov/p/inl/rls/rpt/13571.htm#10> Note: It is the responsibility of the OGE interpret the rules pertaining to conflicts of interest, post-employment restrictions, standards of conduct and public and confidential financial disclosure statements. However, OGE has no enforcement powers, which are invested in the inspectors general offices of each executive agency. This system has been criticized for its lack of independence, as each inspector general reports to the cabinet member at the head of that agency.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

The Office of Governmental Ethics and the agencies maintain a separate public disclosure system for Standard Form (SF) 278 Public Financial Disclosure Reports filed by high-level executive branch officials. Copies of the reports of Presidential appointees subject to Senate confirmation, designated agency ethics officials, and certain other officials are available from OGE directly by filing the appropriate access form, OGE Form 201. SF 278 reports of those officials and all other public filers are also available from the officials' own employing departments and agencies throughout the executive branch. These records are available, not under the FOIA, but the under the Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105) and OGE's regulations thereunder, subject to certain restrictions on use (including a general prohibition on commercial use, except for dissemination to the general public by news and communications media). http://www.usoge.gov/pages/about_oge/foiaguide.html

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Executive branch employees are subject to restrictions on the gifts that they may accept from sources outside the Government. Generally they may not accept gifts that are given because of their official position or that come from certain interested sources (prohibited sources²). Those sources include persons (or an organization made up of such persons) who: are seeking official action by the employee's agency; are doing or seeking to do business with the employee's agency; are regulated by the employee's agency, or have interests that may be substantially affected by performance or nonperformance of the employee's official duties. There are a number of exceptions to the ban on gifts from outside sources. These exceptions would allow the

acceptance of gifts in the following circumstances: where the value of the gift is \$20 or less; where the gift is based solely on a family relationship or personal friendship; where the gift is based on an outside business or employment relationship; or where the gift is in connection with certain political activities. "Summary of the Executive Branch Standards of Ethical Conduct," <http://www.usdoj.gov/jmd/ethics/docs/summary.htm>

New changes passed by Congress and waiting on Bush's approval would affect the executive branch as well. For example, presidential candidates would have to pay the full charter rate when flying on private jets, rather than the current practice of paying merely the price of a first class commercial ticket. "Overhauling Congressional Ethics," New York Times, August 3, 2007.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

According to the U.S. State Department, In the executive branch, the respective employing agency reviews the financial disclosure report of an officer or employee. Reports are reviewed for internal consistency and for facial completeness, but they are not audited. In addition to the review of the report (which can include Internet searches and other research geared towards cross-checking information with public sources), a number of other means exist to verify the information on a report. A reviewer can ask a filer questions to ensure all relevant information appears on the report and is correct. Also, the scrutiny of the media and of persons familiar with a filer can lead to allegations that a filer has omitted or misrepresented certain information on a publicly available financial disclosure report. Therefore, instead of using an independent auditor, the government relies on "public and media cultures that reward investigative reporters who uncover government scandal; that reward system gives incentive to investigative reporters to examine and investigate public financial disclosure reports closely." U.S. Response to OAS First Round Questionnaire, <http://www.state.gov/p/inl/rls/rpt/13571.htm#10>. Former Director of the Center for Public Integrity Chuck Lewis argues, however, that a system that relies primarily on media investigation is hindered by numerous obstacles, including complicated ethics rules, vague disclosure reports (e.g., assets are listed as ranges, not discrete amounts), and the media's decreasing investment in investigative reporting. Personal interview, spring 2003.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

Executive branch employees are subject to certain restrictions on their activity after they leave Government service. Two of the restrictions apply with respect to particular matters involving specific parties that were involved with while in Government service. If the employee's involvement in such a matter was personal and substantial, then the employee is permanently barred from representing anyone back to any Federal department, agency, or court on that same matter. If the matter was under the employee's official responsibility during the last year of Government service, then the employee is barred for two years after leaving Government service from representing anyone back to the Government on that same matter. In addition, certain high level officials are subject to a so-called one-year cooling off period." For a period of one year after leaving a "senior" position, these officials may not make any appearance on behalf of any person (other than the United States) before his former agency with the intent to influence the agency on any matter in which that person seeks official action. "Ethics Program Topics" http://www.usoge.gov/pages/about_oge/ethics_program.html

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

It is very common for senior agency officials to travel from industry to government and back (or to a lobbying position for industry). This revolving door" practice has increased significantly during the Bush Administration, and its impact on policy and public confidence in government is detailed in a 2005 collaborative report written by a collection of watchdog organizations: "A Matter of Trust," http://www.revolvingdoor.info/docs/matter-of-trust_final-full.pdf.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

Compared to Congress, far less controversy surrounds gifts received by members of the executive branch. As a member of the President's Commission on Federal Ethics Law Reform points out In Congress, but not in the executive branch, officials may accept luxurious travel, accommodations and meals anywhere in the world as long the trip has some official purpose, such as giving a speech or participating in a conference." Jan Witold Baran, "Can I Lobby For You?" Washington Post, January 8, 2006, B1. Nevertheless, in 2005, President Bush received \$17,316 in personal gifts, according to financial disclosures released by the White House, including a \$5,474 bike and \$515 cycling shoes from Trek Bicycle Corp. Vice President Cheney accumulated \$39,722 in gifts, including a \$15,000 oil painting of his home by Thomas William Jones and a \$6,125 Colt revolver from U.S. Firearms Manufacturing. Amy Argetsinger and Roxanne Roberts, "The Reliable Source," Washington Post, May 17, 2006. And in some cases, the "personal friend" exception can be used as a convenient loophole to hide improper gifts. Jeffrey H. Birnbaum, "Ex-Aide To Bush Found Guilty; Safavian Lied in Abramoff Scandal," Washington Post, June 21, 2006, p. A1.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

According to the U.S. State Department, In the executive branch, the respective employing agency reviews the financial disclosure report of an officer or employee. Reports are reviewed for internal consistency and for facial completeness, but they are not audited. In addition to the review of the report (which can include Internet searches and other research geared at cross-checking information with public sources), a number of other means exist to verify the information on a report. A reviewer can ask a filer questions to ensure all relevant information appears on the report and is correct. Also, the scrutiny of the media and of persons familiar with a filer can lead to allegations that a filer has omitted or misrepresented certain information on a publicly available financial disclosure report. Therefore, instead of using an independent auditor, the government relies on "public and media cultures that reward investigative reporters who uncover government scandal. That reward system gives incentive to investigative reporters to examine and investigate public financial disclosure reports closely." U.S. Response to OAS First Round Questionnaire, <http://www.state.gov/p/inl/rls/rpt/13571.htm#10>

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

92

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

Individuals who wish to receive a copy of the financial disclosure report of an individual employed by the executive branch must file a request with the agency that employs the individual or with OGE if the agency is required to transmit a copy of the report to OGE.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

There is no online database for public disclosure forms. OGE requests are filled within one or two working days. Source: Interview with OGE official Denise Shelton, September 15, 2006

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Reports numbering less than 333 pages are free. (The vast majority of reports fall into this category, including, for example, the report for Secretary of State Condoleezza Rice.) Requested reports longer than 333 pages are charged for the entire job @ 3 cents per page. Source: Interview with OGE official Denise Shelton.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

50

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

References:

Formal regulations and the Hatch Act divide activities devoted to government or campaign purposes. For example, official staff often resign to work on campaign activities, and are paid out of campaign funds.

The Bush Administration, however, is coming under increasing fire for blurring the line between government and partisan objectives. For example, Bush's Attorney General (and former White House aid) is under fire regarding the firing of federal prosecutors solely on partisan grounds. And government officials, including the U.S. Surgeon General, have revealed that their work was heavily controlled for partisan reasons. Congress is also investigating whether executive branch officials were encouraged to help defeat Democrats in past campaigns. GSA Chief Grilled on GOP Political Presentation," Washington Post, March 29, 2007; "Bush Administration Under a Cloud," Associated Press, April 22, 2007. "I was muzzled: ex-surgeon general; Says Bush officials kept hot-button issues from public," Chicago Sun Times, July 11, 2007.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

92

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

The federal judicial branch is composed of judges, appointed by the President and confirmed by the Senate, and various employees hired to support judicial functions. Judges receive a lifetime appointment without diminution of pay and can only be removed by the Congress after impeachment. Federal judges, located at various U.S. district and appeals courts throughout the United States, can check the legislatures and executives actions to ensure that they do not violate constitutional prerogatives and limits. U.S. Response to OAS First Round Questionnaire, <http://www.state.gov/p/inl/rls/rpt/13571.htm#10>

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

References:

While the judiciary is formally non-partisan, there is increasing concern that the system (especially the Supreme Court) is becoming more partisan as a result of an increasingly partisan and highly-politicized confirmation process. According to a 2005 report in the Christian Science Monitor, Many analysts – including some of the justices themselves – have expressed concern that the increasingly partisan and ideologically driven nomination process is politicizing the court, tainting its credibility as dispassionate arbiters of the law.” Warren Richey, “How a new justice could change the court,” July 10, 2005.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

References:

Article 1, Sec. 6 of the U.S. Constitution states that Members of Congress shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.” The Constitution also places the responsibility for overseeing congressional behavior on the House and Senate, respectively, with neither chambers’ ethics committees being especially aggressive. Nevertheless, the Department of Justice’s Federal Bureau of Investigation (FBI) will from time to time investigate and prosecute Members for egregious wrongdoing, such as bribery. In a recent case, the FBI raided the office and home of a Louisiana congressman who was suspected of bribery. “FBI Searches Congressional Office of Louisiana Lawmaker,” Washington Post, May 21, 2006.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

New changes passed by Congress and waiting on Bush's approval would require additional disclosures:

- 1) Lawmakers must disclose those lobbyists who raise \$15,000 or more for them within six months by bundling" campaign donations from numerous givers.
- 2) Senators seeking a special spending project, or "earmark," must disclose it two days before a vote and certify that they and their immediate relatives have no direct financial interest in it.
- 3) Leaders of the majority party, not the Senate parliamentarian, would rule on whether the earmark disclosure requirements have been met.
- 4) Lobbyists must disclose payments made to presidential libraries, inaugural committees or organizations controlled by, or named for, members of Congress.

Lobbyists must disclose payments made to presidential libraries, inaugural committees or organizations controlled by, or named for, members of Congress.

"A Summary of the Ethics Bill," The Associated Press, August 2, 2007

References:

Both House and Senate rules require members and senior staff to file financial disclosure forms. They must disclose income (earned and unearned), assets, liabilities, transactions in securities and real property, certain gifts, travel paid by a private source, outside positions, and agreements. Financial information regarding spouse and dependent children generally must be disclosed as well. Records are kept only for a six year period (the length of one term in the Senate), after which they are destroyed. <http://www.house.gov/ethics/Highlights2006.htm#FinancialDisclosure>; <http://ethics.senate.gov/downloads/pdffiles/overview>.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

According to House and Senate CURRENT rules: For one year after leaving office: A Member may not communicate with or appear before a Member, officer or employee of either House of Congress, or any Legislative Branch office, with intent to influence official action on behalf of anyone else. Very Senior Staff may not communicate with or appear before the individual's former employer or office with intent to influence official action on behalf of anyone else. A Member, Officer or Very Senior Staff Member 1.) May not represent or advise a foreign government or a foreign political party. 2.) May represent oneself, a state or local government, or the U.S. Government as an official or employee of a government agency or entity. <http://www.house.gov/ethics/Highlights2006.htm#FinancialDisclosure>; <http://ethics.senate.gov/downloads/pdffiles/overview.pdf>

If the ethics reforms are signed into law by President Bush, former senators must wait two years before lobbying Congress in person. Ex-House members and top congressional aides must wait one year.

"A Summary of the Ethics Bill," Associated Press, August 2, 2007

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

New gift rules (awaiting Bush's signature):

- 1) Senators and candidates for the Senate and White House must pay full charter fare when traveling on private airplanes. House members and candidates may not accept trips on private planes.
 - 2) Members and their staffs may not accept gifts from lobbyists and their clients.
 - 3) Lawmakers may not attend large parties given in their honor by lobbyists at national political conventions.
- A Summary of the Ethics Bill, Associate Press, August 8, 2007

Current rules:

The House and Senate gift rule prohibits acceptance of any gift unless permitted by one of the following exceptions: any gift (other than cash or cash equivalent) valued at less than \$50 (however, the cumulative value of gifts that can be accepted from any one source in a calendar year is less than \$100); gifts having a value of less than \$10 do not count against the annual limit (Buydowns" are not allowed — i.e., a gift valued at \$55 cannot be accepted merely by paying \$6); gifts from relatives, and gifts from other Members or employees; gifts based on personal friendship (but a gift over \$250 in value may not be accepted unless a written determination is obtained from committee), personal hospitality in a private home (except from a registered lobbyist); free attendance at charity, political, or officially-related "widely attended" events if offered by sponsor, and free attendance at receptions; anything paid for by federal, state, or local government.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

As with executive officials, the House and Senate ethics committees review financial disclosure forms for accuracy, but there is no independent audit.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

This rating is increased from 25 to 75, citing the cultural change” regarding ethics on Capitol Hill (quoting Common Cause’s Mary Boyle). This rating also assumes the new rules will take effect as follows:

- 1) Former senators must wait two years before lobbying Congress in person. Ex-House members and top congressional aides must wait one year.
- 2) Lawmakers and their aides may not try to influence hiring decisions by lobbying firms and others in exchange for political access.
- 3) Bars member-turned-lobbyists from setting foot in the Senate or House gym (a previously common place to make deals). “House stiffens ethics rules; The Senate is ready to pass an identical bill, the toughest crackdown on congressional behavior in decades,” Los Angeles Times, August 1, 2007

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Common Cause’s Mary Boyle admits that loopholes will certainly persist despite reforms, but the disclosure mechanisms should help limit malfeasance because more people will be watching.”

References:

This rating is increased from 25 to 75, citing the cultural change” regarding ethics on Capitol Hill (quoting Common Cause’s Mary Boyle). This rating also assumes the new rules will take effect as follows:

- 1) Former senators must wait two years before lobbying Congress in person. Ex-House members and top congressional aides must wait one year.
- 2) Lawmakers and their aides may not try to influence hiring decisions by lobbying firms and others in exchange for political

access.

3) Bars member-turned-lobbyists from setting foot in the Senate or House gym (a previously common place to make deals).

“House stiffens ethics rules; The Senate is ready to pass an identical bill, the toughest crackdown on congressional behavior in decades,” Los Angeles Times, August 1, 2007.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

As with executive officials, the House and Senate ethics committees review financial disclosure forms for accuracy, but there is no independent audit. Media and watchdog groups serve as the only real auditors.” See above.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

83

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

The Ethics in Government Act of 1978 requires individuals who wish to receive a copy of the financial disclosure report of a candidate for, a member of, or a legislative officer or employee of the House or Senate must file a request with the appropriate office within each chamber.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The new rules were supposed to streamline this process further: According to the Christian Science Monitor: 'A key provision that was dropped in the final version of this bill would have made lists of congressional earmarks available on a searchable database. The new version makes that requirement only if technically feasible.' "This is something Amazon.com does every day with its eyes closed," says Bill Allison, senior fellow for the Sunlight Foundation, a public interest group that promotes transparency in government. "We're still going to be in a situation where public interest groups are going to have to get earmarks in a form that's usable. Congress should have done this itself and didn't." "Congressional lobby reform aims at disclosure," August 1, 2007.

References:

There is currently not an easily accessed online database. The ethics committees make the disclosure documents available to media when they become available in June each year. However, it is left to the media to summarize these disclosures or focus on certain legislators. See, for example, "Disclosures Make Lawmakers' Finances an Open Book," Washington Post, June 15, 2006. Ordinary citizens can view disclosure forms in person, or can fax a written request to view certain disclosure forms to either the Senate or House clerk, copies of which are then mailed out within a day or two. Overnight delivery is available if the requester has a FedEx account. Source: Interview with Senate Office of Public Records. It should be noted that Congress recently made salary levels available online for approximately 20,000 congressional employees. <http://www.legistorm.com>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

The lack of an searchable online database requires a less than 100 rating here. Delivery via 3rd class mail is free, although copies cost 20 cents per page. Because the complexity of each legislators' finances varies, the total page count ranges from 4 to 236 (Virginia Senator John Warner). Source: Interview with Senate Office of Public Records.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

100

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

The Congressional Record publishes a daily transcript of all congressional hearings and introduced bills.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

References:

The Congressional Record is published daily, and is available online. The Library of Congress also provides comprehensive legislative material on its THOMAS Web site. http://thomas.loc.gov/home/abt_thom.html

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

References:

Available online.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

33. Are judges appointed fairly?

100

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

The president is responsible for nominating Federal Circuit Court judges and Supreme Court justices and choosing the chief justice. These nominations must be confirmed by the Senate. http://www.law.cornell.edu/wex/index.php/Executive_power#Nominations

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

References:

A biographical review of federal judges reveals the vast majority have significant legal experience. <http://www.fjc.gov/servlet/tAsearch?lname=R>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

See above. For Supreme Court and some Appeals court nominations, the process receives a great deal of attention in the media. Senate Judicial Committee hearings on Supreme Court nominations are frequently televised on major broadcast channels.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

88

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

While no law exists requiring it, opinions of the courts (and often dissents) are well documented and made available to the public.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

An example of a recent campaign financing decision can be found at:

<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=06-969>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

The U.S. Judicial Conference Committee on Codes of Conduct oversees judicial conduct. Actions the courts system may take against a judge include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be warranted.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

Tom Fitton, president of Judicial Watch (a conservative-leaning government watchdog), believes the non-political nature of the judiciary (at least compared to Congress) makes it far less likely that its internal judicial disciplinary agency can be affected by political interference. Still, he expresses concerns that the lack of an independent review system can be problematic. Interview, August 31, 2007.

References:

Member of the Judicial Conference is limited to the judicial branch, which limits political interference. The Chief Justice of the United States is the presiding officer of the Judicial Conference. Membership is comprised of the chief judge of each judicial circuit, the Chief Judge of the Court of International Trade, and a district judge from each regional judicial circuit.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

Tom Fitton, president of Judicial Watch (a conservative-leaning government watchdog), expresses concern that judicial investigations, especially of the most controversial cases involving conflicts of interest, are insufficiently thorough.

See also, Implementation of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice, The Judicial Conduct and Disability Act Study Committee, Stephen Breyer, Chair. <http://www.supremecourtus.gov/publicinfo/breyercommitteereport.pdf>

References:

According to U.S. government documents, actions the courts system may take against a judge include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be warranted (U.S. Response to OAS First Round Questionnaire," <http://www.state.gov/p/inl/rls/rpt/13571.htm#10>).

However, an independent review of this system finds numerous problems and a passive enforcement mechanism. "Ethics Lapses by Federal Judges Persist, Review Finds; Violations Involve Stock Holdings And Free Trips," Washington Post, April 18, 2006.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

Comments:

Tom Fitton, president of Judicial Watch (a conservative-leaning government watchdog), expresses concern that judicial investigations, especially of the most controversial cases involving conflicts of interest, are insufficiently thorough.

See also, Implementation of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice, The Judicial Conduct and Disability Act Study Committee, Stephen Breyer, Chair. <http://www.supremecourtus.gov/publicinfo/breyercommitteereport.pdf>

References:

According to U.S. government documents, actions the courts system may take against a judge include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be warranted (U.S. Response to OAS First Round Questionnaire, <http://www.state.gov/p/inl/rls/rpt/13571.htm#10>).

However, an independent review of this system finds numerous problems and a passive enforcement mechanism. "Ethics Lapses by Federal Judges Persist, Review Finds; Violations Involve Stock Holdings And Free Trips," Washington Post, April 18, 2006.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

50

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

As with executive and congressional officials, the Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105) and Ethics Reform Act of 1989, Pub. L. No. 101-194, §§ 601-603, 103 Stat. 1716, 1760-1763 (1989) requires federal judges to disclose their finances.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

the Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105) also places gift restrictions on judges. See also: Code of Conduct for United States Judges, <http://www.uscourts.gov/guide/vol2/ch1.html>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

As with Congress and the executive branch, there is no formal auditing of disclosure forms.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

According to Tom Fitton of Judicial Watch, while there are restrictions for court clerks, there are no restrictions for judges.

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | **75** | 50 | 25 | 0

References:

Tom Fitton, President of Judicial Watch, does not view this a major problem in th U.S. After all, federal judges are appointed for life (Art. III, U.S. Constitution), so they rarely go into the private sector upon retirement. Still, no rules limit their ability to do so.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | **75** | 50 | 25 | 0

Comments:

Tom Fitton of Judicial Watch does not view this as a major problem in the judiciary. When it comes to corporate-sponsored travel however, he admits that the conservative nature of his organization makes it ideologically opposed to express significant concern over such trips.

References:

The Code of Conduct for United States Judges, which applies to federal judges and contains such standards as: integrity and independence (Canon 1); the avoidance of impropriety or the appearance thereof (Canon 2); impartiality and diligence (Canon 3); disqualification (Canon 3.C) and conflicts of interest (Canon 5). MECHANISM FOR FOLLOW-UP ON THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION, 30 September 2005.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

According to Judicial Watch president Tom Fitton, there is no independent audit of financial disclosure reports, only that which is done by his organization or the media.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

83

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

As with executive and congressional officials, citizens can access judicial disclosure records.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

As with Congress, the government does not make it as easy as it could be. Luckily, however, Judicial Watch, the public interest group that promotes integrity and accountability in the judiciary and the government, provides a complete, easy-to-use resource for financial disclosure reports for federal judges. Utilizing the Ethics in Government Act, Judicial Watch has obtained these financial disclosure reports and posts them as a public service. They are accessible at no charge.

See: <http://www.judicialwatch.org/judges.shtml>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

While the public can access the Judicial Watch database free on the Web, Tom Fitton laments that the judiciary charges them \$4,000 to access and modify the database for his organization's Website.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

100

37a. In law, the legislature can amend the budget.

YES | NO

References:

As the National Democratic Institute (NDI) notes, the U.S. Congress plays a far greater role in budgeting decisions that do legislatures in most other democracies, possessing virtually unlimited amendment powers in the budget process." John Whaley, "Strengthening Legislative Capacity in Legislative-Executive Relations," 2000, p. 14. See also: U.S. Office of Management and Budget, *The Budget System and Concepts: Budget of the United States Government, Fiscal Year 1999* (Washington, DC: U.S. Government Printing Office, 1998), p. 2.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

The NDI report notes Congress considers the Presidents budget proposals and approves, modifies, or disapproves them. It can change funding levels, eliminate programs, or add programs not requested by the President. It can add or eliminate taxes and other sources of receipts, or make other changes that affect the amount of receipts collected.”

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive’s personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

Each chamber has a budget committee with a large number of full-time professional staff. Congress also receives budget assistance from the nonpartisan Congressional Budget Office (CBO). As NDI notes, the CBO provides Congress the necessary expertise to assess and often counter the Presidents budget. Its staff of economists and public policy experts provide Congress with cost estimates of various policy options, as well as multi-year projections of government income. The CBO is an expensive resource, however. Its fiscal year 2000 appropriation totaled \$26.1 million (of which 87% went to personnel costs).”
“Strengthening Legislative Capacity,” p. 15.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

The majority of the budget process is transparent, with congressional debate and key hearings often televised. However, certain budget items related to intelligence and national security concerns are unknown to the public. For example, the Washington Post notes the Counterintelligence Field Activity, or CIFA, is a three-year-old agency whose size and budget remain secret. It has grown from an agency that coordinated policy and oversaw the counterintelligence activities of units within the military services and Pentagon agencies to an analytic and operational organization with nine directorates and ever-widening authority. "Pentagon's Intelligence Authority Widens," December 19, 2005. It should be noted, however, that the Senate Select Committee on Intelligence has recently acted to require more transparency in intelligence budgets. "Panel Requires Annual Disclosure of Intelligence Budget," Washington Post, May 28, 2006, p. A6. A budgeting practice known as "earmarking" has also earned considerable scrutiny, as anonymous authors could drop in specifically targeted measures for their constituents.

New ethics rules seek to end (or at least shine light on) this practice, although critics remain unconvinced that much will change. See for, example, "Draining the 'Swamp' Is Not So Easy; Skeptics Question Bite of Ethics Rules," The Washington Post, August 7, 2007

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

References:

A list of witnesses who have testified recently at House budget committee hearings can be found at: <http://budget.house.gov/hearings.htm>.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

The federal government makes current and past budgets available online: <http://www.gpoaccess.gov/usbudget/index.html>

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

Scores of committees and subcommittees hold hearings on proposals under their jurisdiction. The House and Senate Armed Services Authorizing Committees, and the Defense and Military Construction Subcommittees of the Appropriations Committees, for instance, hold hearings on the President's defense plan. To consider the budget's proposed changes in taxes, the House Ways and Means and the Senate Finance Committees will hold hearings. Citizen's Guide to the Federal Budget," General Printing Office, p. 16. <http://www.gpoaccess.gov/usbudget/fy02/pdf/guide.pdf>

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

81

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

Reports can be found at: <http://www.whitehouse.gov/omb/legislative/agencycomm.html>

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

The party in power occupies a greater number of committee slots on every congressional committee, with the ethics committees being the sole exception. On Appropriations, for example, the House committee responsible for writing each of the 13 annual federal spending bills, Democrats enjoy a 37 to 29 advantage.

<http://appropriations.house.gov/members110th.shtml>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee’s work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members’ ability to shape the committee’s activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

For most of the post-WWII era, the U.S. had a “divided government” in which the president and Congress were from separate parties. This trend has been reestablished with the recent election which brought about Democratic control of Congress. This dynamic ensures that at the very least there will be political competition over the budget. While the Republicans controlled both houses of Congress and the presidency, critics accused the President of “rubber stamping” the appropriations of his fellow Republicans in Congress.

“Democrats Pledge to Restrain Spending; Critics Say Party’s Goals Are Too Lofty,” The Washington Post, December 26, 2006.

For a review of the latter period, see: Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress is Failing America and How to Get it Back on Track*. Oxford University Press (2006).

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee’s behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

On a formal level, congressional committees conduct a large number of investigations and hearings on fiscal improprieties. See, for example: <http://waysandmeans.house.gov/About.asp?section=6>. The GAO also serves as an investigatory arm of Congress. As the willingness of Congress to investigate the executive branch is directly tied to its willingness to be independent of the executive branch, 2007 has seen far more investigative initiative than in the previous year (with the House Oversight and Government Reform Committee leading the way).
Revival of Oversight Role Sought; Congress Hires More Investigators, Plans Subpoenas,”
The Washington Post, April 25, 2007.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁸⁹ Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES

NO

References:

The Pendleton Civil Service Reform Act of 1883 established an independent civil service. <http://www.opm.gov/BiographyofAnIdeal/>

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

The Pendleton Act specifically addresses these issues, with the Civil Service Reform Act of 1978 further refining these restrictions. <http://www.opm.gov/BiographyofAnIdeal/> Also, 5 U.S.C 2301 (8) state employees should be protected against arbitrary action, personal favoritism, or coercion for partisan political purposes.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

References:

Civil Service Reform Act of 1978 provides for an appeals process.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | **NO**

References:

Under 5 U.S.C 2302(b) (10), even a criminal conviction does not automatically justify taking a job action unless a nexus can be

established between the conviction and performance of the employee's duties. However, 5 U.S.C 7371 requires any law enforcement officer who is convicted of a felony shall be removed from employment as a law enforcement officer on the last day of the first applicable pay period following the conviction notice date.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

81

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Although few civil servants lose their jobs as a result of political interference and favoritism, their work content is often influenced by politics (especially as the heads of most agencies are political appointees). See stories related to the U.S. Surgeon General above, and "Profiling Report Leads to a Clash And a Demotion," The New York Times, August 24, 2005, p. A1.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

The vast majority of the immense civil service force is hired on merit. However, over one thousand high-level positions are political appointees for whom neither professional criteria nor congressional approval are necessarily required. (In fact, a congressional report notes that the number of Schedule C political appointees, who are hired without congressional approval, has increased by over 400, from 1,229 in 2000 to 1,640 in 2005, an increase of 33%). <http://www.democrats.reform.house.gov/Documents/20060502094249-65817.pdf>

Hurricane Katrina provided a particularly egregious example of a senior official of the Federal Emergency Management Agency who apparently lacked any professional training in this area prior to assuming the position. "Leader of Federal Effort Feels the Heat," New York Times, New York Times, September 3, 2006, p. A17.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

The vast majority of the immense civil service force is hired on merit. However, over one thousand high-level positions are political appointees for whom neither professional criteria nor congressional approval are necessarily required. (In fact, a congressional report notes that the number of Schedule C political appointees, who are hired without congressional approval, has increased by over 400, from 1,229 in 2000 to 1,640 in 2005, an increase of 33%). <http://www.democrats.reform.house.gov/Documents/20060502094249-65817.pdf>

Hurricane Katrina provided a particularly egregious example of a senior official of the Federal Emergency Management Agency who apparently lacked any professional training in this area prior to assuming the position. "Leader of Federal Effort Feels the Heat," New York Times, New York Times, September 3, 2006, p. A17.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

Civil service jobs descriptions are highly detailed. Examples can be found at the federal government's online job search Web site. <http://www.usajobs.opm.gov/>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

5 U.S.C § 5384 states that the amount of a performance award may not be less than 5 percent nor more than 20 percent of the career appointees rate of basic pay.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

See the Federal Employment Statistics division of the Office of Personnel Management, an authoritative source for statistical information on the size and composition of the Federal civilian workforce.

<http://www.opm.gov/feddata/index.asp>

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

References:

To protect the rights of civil service employees, the U.S. Merit Systems Protection Board was set up in 1978 as an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems. The Board's mission is to ensure that Federal employees are protected against abuses by agency management, that Executive Branch agencies make employment decisions in accordance with the merit systems principles, and that Federal merit systems are kept free of prohibited personnel practices. <http://www.mspb.gov/mspbmissionpage.html>

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward

on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

There have been no reports of delayed employee disbursements over the past year. Source: Lexis Nexis search.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

The law does not require terminating felons, with the exception of law enforcement officers. Employees convicted of a felony may not receive a bonus, however. 5 U.S.C 8148.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

See: Standards of Ethical Conduct for Employees of the Executive Branch (http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/reference/rfsoc_02.pdf), and Common Ethics Issues (http://www.usoge.gov/pages/common_ethics_issues/common_ethics_issues_pg2.html#Anchor-Gener-30592).

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

If the employee's involvement in such a matter was personal and substantial, then the employee is permanently barred from representing anyone back to any Federal department, agency, or court on that same matter. If the matter was under the employee's official responsibility during the last year of Government service, then the employee is barred for two years after leaving Government service from representing anyone back to the Government on that same matter. In addition, certain high level officials are subject to a so-called one-year cooling off " period. For a period of one year after leaving a "senior" position, these officials may not make any appearance before or communication to their former agencies on behalf of any person (other than the United States), with the intent to influence them on any matter in which that person seeks official action.http://www.usoge.gov/pages/common_ethics_issues/common_ethics_issues_pg2.html#post-employment

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

http://www.usoge.gov/pages/common_ethics_issues/common_ethics_issues_pg2.html#gifts1

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

http://www.usoge.gov/pages/common_ethics_issues/common_ethics_issues_pg2.html#gifts1

A Matter of Trust," http://www.revolvingdoor.info/docs/matter-of-trust_final-full.pdf.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

J. Steven Griles, the second-ranking official in the Interior Department yesterday was sentenced to 10 months in prison for a felony conviction of obstructing a Senate investigation into corrupt lobbyist Jack Abramoff. Giles is the highest ranking member of

the Bush Administration to be convicted in connection to Abramoff. Judge Orders Prison Time for Ex-Interior Deputy,” Washington Post, June 27, 2007

References:

As noted above, far less controversy surrounds gifts received by members of the executive branch compared to Congress. Nevertheless, a recent bipartisan congressional report shows how corrupt lobbyist Jack Abramoff spent almost \$25,000 in meals and drinks for the White House officials and provided them with tickets to numerous sporting events and concerts.” The report also notes, however, that the lobbyist was not especially successful in getting what he wanted. “Abramoff and Rove Had 82 Contacts, Report Says,” New York Times, September 29, 2006.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | **50** | 25 | 0

Comments:

A recent scandal involving college student loans led to the suspension of a U.S. Department of Education official, Matteo Fontana, after revelations that he owned at least \$100,000 in stock of a loan company that he was charged with overseeing, among other accusations that he aided a former employer. The Chronicle of Philanthropy, May 18, 2007 Friday. Democrats in Congress raised further questions about the ability of the Department’s Inspector General to properly monitor the industry. Justice Department is investigating overpayments to student loan company,” Associated Press Financial Wire, May 10, 2007

References:

As Matter of Trust” notes: The revolving door casts grave doubts on the integrity of official actions and legislation. A government employee could well be influenced in his or her official actions by promises of a future high-paying job from a business that has a pecuniary interest in the official’s actions while in government.” p. 8.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

75

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

Certain senior officers and employees of the executive branch are required to file publicly available reports. However, certain other executive branch employees whose duties involve the exercise of discretion in sensitive areas such as contracting, procurement, administration of grants and licenses, and regulating or auditing non-Federal entities are required to file confidential financial disclosure reports. The most notable difference between public and confidential reports, however, is that confidential reports are not available to the public. http://www.usoge.gov/pages/common_ethics_issues/common_ethics_issues_pg2.html#public

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

As noted above, disclosure forms for ministerial level officials are easily available. However, because the disclosure forms of other executive branch employees in "sensitive" positions are not publicly available, transparency is compromised. Also, FOIA requests for this material could be rejected based on exemptions related to sensitive personal information. See the OGE FOIA report for 2005: http://www.usoge.gov/pages/about_oge/aboge_files/foiaguide/foia_rptfy05.html

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | **75** | 50 | 25 | 0

References:

Cost has little bearing on publicly available disclosure reports. As noted above, however, appealing rejected FOIA requests can be very expensive.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

88

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

US Code 5 Sec. 2301 (9) states that employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences: (A) a violation of any law, rule, or regulation, or (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

References:

According to the CSO Government Accountability Project (GAP), the Whistleblower Protection Act (WPA) has been eroded to the point that federal workers have virtually no protections from agency retaliation.”http://www.whistleblower.org/template/page.cfm?page_id=121. See also, “Coalition urges House to let whistle-blowers speak freely,” The Hill, August 9, 2006.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

The passage of the Sarbanes-Oxley Act of 2002 (Corporate Accountability Act) provides comprehensive whistleblower protections for all employees of publicly-traded companies.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

GAP called Sarbanes-Oxley outstanding good government legislation. The Act lengthens the statute of limitations and empowers state Attorneys General to prosecute corporate criminals under existing federal racketeering law. Its centerpiece, however, is legal rights for whistleblowers at publicly-traded corporations.” Senate Testimony of GAP Legal Director Tom Devine on Corporate Whistleblower Protection, July 10, 2002.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

Each federal agency has an office of Inspector General. These 58 offices serve as the clearinghouse for corruption complaints generally, and process about 200,000 complaints of waste, fraud and abuse annually. See Law Enforcement in the United States, by James Andrew Conser and Gregory D. Russell, 2005, Jones & Bartlett.

For an example of an agency OIG hotline, see: <http://oig.hhs.gov/hotline.html>

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

100

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

In 1978, Congress passed the Inspector General Act, which created high-level officials in each federal agency to conduct independent audits and investigations. These inspectors general had broad power to explore agency operations, and they had authority over their own budget and staff. Donald F. Kettl, Shedding Light on Corruption: Sunshine Laws and Freedom of Information," <http://usinfo.state.gov/journals/itdhr/1206/jde/kettl.htm>.

The Office of Inspector General at U. S. Department of Health and Human Services has a staff of 1500 analysts, auditors, attorneys, criminal investigators, and support staff in 8 regional offices and 85 field offices across the United States and Puerto Rico.

<http://oig.hhs.gov/organization/IGbiography.html>

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

The Office of Inspector General at the Department of Health and Human Services, for example, is expect to receive \$45 million in 2008, up from \$39 million in 2006 and 2007. <http://www.whitehouse.gov/omb/budget/fy2008/hhs.html>

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

To use the HHS OIG as an example, since 2004 the office realized in excess of \$36.6 billion in fines, savings, recoveries and restitutions to the taxpayers and programs. In addition, more than 760 criminal convictions were obtained, 381 civil actions were resolved, and more than 5,300 exclusions of individuals and entities were imposed for fraud or abuse of Federal health care programs and/or their beneficiaries. <http://oig.hhs.gov/organization/IGbiography.html>

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:

In a recent example, HHS OIG is undertaking a broad review of conflict-of-interest policies at the National Institutes of Health, with potentially wide ramifications involving the agency's oversight of nonfederal scientists who conduct research with government money. HHS Watchdog to Recheck Ethics Cases," Associated Press Online, March 30, 2007.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

96 IV-3. Procurement

48. Is the public procurement process effective?

90

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

18 U.S.C. § 208. prohibits government officials from engaging in acts that affect their personal financial interest. http://www.usoge.gov/pages/laws_regs_fedreg_stats_comp_fed_ethics_laws.pdf.

In addition, three sets of regulations guide procurement activities: 1) Federal Acquisition Regulation (FAR), which was established to codify uniform policies for acquisition of supplies and services by executive agencies (<http://www.arnet.gov/far/>); 2) The Office of Management and Budget's Circular A-110, which sets forth standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations (<http://www.whitehouse.gov/omb/circulars/a110/a110.html>); 3) OMB's Circular A-76, which guides procurement activities related to private operation of government activities.

Contract officers go through in house training programs. Senior officers become certified at the Defense Acquisition University at Fort Belvoir, Virginia. Source: interview with Dept. of Defense procurement specialist Andrew West

The Center for Public Integrity has conducted extensive investigations on the procurement process and on many cases found it wanting. For example, the Center's report notes the Department of Defense Inspector General determined that 13 of the 24 contracts it reviewed did not adequately monitor contractors." In addition, "federal agencies have sometimes hired contractors to oversee the work being done by yet other contractors, a practice that raises questions of conflicts of interest. See "Windfalls of War" at <http://www.publicintegrity.org/wow/>. The Department of Defense has made some efforts to tighten its enforcement mechanism in response to a major scandal regarding a senior procurement officer who provided the Boeing Company preferential treatment in exchange for a job there. See: Renae Merle, "Pentagon Updates Rules On Post-Government Work," Washington Post," November 19, 2004.

High level procurement officials must file a confidential financial disclosure form for the Office of Governmental Ethics. According to a procurement specialist, federal auditors also check to see if too many contracts going to one contractor. Source: Interview

with Dept. of Defense procurement specialist, Andrew West.

10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts. http://www.arnet.gov/far/current/html/Subpart%206_1.html#wp1087648

"41 U.S.C. 253(c) and 10 U.S.C. 2304(c) each authorize, under certain conditions, contracting without providing for full and open competition. When the supplies or services required by the agency are available from only one responsible source, or, for DoD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for. http://www.arnet.gov/far/current/html/Subpart%206_3.html#wp1086841

According to FAR regulations, all federal agencies should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Section 33.103 (c)

Losing competitors receive a debrief from procurement officials to explain why they lost. Source: Interview with Dept. of Defense procurement specialist Andrew West.

Procurement rules require suspending companies who frequently violate regulations. Source: Interview with Dept. of Defense procurement specialist Andrew West.

The Center for Public Integrity's investigation revealed procurement violations by favorite companies often go unpunished. See, for example, "Documents Reveal Concern Regarding Halliburton Contracts," <http://www.publicintegrity.org/wow/report.aspx?aid=420>

FAR and other procurement-related regulations are available online. See above.

According to FAR regulations, contracting officers shall make information available on awards over \$3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 5:00 p.m. Washington, DC time on the day of the award.

FedBizOpps.gov provides an easily accessed point-of-entry for federal government procurement opportunities over \$25,000. (<http://www.fedbizopps.gov/>), and the vast majority of federal procurement opportunities can be found here. However, an assessment of Department of Defense contracts worth millions of dollars conducted by the Center for Public integrity found that most of the contracts awarded to the very biggest defense contractors were won without what the Pentagon calls "full and open" competition. Of the 10 biggest contractors, only one — Science Applications International Corp.(SAIC) won more than half its dollars through an open bidding process. Three of the top 10 — United Technologies, General Electric and Newport News Shipbuilding (now owned by Northrop Grumman) — collected less than 10 percent of their contract dollars through open bidding. "Outsourcing the Pentagon: Who benefits from the Politics and Economics of National Security?" September 2004 (revised 2006), <http://www.publicintegrity.org/pns/report.aspx?aid=385>.

Award information on all federal contracts over \$2,500 can be found at: <https://fpds.gov/>

Under the Clinton and Bush Administrations, the U.S. has stepped up efforts to privatize certain activities that were traditionally government-run. Office of Management and Budget Circular No. A-76 sets the policies and procedures that executive branch agencies must use in identifying commercial-type activities and determining whether these activities are best provided by the private sector, by government employees, or by another agency through a fee-for-service agreement. The term typically used to describe this process is competitive sourcing. U.S. Department of Energy: "What You Always Wanted to Know About the New OMB Circular A-76, but Were Too Confused to Ask."

OMB A-76 requires that agencies comply with procurement integrity, ethics, and standards of conduct rules, including the restrictions of 18 U.S.C. § 208, when performing streamlined and standard competitions. http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.html#b

As noted above, the Center for Public Integrity has reported on the weak enforcement powers of privatization and procurement regulations. "Outsourcing the Pentagon," <http://www.publicintegrity.org/pns/default.aspx>

OMB Circular A-76 details requirements for competition, and requires an agency to make a formal public announcement (at the local level and via FedBizOpps.gov) for each streamlined or standard competition.

Award information on all federal contracts over \$2,500 can be found at: <https://www.fpds.gov/>

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

The Government Employees Training Act, passed in 1958, created the framework for agencies to plan, develop, establish, implement, evaluate, and fund training and development programs designed to improve the quality and performance of the workforce.

GETA was codified into Title 5 United States Code Chapter 41.

<http://www.opm.gov/hrd/lead/pubs/handbook/solft.asp>

References:

Contract officers go through in house training programs. Senior officers become certified at the Defense Acquisition University at Fort Belvoir. Source: interview with Dept. of Defense procurement specialist Andrew West

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

In a recent positive example the Department of Homeland Security's OIG is investigating four of the seven top U.S. Coast Guard officers who retired since 1998, who took positions with private firms involved in the Coast Guard's troubled \$24 billion fleet replacement program, an effort that government investigators have criticized for putting contractors' interests ahead of taxpayers'.

Coast Guard's Purchasing Raises Conflict-of-Interest Flags," Washington Post , March 25, 2007

The article also notes that an expert panel appointed by the White House and Congress found this winter that increased reliance on contractors threatens to "undermine the integrity of the government's decision making processes." Handing off traditional governmental duties — such as designing major systems and managing huge contracts — coupled with defense industry consolidation, "increased the potential for organizational conflicts of interest," the panel found.

References:

The Center for Public Integrity has conducted extensive investigations on the procurement process and on many cases found it wanting. For example, the Center's report notes the Department of Defense Inspector General determined that 13 of the 24 contracts it reviewed did not adequately monitor contractors." In addition, "federal agencies have sometimes hired contractors to oversee the work being done by yet other contractors, a practice that raises questions of conflicts of interest. See "Windfalls of War" at <http://www.publicintegrity.org/wow/>.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

High level procurement officials must file a confidential financial disclosure form for the Office of Governmental Ethics. According to a procurement specialist, federal auditors also check to see if too many contracts going to one contractor. Source: Interview with Dept. of Defense procurement specialist, Andrew West.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

Comments:

However, national security exceptions and the war in Iraq have led to a significant increase in no-bid contracts. Federal No-Bid Contracts On Rise," Washington Post, August 22, 2007.
For a specific example, see: "Armored Vehicles Chronically Late; Inspector General Faults No-Bid Deals," The Washington Post, July 12, 2007

References:

10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts. http://www.arnet.gov/far/current/html/Subpart%206_1.html#wp1087648

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

41 U.S.C. 253(c) and 10 U.S.C. 2304(c) each authorize, under certain conditions, contracting without providing for full and open competition. When the supplies or services required by the agency are available from only one responsible source, or, for DoD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for. http://www.arnet.gov/far/current/html/Subpart%206_3.html#wp1086841

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

According to FAR regulations, all federal agencies should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Section 33.103 (c)

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Losing competitors receive a debrief from procurement officials to explain why they lost. Source: Interview with Dept. of Defense procurement specialist Andrew West.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Procurement rules require suspending companies who frequently violate regulations. Source: Interview with Dept. of Defense procurement specialist Andrew West.

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The Project On Government Oversight (POGO) operates a Web-accessed database that shows major contractors continue to receive federal contracts despite significant examples in misconduct.

<http://www.contractormisconduct.org/>. For example, Lockheed Martin has 41 cases of misconduct since 2005 (totaling \$553 million in contract funds), but nevertheless enjoyed nearly \$25 billion in federal contracts in 2005.

References:

The Center for Public Integrity's investigation revealed procurement violations by favorite companies often go unpunished. See, for example, Documents Reveal Concern Regarding Halliburton Contracts," <http://www.publicintegrity.org/wow/report.aspx?aid=420>

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

49a. In law, citizens can access public procurement regulations.

YES | NO

References:

FAR and other procurement-related regulations are available online.

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

According to FAR regulations, contracting officers shall make information available on awards over \$3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 5:00 p.m. Washington, DC time on the day of award. <http://www.arnet.gov/far/current/html/Subpart%205.3.html#wp1083932>.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

FAR and other procurement-related regulations are available online.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

FAR and other procurement-related regulations are available online.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

FedBizOpps.gov provides an easily accessed point-of-entry for federal government procurement opportunities over \$25,000 (<http://www.fedbizopps.gov/>), and the vast majority of federal procurement opportunities can be found here. However, an assessment of Department of Defense contracts worth millions of dollars conducted by the Center for Public Integrity found that most of the contracts awarded to the very biggest defense contractors were won without what the Pentagon calls full and open competition. Of the 10 biggest contractors, only one — Science Applications International Corp. (SAIC) — won more than half its dollars through an open bidding process. Three of the top 10 — United Technologies, General Electric and Newport News Shipbuilding (now owned by Northrop Grumman) collected less than 10 percent of their contract dollars through open bidding. "Outsourcing the Pentagon: Who benefits from the Politics and Economics of National Security?" September 2004 (revised 2006), <http://www.publicintegrity.org/pns/report.aspx?aid=385>.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

Award information on all federal contracts over \$2,500 can be found at: <https://www.fpds.gov/>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

83

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Under the Clinton and Bush Administrations, the U.S. has stepped up efforts to privatize certain activities that were traditionally government-run. Office of Management and Budget Circular No. A-76 sets the policies and procedures that executive branch agencies must use in identifying commercial-type activities and determining whether these activities are best provided by the private sector, by government employees, or by another agency through a fee-for-service agreement. The term typically used to describe this process is competitive sourcing. U.S. Department of Energy: What You Always Wanted to Know About the New OMB Circular A-76, but Were Too Confused to Ask.”

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

OMB A-76 requires that agencies comply with procurement integrity, ethics, and standards of conduct rules, including the restrictions of 18 U.S.C. § 208, when performing streamlined and standard competitions. http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.html#b

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

As noted above, the Center for Public Integrity has reported on the weak enforcement powers of privatization and procurement regulations. Outsourcing the Pentagon,” <http://www.publicintegrity.org/pns/default.aspx>

Recent congressional testimony indicates the problems continue. See: “House panel digs deeper into use of contractors; According to testimony, mismanagement of federal projects by private companies is a `systemic problem.” Los Angeles Times,

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

100

51a. In law, citizens can access privatization regulations.

YES | NO

References:

OMB Circular A-76 details requirements for competition.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Award information on all federal contracts over \$2,500 can be found at: <https://www.fpds.gov/>

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

OMB Circular A-76 requires an agency to make a formal public announcement (at the local level and via FedBizOpps.gov) for each streamlined or standard competition.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Award information on all federal contracts over \$2,500 can be found at: <https://www.fpds.gov/>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Award information on all federal contracts over \$2,500 can be found at: <https://www.fpds.gov/>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁸⁷National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

There is no comparable ombudsman” for the entire federal U.S. government. Instead, similar duties are “balkanized” throughout government, with inspectors general overseeing the performance of each federal agency, the GAO auditing budgetary matters, the OGE providing outreach and guidance for executive officials, each congressional chamber having its own ethics committee, judicial conduct guided by the Judicial Conference, and the Department of Justice responsible for overall investigation (FBI) and prosecution (Public Integrity Section) of government officials. See U.S. Response to OAS Questionnaire and Web sites of the various aforementioned entities.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

57

53a. In law, the ombudsman is protected from political interference.

YES | **NO**

References:

The lack of a truly independent ombudsman requires a no” rating here, especially as certain corruption entities (e.g., congressional ethics committees are well known for being influenced by political considerations). However, the U.S.’s “balkanized” anti-corruption structure does prove somewhat helpful in that competing agencies and governmental branches possess incentives to pinpoint corruption elsewhere.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

A slight rating improvement is warranted since 2006, however, as 2007 exhibited multiple examples of vigorous activity by agency inspectors general. Stuart W. Bowen Jr., the U.S. special inspector general for Iraq and Pentagon Inspector General Claude Kicklighter have shown considerable independence in tracking down fraud and abuse among federal officials and contractors. Army Combs for Abuses in Iraq Contracts” Washington Post, August 30, 2007. Another Report on Iraq, Another Round of Headaches for U.S., Washington Post, August 6, 2007.

The Justice Department's inspectors are investigating whether former Attorney General Alberto Gonzales lied to Congress. "Justice Dept. Probing Whether Gonzales Lied, Washington Post, August 31, 2007

References:

With the exception of the GAO, whose head is appointed to a 15 year term, none of the entity heads enjoy true independence. Congressional ethics chairmen might be another exception, although their independence typically allows them to be an obstacle to anti-corruption efforts instead of a catalyst.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

A slight rating improvement is warranted since 2006, however, as 2007 exhibited multiple examples of vigorous activity by agency inspectors general. Stuart W. Bowen Jr., the U.S. special inspector general for Iraq and Pentagon Inspector General Claude Kicklighter have shown considerable independence in tracking down fraud and abuse among federal officials and contractors. "Army Combs for Abuses in Iraq Contracts" Washington Post, August 30, 2007. Another Report on Iraq, Another Round of Headaches for U.S., Washington Post, August 6, 2007.

The Justice Department's inspectors general are also investigating whether former Attorney General Alberto Gonzales lied to Congress. "Justice Dept. Probing Whether Gonzales Lied, Washington Post, August 31, 2007

References:

With the exception of the GAO, whose head is appointed to a 15 year term, none of the entity heads enjoy true independence. Congressional ethics chairmen might be another exception, although their independence typically allows them to be an obstacle to anti-corruption efforts instead of a catalyst.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

The lack of resources is rarely an obstacle for U.S. agencies (e.g., HHS inspector general's office received \$40 million in 2006); it is rather the lack of independence or political will.

<http://www.whitehouse.gov/omb/budget/fy2006/hhs.html>

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Despite examples of increased activity in 2007 among inspectors general, they are generally appointed for political reasons and have well established party ties. See, for example, the longstanding relationship between DOJ's chief of the Public Integrity Section and Bush's Secretary of Homeland Security in: Chertoff's Wake: The DHS chief's coattails extend to the administration's highest levels," Legal Times, January 23, 2006.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

See above. As with staffing, most corruption-related agencies receive relatively stable funding from year to year.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

Practices at different agencies vary significantly, making this difficult to score. GAO and DOJ reports are widely available, for example, while congressional ethics reports are almost always confidential. The administration's increased attempts to classify information also hamper full disclosure.

<http://www.openthegovernment.org/otg/govtsecrecy.pdf>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

As discussed elsewhere, investigations of high-level officials are often hindered by jurisdictional or political obstacles, although exceptions in 2007 are notable.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Aggressive” would not be the adjective to characterize most enforcement examples in the U.S., but enforcement does occur. One of the most high profile cases of the past few years has been the conviction of David H. Safavian, former chief of staff of the General Services Administration, who despite his political connections was convicted in June 2006 of obstruction and making false statements.

Additionally, former Ohio Congressman Robert Ney is serving a 30-month sentence in federal prison in Morgantown, W.Va., for performing official acts for Jack Abramoff's lobbying clients between 2001 and 2004 in exchange for luxury vacation trips, sporting tickets, campaign contributions, expensive meals and thousands of dollars in gambling chips. “Ney's Chief of Staff Wore Wire, Was Key To Boss's Conviction,” Washington Post, August 13, 2007

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The

agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

As the section detailing the GAO notes, the majority of GAO recommendations are followed by congressional and executive officials. In some cases, agencies are empowered to act on their own. For example, the Department of Justice's FBI investigates and then turns over evidence to the Criminal Division's Public Integrity Section to prosecute. <http://www.usdoj.gov/criminal/pin/>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Most corruption-related agencies provide hotlines" to report malfeasance. See, for example, the FBI's "Tips" program at: <https://tips.fbi.gov/>. However, an agency's willingness to act relies greatly on the activity reported and the person involved.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

100

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

The balkanized nature of the multiple OIGs makes it difficult for the public to know where to turn for information on corruption.

References:

DOJ's Public Integrity Section, for example, provides annual reports to Congress. http://www.usdoj.gov/criminal/pin/AnnReport_05.pdf

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Reports are available online. <http://www.gao.gov/docsearch/repandtest.html>

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Reports available online at: <http://www.gao.gov/docsearch/repanptest.html>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that report to Congress.

The GAO Website describes its mission: Congress asks GAO to study the programs and expenditures of the federal government. GAO, commonly called the investigative arm of Congress or the congressional watchdog, is independent and nonpartisan. It studies how the federal government spends taxpayer dollars. GAO advises Congress and the heads of executive agencies (such as Environmental Protection Agency, EPA, Department of Defense, DOD, and Health and Human Services, HHS) about ways to make government more effective and responsive. GAO evaluates federal programs, audits federal expenditures, and issues legal opinions. When GAO reports its findings to Congress, it recommends actions. Its work leads to laws and acts that improve government operations, and save billions of dollars.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

100

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Paul F. Williams, PhD, is a professor of accounting at North Carolina State University and past chair of the public interest section of the American Accounting Association, the GAO has remained relatively scandal-free and GAO reports are highly regarded as reliable and objective.” The CPA Journal, April 2003, Pg. 14 Vol. 73 No. 4

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

The agency is headed by the Comptroller General, who is appointed to a 15-year term. The long tenure of the Comptroller General gives GAO a continuity of leadership that is rare within government. GAO’s independence is further safeguarded by the fact that its workforce is comprised almost exclusively of career employees.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Its 3,300 employees include experts in program evaluation, accounting, law, economics, and other fields.

<http://www.gao.gov/about/gg glance.html>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Paul F. Williams, PhD, is a professor of accounting at North Carolina State University and past chair of the public interest section of the American Accounting Association, the GAO has remained relatively scandal-free and GAO reports are highly regarded as reliable and objective." The CPA Journal, April 2003, Pg. 14 Vol. 73 No. 4

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

The GAO's budget for 2006 was \$484 million, up \$10 million from 2005.

<http://www.gao.gov/about/gg lance.html>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

GAO posts reports on its Web site, which is updated daily. Also, reports may be ordered online from GAO. The Chief Quality Officer will either acknowledge or honor the request within 20 days of receipt, or on expedited basis in which the person requesting the records demonstrates a compelling need.

<http://www.gao.gov/about/publicrecords/4cfr81jn03.txt>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

References:

GAO recommendations to improve government operations: 2,097 (At the end of fiscal 2006, 82 percent of the recommendations GAO made five years earlier had been implemented.)

Measurable financial benefits from GAO work: \$51 billion — a \$105 return on every dollar invested in GAO.

<http://www.gao.gov/about/gglance.html>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

References:

Responsibilities of the GAO include: evaluating how well government policies and programs are working; auditing agency operations to determine whether federal funds are being spent efficiently, effectively, and appropriately; investigating allegations of illegal and improper activities; and issuing legal decisions and opinions.

<http://www.gao.gov/about/what.html>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES | NO

References:

While GAO is not subject to the Freedom of Information Act (5 U.S.C. 552), GAO's disclosure policy follows the spirit of the act consistent with its duties and functions and responsibility to the Congress.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

GAO posts reports on its Web site, which is updated daily. Also, reports may be ordered online from GAO. The Chief Quality Officer will either acknowledge or honor the request within 20 days of receipt, or on expedited basis in which the person requesting the records demonstrates a compelling need."

<http://www.gao.gov/about/publicrecords/4cfr81jn03.txt>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No fee is charged for documents fewer than 50 pages. Fees for research or lengthy reports are nominal. <http://www.gao.gov/about/publicrecords/4cfr81jn03.txt>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

100
V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

References:

The Internal Revenue Service is a bureau of the Department of the Treasury and bills itself as one of the world's most efficient tax administrators. In 2004, the IRS collected more than \$2 trillion in revenue and processed more than 224 million tax returns. <http://www.irs.gov/irs/article/0,,id=98141,00.html>

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

100

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

According to U.S. News and World Report, the IRS has 89,704 as of September 2003. http://www.usnews.com/usnews/biztech/best-places-to-work/sub-agencies/tr93_at-a-glance.htm

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

FY 2006 budget was \$10.7 billion, a slight increase over FY 2004 and FY 2005 budgets. <http://www.whitehouse.gov/omb/budget/fy2006/treasury.html>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

75

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Wealthy citizens are more able to hire accountants to help evade taxes (by legal or illegal means).” Kim M. Bloomquist, Senior Economist, Internal Revenue Service, “Tax Evasion, Income Inequality and Opportunity Costs of Compliance,” Paper presented at the 96th Annual Conference of the National Tax Association, November, 2003.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

References:

The U.S. Customs and Border Protection (CBP) agency. <http://www.cbp.gov/>

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

100

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

CBP has 42,000 employees. http://www.cbp.gov/xp/cgov/toolbox/about/organization/deputy_commissioner_1.xml

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

CBP's 2006 budget was \$5.8 billion. <http://www.whitehouse.gov/omb/budget/fy2007/dhs.html>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

CBP's jurisdiction also covers border crossings, an area for which CBP has been accused of discrimination. U.S. Muslims Say Terror Fears Hamper Their Right to Travel," New York Times, June 1, 2006.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

However, there are exceptions in the cases of public/private state-supported entities, such as the passenger train system known as Amtrak. Under the Rail Passenger Service Act of 1970, Amtrak was created in 1971 and authorized to operate a nationwide system of passenger rail transportation. Historically, Amtrak has received subsidies from the Federal Government. These subsidies are approved annually, and Amtrak's ability to continue operating in its current form is dependent upon the continued receipt of such subsidies and other forms of financing transactions to raise funds. Amtrak Annual Report, 2006. http://www.amtrak.com/pdf/AmtrakAnnualReport_2006.pdf

There is no universal agency dedicated to overseeing state-owned companies. However, Amtrak, for example, has its own inspector general similar to executive branch departments. <http://www.amtrakoig.com/>

References:

With the exception of localized public utility companies, and some cities that have experimented with privatizing education, road construction and maintenance, trash collection and other services by contracting them out to private firms, state-owned companies do not generally exist in the United States.

<http://usinfo.state.gov/products/pubs/archive/prosper/prosper3.htm>

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

100

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

Amtrak has its a separate Board of Directors that is generally separate from the federal government. The Board, along with the Executive committee, has no direct connection to the government, with the exception of the Secretary of Transportation, who serves on the Board.

http://www.amtrak.com/servlet/ContentServer?pagename=Amtrak/am2Copy/Title_Image_Copy_Page&c=am2Copy&cid=1081442674231&ssid=166

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Amtrak's OIG is well staffed, with offices in six major cities in the U.S.

<http://www.amtrakoig.com/organizationchart.html>

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

As with OIG offices in general, the Amtrak OIG receives regular funding and is expected to report annually to Congress.

<http://www.amtrakoig.com/reports/ATK350107.PDF>

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

There are about 25 investigative staff, comprised of individuals with varying skills and level of expertise. This group conducts investigations on a variety of fraudulent, abusive, and mismanagement practices.

OI staff is located in Washington, Baltimore, Philadelphia, New York, Chicago, and Los Angeles. The offices are aligned consistent with the company's corporate structure, infrastructure needs, and employee population. This allows us to provide service to the business units, maintain communication with management, and stay appraised of changes within the company.

<http://www.amtrakoig.com/investigations.html>

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

According to the OIG's report to Congress, Amtrak OIG investigators were involved in hundreds of cases, including those involving credit card fraud and bribery on construction projects.

2007 Letter to Congress. <http://www.amtrakoig.com/reports/ATK350107.PDF>

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

100

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Amtrak's annual report, including summaries of its federal subsidies, is available online.

http://www.amtrak.com/servlet/ContentServer?pagename=Amtrak/am2Copy/Title_Image_Copy_Page&c=am2Copy&cid=1081794202462&ssid=161

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

Amtrak's OIG includes an audit division, which annually audits the agency's finances.

<http://www.amtrakoig.com/audits.html>

See also, Semiannual Report to Congress, March 31, 2007. <http://www.amtrakoig.com/reports/ATK350107.PDF>

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

Amtrak's audit reviews include, but not limited to, the accuracy and reliability of financial information, compliance with applicable laws and regulations, and safeguarding of company assets. Operational, financial, systems, and compliance audits are conducted in accordance with applicable standards, particularly those established by the Comptroller General of the United States as promulgated in Government Auditing Standards (Yellow Book).

<http://www.amtrakoig.com/audits.html>

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

As noted above, Amtrak's financial reports are available online.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

As noted above, Amtrak's financial reports are available online.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

100
V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

94

67a. In law, anyone may apply for a business license.

YES | NO

References:

Basic business licenses are readily available, although the specific process varies from city to city and state to state. An example process can be found at the District of Columbia Department of Consumer and Regulatory Affairs Web site: <http://mblr.dc.gov/>

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

In D.C., for example, the Office of Administrative Hearings has jurisdiction to hear appeals regarding decisions made by the Department of Consumer and Regulatory Affairs. <http://bar.dc.gov/oah/frames.asp?doc=/oah/lib/oah/pdf/about/oahact.pdf>

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | **75** | 50 | 25 | 0

References:

In D.C., a licensee can get the appropriate forms on-line which are then mailed to the Department. A license then arrives in approximately two weeks. Source: recent experience starting a small business.

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

References:

Costs of D.C. business licenses vary by the type of business. A bakery, for example, would cost \$334 (\$35 application fee; \$10 business activity fee (bakery); \$289 license fee). <http://mblr.dc.gov/information/bbl/calculator.asp>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

These vary by state. In California, for example, employers may find pertinent information at: <http://www.dir.ca.gov/dosh/EmployerInformation.htm>

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

These vary by state. In California, for example, employers may find pertinent information at: <http://www.dir.ca.gov/dosh/EmployerInformation.htm>

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

These vary by state. In California, for example, employers may find pertinent information at: <http://www.dir.ca.gov/dosh/EmployerInformation.htm>

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

75

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Regulatory compliance and enforcement can be affected by politics because regulatory agencies often reflect the business-mindset of that administration. A recent GAO report, for example, found that the egg industry made several requests for changes

in a 2000 Food and Drug Administration rule requiring safe-handling instructions on egg cartons to prevent food poisoning. It cited financial hardship. The final rule, issued Aug. 20, puts the safety information on the inside of the carton.

Washington's Surprisingly Flexible Rulemakers," Washington Post, August 28, 2007

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Washington's Surprisingly Flexible Rulemakers," Washington Post, August 28, 2007

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

See, for example, "Safety Agency Faces Scrutiny Amid Changes," New York Times, September 2, 2007

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁹³Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

References:

18 U.S.C § 201 outlines proscriptions on corruption of public officials and witnesses.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

References:

18 U.S.C § 872 outlines proscriptions extortion by officers or employees of the United States.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

The Standards of Conduct state at 5 C.F.R. ' 2635.101(b)(11) that employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities. Appropriate authorities for employees can include supervisors or appropriate investigative authorities such as an agency's Inspector General. Additionally, all executive branch agency heads are required, pursuant to 28 U.S.C. ' 535 (Attachment 18), to report to the U.S. Attorney General or his delegates any information, allegation, or complaint received in their respective agency regarding a violation of the U.S. criminal code by an executive branch officer or employee.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

18 U.S.C § 201 outlines proscriptions on bribery of public officials and witnesses.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

The United States has signed and ratified both the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Council of Europe Criminal Law Convention Against Corruption. U.S. Response to OAS Questionnaire.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Executive Order 12674 and modified in 1990 by Executive Order 12731 states 14 general principles that broadly define the obligations of public service. Underlying these 14 principles are two core concepts: employees shall not use public office for private gain, and employees shall act impartially and not give preferential treatment to any private organization or individual. http://www.usoge.gov/pages/common_ethics_issues/common_ethics_issues_pg2.html#Anchor-Gener-30592

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Section 101 (c) of Executive Order 12731 states that employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

References:

18 U.S.C § 1956 outlines proscriptions on laundering of monetary instruments.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

18 U.S.C § 371. outlines proscriptions on conspiracy to commit offense or to defraud United States.

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

As noted above, it has been argued that a diffuse approach to anti-corruption has its advantages, as various agencies have political and funding incentives to point out misconduct by rival agencies.

References:

The U.S.'s strong commitment to separation of powers means that anti-corruption efforts are often diffuse and uncoordinated. Nevertheless, the executive branch's Department of Justice (and its Federal Bureau of Investigation (FBI) and Public Integrity Section have ultimate jurisdiction over corruption. Public corruption is one of the FBI's top investigative priorities, behind only terrorism, espionage, and cyber crimes," according to the FBI Web site. <http://www.fbi.gov/hq/cid/pubcorrupt/pubcorrupt.htm>.

See also: <http://www.usdoj.gov/criminal/pin>

Members of Congress are also subject to DOJ investigation and prosecution, although the Constitution places most of the onus on Congress itself to manage Congressional behavior.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

75

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

Both the FBI director and the Attorney General are presidentially appointed, and as such have close ties to the president and his administration. Former Attorney General Alberto Gonzales provides a stark example, as his intense loyalty to President Bush (and vice-versa) in the face of bipartisan criticism contributed to his stepping down.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

See above and: In the End, Realities Trumped Loyalty, Washington Post, August 28, 2007.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Article II, Sec. 4 of the Constitution requires impeachment of civil officers to be limited to treason, bribery, or other high crimes and misdemeanors.”

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

Attorneys General (head of Dept of Justice) and FBI Directors are typically well qualified.

See: <http://www.usdoj.gov/jmd/lis/agbiographies.htm> and <http://www.fbi.gov/libref/directors/directmain.htm>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

As of July 3, 2007, the FBI had a total of 30,646 employees. That includes 12,444 special agents and 18,202 support professionals such as intelligence analysts, language specialists, scientists, information technology specialists, and other professionals.

<http://www.fbi.gov/quickfacts.htm>

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

In fiscal year 2007, the FBI's total budget was approximately \$6.04 billion, including \$318 million in program increases for our counterterrorism, surveillance, information technology, forensics, training, and information sharing programs.
<http://www.fbi.gov/quickfacts.htm>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

See example reports at: <http://www.fbi.gov/publications.htm>

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

Comments:

That said, 2007 has witnessed FBI investigations of powerful members of Congress, including Senator Ted Stevens, former Chair and current ranking minority member of the Senate Appropriations Committee, which oversees disbursement of federal funds. Stevens' Raid May Boost Ethics Reform," Washington Post, August 1, 2007

References:

The Constitution gives Congress authority to oversee the behavior of its members, and this power creates significant obstacles to FBI investigations into improper congressional activities. In a recent example cited above, both Democratic and Republican members of Congress protested the FBI's raid of a Congressman's office, even though the FBI had amassed a great deal of evidence of wrongdoing.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

Comments:

The Constitution gives Congress authority to oversee the behavior of its members, and this power creates significant obstacles to FBI investigations into improper congressional activities. In a recent example cited above, both Democratic and Republican members of Congress protested the FBI's raid of a Congressman's office, even though the FBI had amassed a great deal of evidence of wrongdoing.

That said, 2007 has witnessed FBI investigations of powerful members of Congress, including Senator Ted Stevens, former Chair and current ranking minority member of the Senate Appropriations Committee, which oversees disbursement of federal funds. Stevens' Raid May Boost Ethics Reform," Washington Post, August 1, 2007

References:

While the FBI can act independently, congressional leaders can serve as gatekeepers to FBI investigations into congressional malfeasance. FBI to Examine Foley's E-Mails: Hastert Calls For Independent Probe," Washington Post, Monday, October 2, 2006; Page A1.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

75

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The FBI has online and telephone methods for reporting corruption. Minor cases get addressed rapidly, but political and constitutional realities may impede corruption claims against more senior officials, especially in Congress. <http://www.fbi.gov/hq/cid/pubcorrupt/pubcorrupt.htm>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

The House of Representatives does not allow citizens or CSOs to file complaints to its ethics committee, which has oversight over ethical (but not criminal) behavior. The committee's Web site, in contrast to the FBI's, is designed more for helping House members and staff navigate the ethics process than to encourage constituents to report malfeasance.

<http://www.house.gov/ethics/>

References:

Ordinary citizens who report corruption are more isolated from retaliation than are government employees (whose jobs are on the line). In addition to being protected by both state and federal laws, citizens enjoy a vibrant media system always eager to report on government corruption. Nevertheless, the sensitivity of the issue (especially surrounding national security revelations) can have a direct effect on the government's response. Blowing the whistle on fraud against government yields big rewards," Associated Press, November 26, 2004.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

83
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

92

74a. In law, there is a general right of appeal.

YES | NO

References:

Both the Constitution and federal laws guarantee the right to appeal. <http://www4.law.cornell.edu/>

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Backups are common, but cases are acted upon quickly.

See: The Changing Face of U.S. Courts,” <http://usinfo.state.gov/journals/itdhr/0503/ijde/ijde0503.htm>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

While all citizens have access to the appeals process, attorney-related costs can be especially burdensome for lower-income appellants. In addition, empirical data suggests lower-income systems are adversely affected by the lack of legal counsel. The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment Carroll Seron; Martin Frankel; Gregg Van Ryzin; Jean Kovath, Law & Society Review Vol. 35, No. 2 (2001), pp. 419-434.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

The U.S. judicial system relies heavily on written law and precedence to guide decisions. http://www.law.cornell.edu/wex/index.php/Stare_decisis

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

100

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

Judicial decisions are enforced by the relevant federal, state or local jurisdictions. Richard Van Duizend, The American Court System: Long Traditions, New Directions." <http://usinfo.state.gov/journals/itdhr/0503/ijde/vanduizend.htm>

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

100

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Independence is assured by Article III of the Constitution, which guarantees life tenures for federal judges. As the Brennan Center notes, however, state judges usually do not have such protection, even under state constitutions. Most state judges do not enjoy life tenure, and approximately 80% of them must stand for some form of popular election. http://www.brennancenter.org/resources/resources_jqanda.html

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Federal judges enjoy considerable independence, despite being politically appointed by the president. Supreme Court Justice David Souter, for example, was nominated by President Bush's father but has proved a solid liberal vote on most issues. Miers Makes Rounds On Hill; Some Senators Remain Skeptical," Washington Post, October 7, 2005.

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Federal cases are distributed geographically. <http://www.uscourts.gov/faq.html> and <http://www.uscourts.gov/courtlinks/>

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Federal judges can be removed only for treason, bribery, and other high crimes and misdemeanors.” In addition, federal judges’ salaries cannot be reduced while they are in office. As a result, the decisions of federal judges cannot be influenced by the threat of losing their jobs or income. http://www.brennancenter.org/resources/resources_jiqanda.html

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

While the security of judges is an increasing concern, bodily harm and assault has not been related to corruption cases. Durbin, Obama Ask Attorney General To Help Immediately Release Funding for Judicial Security,” Press Release, Senator Barak Obama, December 2, 2005.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

While the security of judges is an increasing concern, bodily harm and assault has not been related to corruption cases. Durbin, Obama Ask Attorney General To Help Immediately Release Funding for Judicial Security,” Press Release, Senator Barak Obama, December 2, 2005.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge’s involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

82

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Three months after this initial assessment, the Supreme Court ruled that federal judges are not bound by federal guidelines

calling for tougher penalties for those who sell crack rather than powder cocaine, giving them broad discretion in drug and other criminal cases. In the wake of this ruling, The U.S. Sentencing Commission voted unanimously to allow some 19,500 federal prison inmates, most of them black, to seek reductions in their crack cocaine sentences.

Justices Reinforce Leeway on Sentences," Washington Post, December 11, 2007.
"Panel Allows Easing of Crack Sentences" Washington Post, December 11, 2007.

References:

Racial disparities are widespread in the U.S. generally, and the judicial system also reflects these disparities. Perhaps one of the most egregious example is the arbitrary sentencing distinction made between crack cocaine (used primarily by African-Americans) and powder cocaine (used primarily by whites). As the Sentencing Project notes, For powder cocaine, a conviction of possession with intent to distribute carries a five year sentence for quantities of 500 grams or more. But for crack, a conviction of possession with intent to distribute carries a five year sentence for only 5 grams." "Crack Cocaine Sentencing Policy: Unjustified and Unreasonable," <http://www.sentencingproject.org/pdfs/1003.pdf>.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

While women generally enjoy equal access to the legal system, their lower incomes decrease their likelihood of navigating the system successfully compared to men. In addition, many women's rights organizations argue that some laws (e.g., domestic violence) remain biased in favor of men.

See, for example: <http://www.now.org/issues/violence/>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Stuart Gorin and Bruce Carey, Players in the Judicial Process," <http://usinfo.state.gov/journals/itdhr/0999/ijde/gorin.htm>

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

Public defenders, while trained, are typically far less experienced and successful than their prosecuting counterparts, leading to high turnover among PDs. Charles J. Ogletree, Jr., Beyond Justifications: Seeking Motivations to Sustain Public Defenders," Harvard Law Review > Vol. 106, No. 6 (Apr., 1993), pp. 1239-1294

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

The U.S. is well known for its litigious culture, in which attorneys encourage lawsuits and generally agree to take payment on the condition the suit is successful. In fact, the Association of Trial Lawyers of American, one of the largest lobbying organizations in the nation, works very hard to maintain this system. See: <http://www.atla.org/> and <http://www.afj.org/>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Also, the U.S. maintains a small claims" court system to expedite claims. In California, for example, individuals cannot seek more than \$7,500; (\$5,000 for corporations or other entities).
<http://www.courtinfo.ca.gov/selfhelp/smallclaims/>

References:

The U.S. is well known for its litigious culture, in which attorneys encourage law suits and generally agree to take payment on the condition the suit is successful. In fact, the Association of Trial Lawyers of American, one of the largest lobbying organizations in the nation, works very hard to maintain this system. See: <http://www.atla.org/> and <http://www.afj.org/>

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

The National Center for State Courts estimates that rural courts represent approximately 79% of the counties in America,” but argues that these courts are often underfunded compared to the urban counterparts. Cullen, Don. Rural Courts: What Makes them Unique. Williamsburg: National Center for State Courts, Institute for Court Management, 2000.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

92

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Unlike many countries, law enforcement in the United States is primarily a local matter, thereby making generalizations difficult. Even at the federal level, there are many different law enforcement agencies, including th FBI, Marshal Service, Secret Service, diplomatic protection, border patrol, airport security, etc. In general, however, most high level law enforcement appointees have professional experience.

See, for example, <http://www.usmarshals.gov/careers/index.html>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

As noted above, the FBI's budget for 2007 was over \$6 billion, while the Marshal's Service budget was over \$800 million. <http://www.fbi.gov/quickfacts.htm>; <http://www.usmarshals.gov/duties/factsheets/facts.pdf>

Even local police departments are typically well funded (D.C.'s Metropolitan Police Department's FY 2005 budget totaled \$398 million). However, funding may or may not directly affect the quality of enforcement, and many large urban cities face continued criticisms about poorly trained and inefficient police forces (e.g., Washington DC being a prime example). Fenty Loath To Extend Emergency Crime Bill," Washington Post, September 30, 2006; Page B1

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Federal agencies (e.g, the FBI) have been well covered on this matter above. At the local level, police chiefs are appointed by the local executive (e.g., mayor) and as such often reflect political concerns of that executive or other political leaders (e.g., city council). Washington D.C.'s recent crime emergency" provides an illustrative example, as evidence indicates the "emergency" may have had more to do with political concerns than an empirically-based increase in crime. "Crime: Up or Down? One month into the official crime 'emergency,' where are we?" Washington Post editorial, August 19, 2006.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

92

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

Police departments generally maintain some system to field citizen complaints. D.C.'s Metropolitan Police Department's Office of Police Complaints is responsible for this function. <http://dcpc.dc.gov/occr/site/default.asp>

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The decentralized nature of U.S. law enforcement makes it extremely difficult to assess this accurately. As above, large, urban police departments earn greater criticism for their lack of responsiveness. The 2005 killing of New York Times reporter David E. Rosenbaum in Washington, DC is an illustrative example. Colbert King, "The Death of David Rosenbaum," Washington Post, February 25, 2006, p. A17.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues

can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Depending on the nature and extent of the corruption, cases are handled either by the specific department's internal affairs division or by the U.S. Department of Justice.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | **75** | 50 | 25 | 0

References:

The aggressiveness of investigations varies significantly by jurisdiction. The Department of Justice is responsible for overall investigation (FBI) and prosecution (Public Integrity Section) of government officials.

U.S. Response to OAS First Round Questionnaire, <http://www.state.gov/p/inl/rls/rpt/13571.htm#10>
<http://www.usdoj.gov/criminal/pin.html>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or

occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Law enforcement officers enjoy no special immunity. http://www.law.cornell.edu/uscode/html/uscode18/usc_sup_01_18_10_II.html

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

While investigation of law enforcement officers may be lax on some occasions, immunity is not an impediment. See above.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

