

# Chapter 2: Ethics

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## Chapter Overview

Fewer than 20 percent of Americans express trust in the government in Washington to do what is right.<sup>2</sup> The causes behind this deficit in trust are complex and multifaceted; however, there can be no question that bearing witness to pay-to-play influence and the revolving door between special interests and government has played a critical part. Although these forces have been present for decades, the recent rise in lobbyist-run agencies, the denigration of norms against conflicts of interest, and blatant examples of self-dealing across the federal government—including in the White House—have transformed a persistent ailment into a critical threat to the health of our democracy.

The administration must restore ethical principles to the executive branch in 2021 or risk making permanent Americans' loss of trust in government. It is time to re-center ethics at the heart of American democracy by making strong commitments to follow ethical principles in all aspects of government decision-making and implementing reforms to make ethics rules stronger, more complete, and more effective. To do so, the administration should abide by the following four principles:

1. The administration must elevate ethics as a core value by prioritizing meaningful structural ethics reforms and committing publicly to adhere to the rules and the values and norms behind them.
2. The people in government should work for the public, not for personal or private interests.
3. To judge whether the government is acting ethically and to hold unethical actors accountable, the government must preserve meaningful ethics records and make timely ethics disclosures.
4. The public has a right to: meaningful disclosure concerning all individuals and organizations lobbying their elected officials; a government free from wealthy special interests placing their own loyal personnel into government posts; and a government free from former government officials exploiting their networks within government for personal gain.

The commitment to ethical government can, and must, start on January 20, either as a priority for a new administration or a course correction for a second term of the Trump administration. It begins with public statements of support for and voluntary conduct to adhere to once-recognized norms of ethical behavior within the White House. It includes issuing a strong executive order on ethics to bind the entire executive branch. And it concludes by prioritizing legislative reforms to make following ethics rules mandatory by transforming norms into laws.

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<sup>2</sup> Michael Dimock, *How Americans View Trust, Facts, and Democracy Today*, Pew Research Center, Feb. 19, 2020, available at <https://www.pewtrusts.org/en/trust/archive/winter-2020/how-americans-view-trust-facts-and-democracy-today>.

**Principle 3: The administration must elevate ethics as a core value by prioritizing meaningful structural ethics reforms and committing publicly to adhere to the rules and the values and norms behind them.**

### The Problem

Democracy rests on the principle that public officials serve the public, not their own personal interests. The fundamental purpose of ethics laws and regulations is to uphold that principle by ensuring each government official places loyalty to the Constitution, laws, and adherence to ethical principles above private gain; and to ensure that every citizen can have complete confidence in the federal government.

When an administration views ethics rules as an obstacle or impediment and treats loopholes and exceptions as the norm, it undermines confidence in government and creates conditions for corruption. Recent events have made clear that too many ethics rules contain gaps that require filling.

The administration must elevate ethics as a core value. It must pledge to take ethics rules seriously, to follow the letter and spirit of the law, use exceptions sparingly and only for good cause, and punish transgressions even by powerful officials. Finally, the administration should prioritize seeking legislative reforms to strengthen ethics rules so that it, and future administrations, cannot treat the law as optional.

### Recommendations for Action on Day One

#### **1. Center leadership on ethics within the White House.**

The administration should appoint a Chief Accountability Officer to lead and coordinate the administration's transparency and ethics agenda. Among the Chief Accountability Officer's duties will be the implementation of a new ethics executive order, issuing guidance for personnel hiring and appointments across the administration, and the dissemination of ethical principles and priorities to all agencies. The Chief Accountability Officer should have a high rank and access to decision-makers, including the president and should be required by the president to meet early and often with leadership across the federal bureaucracy to elevate ethics.<sup>3</sup> For more details on an ethics executive order designed to update, improve, and fill perceived gaps in the Obama administration's executive order, please see Appendix 2.1.

#### **2. Convene an ethics review panel.**

Under the leadership of Chief Accountability Officer, the next administration should convene a Federal Advisory Committee to propose ethics reforms. As part of the review, the panel should convene a conference with the Office of Government Ethics and

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<sup>3</sup> For more on the role of the Chief Accountability Officer, see "[Center Accountability in the White House](#)," in Chapter 1 ("Open Government").

Designated Agency Ethics Officials from every agency to gather feedback and suggestions for improving the ethics process.

**3. End ethics impunity, restore ethical norms regarding the scope of ethics laws.**

Until recently, every administration has treated conflicts of interest and other ethics rules as though they apply to the president, vice president, and their families, notwithstanding long-standing executive branch opinions that they are technically exempt from them.<sup>4</sup> Similarly, past administrations have taken Hatch Act violations and opinions from the Office of Special Counsel regarding White House staff seriously even though the president has discretion over discipline. The incoming administration must state, and demonstrate, that adhering to ethics rules makes our democracy stronger by committing to following these laws even if they cannot be readily enforced. The alternative is impunity for the president and his or her inner circle because they know they will not face consequences.

**4. Eliminate nepotism at all levels of government.**

Although there are examples of presidents appointing relatives to federal offices throughout history, nepotism undermines accountability and gives the appearance of a conflict of interest. The president and vice president must pledge to reverse the practice of appointing relatives to federal offices, and the Office of Legal Counsel opinion circumventing the federal anti-nepotism statute's applicability to the White House should be rescinded.

The president must also direct the Office of Personnel Management to clarify that anti-nepotism policies as established for all executive agencies include any appointments, hires, or promotions by the president or vice president.

**5. Establish ethics as a top administration priority.**

The next administration should issue a memorandum to all agencies emphasizing the importance of ethical government and principles (e.g., reemphasizing the Office of Government Ethics' 14 general principles of ethical conduct); and reminding all federal employees about ethics laws; the role and availability of the Office of Government Ethics, the Office of Special Counsel, and Designated Agency Ethics Officials.

In order to elevate ethics and to ensure uniform application of the laws, the memorandum should instruct all agency heads to discuss any proposed ethics exemptions or waivers with the White House Chief Accountability Officer and to limit their use to cases for which good cause exists.

The memorandum should also instruct all agency heads to take action against ethics violations, up to and including termination in egregious cases, and should pledge the

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<sup>4</sup> See, e.g., Memorandum to Hon. Kenneth Lazarus from Antonin Scalia, Office of Legal Counsel, <https://fas.org/irp/agency/doj/olc/121674.pdf> ("Notwithstanding the conclusion that [certain ethics rules] bind the President or Vice President, it would obviously be undesirable as a matter of policy for the President or Vice President to engage in conduct proscribed" by the rules.).

president to doing the same with regard to his senior appointees in the White House and at agencies.

**6. Prioritize ethics as a rule-of-law issue.**

The attorney general should issue a memorandum prioritizing the investigation and prosecution of ethics laws, including conflicts of interest statutes, the Hatch Act, the Lobbying Disclosure Act, anti-lobbying laws prohibiting propaganda, and the Foreign Agent Registration Act.

## Recommendations for Short-term Action (First 100 Days)

**1. Make ethics information accessible and transparent.**

The next administration should make it easier for the public to confirm officials are following ethics laws. To do so, it should relaunch Ethics.gov to centralize and publish robust ethics information. In addition to the previous scope of the website (White House Visitor Records; Office of Government Ethics Travel Reports; Lobbying Disclosure Act Data; Department of Justice Foreign Agents Registration Act Data; Federal Election Commission Individual Contribution Reports; Federal Election Commission Candidate Reports; Federal Election Commission Committee Reports) the new Ethics.gov should include ethics information on all appointees within 60 days of appointment, including but not limited financial disclosures, ethics waivers or rejections of waivers, transaction reports, ethics agreements, certificates of compliance, etc. Ethics filings and disclosures should be in structured data format (searchable, sortable, downloadable).

**2. Promulgate new White House-agency contact policies to prevent improper interference in agency decision-making.**

Since Watergate, administrations of both parties have had in place policies to prevent the White House from asserting improper influence in certain agency decisions about how the government treats specific parties like particular companies or individuals. The president should reassert clear policies to prevent even the appearance of cronyism. The most effective of these policies specify that White House officials generally should not intervene with agency decisions on matters such as contract or grant awards, civil enforcement actions, regulatory waivers, or licenses.

## Recommendations for Legislative Action

**1. Transform ethics norms into ethics laws.**

The president should ask the leadership of the House and Senate to pass a significant ethics reform package in 2021, and should instruct his or her director of legislative affairs to make doing so a top priority.

In addition to prioritizing the specific proposals outlined in the subsections that follow, a number of broader legislative reforms have been proposed, some of which complement each other, while others require choosing between several options. Some of the proposals include:

- a. Establishing a new Commission on Federal Ethics to oversee and enforce federal ethics laws, expanding on the authorities of the Federal Election Commission, Office of Government Ethics, and Office of Special Counsel;
- b. Amending the tenure of the director of the Office of Government Ethics to be removable only for just cause;
- c. Expanding the Office of Government Ethics' role to include investigative and enforcement authorities, including potentially subpoena authority and/or establishing an Executive Branch inspector general under the Office of Government Ethics with jurisdiction over the White House (or expanding the Office of Government Ethics director's authority to the same extent).

2. **Amend anti-nepotism law to explicitly include the White House.**

While the president and vice president should commit to re-establishing an anti-nepotism norm across executive agencies, codified in Office of Personnel Management rulemaking, they should also support codifying these norms in law. The anti-nepotism statute needs to be clarified to clearly state that, notwithstanding applicable appointment authorities, the president and vice president are prohibited from appointing a relative to any position in the executive branch, including a position in the White House Office or the Office of the Vice President.

## Principle 4: The people in government should work for the public, not for personal or private interests.

### The Problem

Despite numerous conflict of interest laws and regulations, insiders have mastered the art of the Washington revolving door between industry and government, and some federal government officials are unethical stewards of the public trust. Some use their office for personal or private gain, or provide favors, competitive advantages, or leniency to former or prospective employers, clients, and private sector entities to the detriment of the public. The current administration has exploited gaps in the law and the unenforceability of traditional norms to avoid accountability and oversight. Ethics laws that do not apply to the president, vice president, or their families have failed to prevent President Trump and his family from profiting from his presidency or hiring his family members.

Many individuals who are hired to influence lawmakers and policymakers on behalf of private interests do not register as lobbyists and thereby do not publicly disclose their activity. Even when lobbyists register, they are not required to disclose information sufficient to inform the public of the details of their lobbying activity, including who they are specifically lobbying. The absence of more thorough disclosures deprives the public of meaningful transparency into how money, time and other lobbying resources are spent to influence decision-makers.

In addition, the appointment of private-sector executives and lobbyists to posts within government that oversee their former industry or employer creates the potential for bias in policy

formulation and regulatory enforcement. Business and special interest groups may “capture” a federal regulatory agency when their own personnel fill key government posts. And the government-to-industry revolving door allows the movement of public officials to lucrative private sector positions enable officials to use their public trust (while still in office) and government experience (after leaving public office) to unfairly benefit a new employer in matters of federal procurement, enforcement or regulatory policy. Finally, public officials’ official actions may be influenced by the implicit or explicit promise of a lucrative job in the private sector with an entity seeking a government contract or to shape public policy. Public officials-turned-lobbyists will have access to lawmakers that is not available to others, access that can be sold to the highest bidder among industries seeking to lobby.

### Recommendations for Action on Day One

1. **Publicly commit to following federal ethics laws as if they are applicable to them and their families.**
2. **Issue an ethics executive order that incorporates best practices from previous administrations’ ethics orders, including a strong ethics pledge.**

That executive order should also:

- a. Cover all persons entering government who have a conflict of interest in the outcome of federal policy decisions, not just lobbyists.
  - b. Commit not to hire senior-level appointees who would frequently face conflicts of interest and require recusal.
  - c. Institute a “golden parachute” restriction on those entering and leaving government, prohibiting employment of those who receive bonuses, compensation packages, or other gifts because of seeking or accepting government employment.
  - d. Include a 2-year ban on accepting employment from, or representation of, any party that materially benefitted from a particular matter involving specific parties, or from a particular matter benefitting a particular entity, in which the appointee personally and substantially participated.
  - e. Commit to providing waivers when a conflict is deemed minimal or when it is in the public interest to do so.
3. **Require agency heads and deputy heads to disclose contacts in which they discuss official business of any kind with any individual or entity who has made a substantial donation in the last ten years to the official’s prior state or federal campaign or to PACs and politically active groups supporting the official's prior campaign.**
  4. **Prohibit stock trading activity by senior government officials, except for widely-held mutual funds.**

Require officials who continue to hold individual stocks while in office to place them into a genuine blind trust, run by an independent trustee with no family or business ties to the official, and in which the trustee does not inform the official of purchases and sales.

### Recommendations for Short-term Actions (First 100 Days)

**1. Post conflicts-of-interest information online.**

The president should require the Office of Government Ethics to create an online resource (like an Ethics.gov) that lists officials, their recusals, and their waivers.

**2. Direct OMB to strengthen agency conflict-of-interest rules and practices.**

Through a memorandum to agency heads from the Director of the Office of Management and Budget, the president should:

- a. Require agencies to analyze emoluments and conflicts of interest. Notwithstanding any Office of Legal Counsel or other legal opinion, agencies should be required to assess the potential for conflicts of interest and emoluments violations any time agency heads or deputy heads receive agency funds. Such analyses should be filed with committees of jurisdiction in Congress and with the Office of Government Ethics;
  - b. Use consistent standards in granting ethics waivers. Agencies should require all executive branch ethics waivers to be examined under a consistent standard and publicly disclosed;
  - c. Limit officials' acceptance of private travel services. Agencies should strengthen and enforce rules regarding top officials' travel on private aircraft.
  - d. Set strict anti-nepotism rules in the executive branch, including the White House.
- 3. Direct all inaugural committees to impose strict contribution limits by amount and source, to disclose those contributions more quickly than is currently required by law, and ensure inaugural committee funds are used only for expenses reasonably associated with the inaugural ceremony.**

### Recommendations for Long-term Action

- 1. Require Office of Government Ethics to create digital online tools to analyze Office of Government Ethics filings, such as by mapping related entities, listing entities in which the filer has financial interests, etc.**

### Recommendations for Legislative Action

- 1. Work with Congress to pass legislation that would:**
  - a. Apply federal ethics laws to the president, vice president, and their families.
  - b. Codify the improved ethics pledge.

- c. Amend 18 U.S.C. § 209, the supplementation of salary ban, to redefine salary to include bonuses, infamously known as “golden parachutes,” that companies pay employees contingent on their accepting a government job.
  - d. Amend the Ethics in Government Act to require that the Director of the Office of Government Ethics shall be removed for cause only and allow the agency to communicate with Congress.
  - e. Strike the exemption in the Procurement Integrity Act (41 U.S.C. § 2104(b)) that allows acquisition and program officials to accept “compensation from a division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract[.]” President-elect Trump was on board with the recommendation: “I think anybody that gives out these big contracts should never ever, during their lifetime, be allowed to work for a defense company, for a company that makes that product.” This improvement should ensure the potential for waivers for officials who leave to enter academia.
  - f. Prohibit stock trading activity by senior government officials and lawmakers, except for widely-held mutual funds. Require officials who continue to hold individual stocks while in office to place them into a genuine blind trust, run by an independent trustee with no family or business ties to the official, and in which the trustee does not inform the official of purchases and sales.
  - g. Empower the Office of Government Ethics to designate incoming officials with particularly complicated financial holdings as “complex filers” and to require the official to submit an alternative to the standard 278 Form, as well as additional materials the Office of Government Ethics deems necessary to facilitate Office of Government Ethics determinations and meaningful public disclosures.
2. **Expand the ban on political spending by government contractors so it covers both direct contributions and political spending through so-called “independent” channels such as 501(c)(4) and other dark money groups that hide donor identities.**

**Principle 5: To judge whether the government is acting ethically and to hold unethical actors accountable, the government must preserve meaningful ethics records and make timely ethics disclosures.**

### The Problem

It should be easy for the public to understand whether officials are acting ethically. Unfortunately, under existing ethics rules, a tremendous amount of ethically questionable conduct occurs under the radar because disclosures are complicated, opaque, or untimely. From federal procurement and contracting to the core missions of federal agencies, the public is



right to doubt that the public interest is paramount in decision-making, or that experts within agencies are heard over the din of special interests with access. Disclosure rules and forms must allow the public to scrutinize officials' financial interests and ensure they are prioritizing the public interest instead of personal gain. Any disclosures must be searchable, sortable, downloadable and machine readable. Unless data is explicitly prohibited from being made public by law, the disclosures should include all data fields available.

## Recommendations for Action on Day One

### **1. Adopt a proactive and robust approach to ethics disclosures.**

The administration should embrace the importance of disclosures as a vehicle for building public trust by committing to extensive and proactive disclosures of ethics-related information. These disclosures can be required as part of a broader executive order on ethics and/or implemented by the White House Presidential Personnel Office and Office of Personnel Management. At minimum, mandatory disclosures should include:

- a. Requiring cabinet secretaries and non-career deputy secretaries to release tax returns in addition to filing required Office of Government Ethics forms;
  - b. Requiring agencies and the White House to proactively submit to Congress and the Office of Government Ethics the outcomes of requests for ethics recusals, screening arrangements, and waivers/exemptions (whether under statutory, regulatory, or executive order rules)<sup>5</sup>;
  - c. Requiring any official operating under an ethics waiver or exemption to proactively disclose to Congress and the Office Government Ethics contacts with individuals and entities covered by the waiver;
  - d. Requiring all nominees to positions to disclose if they have been substantially aided in the nominations process by any individual with a financial interest before the agency to which the nominee is nominated.
- ### **2. The president's executive order should prohibit the appointment of any person who received a "golden parachute" from their employer.**

Any special bonus or financial award given by an employer to an employee specifically because of appointment to a senior government position should disqualify that person

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<sup>5</sup> The next administration should take a broad, values-driven approach to what documentation is subject to mandatory, proactive disclosure. Among the obvious candidates for disclosure are: any signed ethics pledges pursuant to Executive Order; any ethics pledge waivers pursuant to Executive Order; any waivers under 18 U.S.C. § 208; any authorizations under 5 CFR § 2635.502; any waivers under 5 CFR § 2635.503; any certificates of divestiture and requests for certificates of divestiture; any financial disclosure reports; any ethics training records; any authorizations to accept gifts of free attendance at widely attended gatherings; any STOCK Act notices of employment negotiations (limited to employment for which the government employee was hired); any disciplinary actions and reprimands related to ethics violations; and any documents demonstrating compliance with ethics agreements.

from appointment. The golden parachute rule should not apply to bonuses or awards that would normally be given regardless of public service.

**Principle 6: The public has a right to: meaningful disclosure concerning all individuals and organizations lobbying their elected officials; a government free from wealthy special interests placing their own loyal personnel into government posts; and a government free from former government officials exploiting their networks within government for personal gain.**

### The Problem

The revolving door between government and business or special interests means that business groups may have outsized influence in government when their personnel are appointed to key government posts, while the movement of public officials to lucrative private sector positions, including but not limited to lobbying, can result in an unfair benefit in matters of federal procurement, enforcement or regulatory policy.

To begin to reverse the trend of unfair special access and influence, the president should immediately establish a Lobbying Reform Task Force to make recommendations that will improve lobbying disclosures and require reporting by currently unregistered lobbyists. He should require senior government officials to pledge to legally binding revolving door prohibitions and he should prohibit making appointments to individuals who receive special compensation from their employers specifically because they are going to serve in a senior government position.

### Recommendations for Action on Day One

**1. Publicize visitor logs.**

Visitor logs are a critical tool for the public to assess whether officials are giving outsized access to particular interests. The next administration should require all agencies to publicly release visitor logs and calendars, including meeting attendees and meeting subject matter, for agency heads and deputy heads (and their direct reports) for all meetings and calls involving registered lobbyists and individuals or corporations seeking contracts from or subject to the regulation of the agency. Visitor logs should include all official meetings regardless of location, including virtual meetings. Please see Appendix 1.2, Visitor Logs.

**2. Connect contributions to contracts.**

It is often assumed that well-connected campaign contributors expect to receive benefits for their donations. The next administration should take steps to prove or disprove that assumption by requiring federal contractors and other federal awardees to disclose campaign contributions and independent expenditures.

3. **Clearly state in the inaugural address that the administration will champion reform of the antiquated lobbying laws, providing the public with transparency and accountability they expect.**

The president should acknowledge that part of the reason the public is losing trust in the government is the perception that high-priced and high-powered lobbyists influence lawmaking to benefit the limited few. Reforming the lobbying law to expose details of lobbying activity will enable voters to identify undue influence of special interests and hold their elected officials accountable.

4. **Sign an Executive Order establishing a Lobbying Reform Task Force to create a report within the first 100 days that identifies the flaws with the current law and recommends corrective actions.**

The focus of the task force should include determining the extent of the problem of unregistered lobbyists who are able to avoid detection of non-compliance with disclosure requirements by simply declining to register in the first instance. The task force should also address the need for timely, complete and electronically searchable disclosure via a well-maintained database, and enforcement mechanisms. The task force should be composed of knowledgeable yet unconflicted stakeholders, including former government officials, former lobbyists, non-profit organizations advocating for public interest. See Appendix 2.2 for lobbying reforms.

5. **Ensure that the ethics pledge for his appointees includes a revolving door prohibition, banning former appointees from lobbying anyone in the administration on behalf of a paying client for two years after leaving public service.**

“Lobbying” for purposes of the ethics pledge should include behind-the-scenes work and support of lobbying efforts of others as a consultant. Senior officials who are not political appointees would be barred from lobbying their own agency for two years after leaving public service.

6. **Require all senior executive branch officials to sign an ethics pledge under oath that addresses both the conflicts of interest of the “reverse revolving door” upon entering government and the regular “revolving door” upon leaving government.**

Incoming government officials will pledge not to take official actions that disproportionately benefit themselves or immediate family, employers, or clients within at least the previous two years of public service (“reverse revolving door”).<sup>6</sup> Senior government officials will also pledge not to conduct any lobbying activities or make lobbying contacts for compensation before their former agencies for at least two years after leaving public service, and very senior officials pledge not to conduct any lobbying activities or make lobbying contacts for compensation before any agency of the

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<sup>6</sup> This point is discussed more extensively in the section on conflicts of interest.

executive branch, including the White House, for at least two years after leaving public service.

Signed under oath of law, the ethics pledge shall be considered legally binding for the revolving door restrictions on both incoming and outgoing officials.<sup>7</sup>

**7. Procurement officers and their supervisors should pledge not to accept employment with a company to which they awarded a government contract.**

Upon leaving government service, procurement officers and those who supervised procurement officers shall pledge not to accept employment with any division of any company to which they had awarded a government contract in the previous two years.

**8. Federal examiners and auditors should pledge not to accept employment with those whom they audited.**

Upon leaving government service, federal examiners and auditors and those who supervised the examiners and auditors shall pledge not to accept employment with any division of a company that they had audited within the last two years.

**9. Senior government officials should disclose employment negotiations.**

Senior government officials preparing to leave public service should pledge to publicly disclose employment negotiations within two weeks of such negotiations. Negotiations for private-sector employment shall be considered to have begun when there is two-way communication about employment prospects between the official and the potential employer. Specifically, negotiations for employment means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position. However, the employee has not begun seeking employment if that communication was for the sole purpose of requesting a job application or for the purpose of submitting a resume or other employment proposal. Such negotiations shall be published on the Office of Government Ethics website.

**10. Waivers from the revolving door restrictions may be granted.**

Any person entering the government may receive a waiver from the reverse revolving door restrictions, if it can be reasonably demonstrated that the incoming official's service is necessary to the operation of the government. Persons leaving public service may receive a waiver from the restrictions on employment applicable to procurement officials and auditors if such employment is with an accredited academic institution. The waiver shall be in writing and publicly available on the Office of Government Ethics website.

**11. All ethics agreements and waivers should be collected and posted on the Office of Government Ethics website.**

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<sup>7</sup> 18 USC 208 should also be amended to ensure that outgoing officials are legally bound by the revolving door restrictions.

The Office of Government Ethics should serve as the central repository of all ethics agreements and waivers, including those issued at the agency-level, and posted on the Office of Government Ethics website. [Discussed further in the section on disclosure.]

### Recommendations for Short-term Action (First 100 Days)

1. **Clearly state that our public deserves searchable electronic disclosure of all meaningful lobbying activities via a database that is well funded and maintained to provide the public with timely and meaningful disclosure of lobbying activities, defined broadly.**

The president should affirm that failure to timely file lobbying disclosures will result in penalties, including public reprimands for failing to file timely disclosures, and financial penalties for repeated failures to file complete or timely disclosure.

2. **The newly established Lobbying Reform Task Force should publish its report on the flaws of the Lobbying Disclosure Act and recommendations for legislation and other solutions.**

This report should highlight the problem of advocates who advertise publicly as performing lobbying activities (e.g., LinkedIn profiles), but who are not registered (e.g., heads of corporate government relations departments who are not registered). The report should also highlight the best path toward expanded electronic disclosure with enforcement for non-filing and failures to disclose.

3. **Request more funding for the U.S. Attorney's Office currently responsible for enforcing the Lobbying Disclosure Act.**

The current office does not have any full-time employee except a contract paralegal specialist. The office does not have a full-time attorney. In addition to full-time, dedicated personnel, the office needs a mandate to enforce the law against those who are not registered, such as those who fail to register or those who deregistered improperly.

4. **Designated Agency Ethics Officers charged with implementing and enforcing these revolving door restrictions should be trained by the Office of Government Ethics early in the administration about the revolving door and other ethics rules.**

Such training shall be mandatory and managed by the Office of Government Ethics.

5. **Exit strategy memoranda should be public record for senior and very senior government officials.**

Upon leaving public service, all employees should receive an exit strategy memorandum from the relevant agency's Designated Agency Ethics Officer or other ethics officials that describes the on-going ethics requirements post-service, including the revolving door restrictions. Such exit strategy memoranda for senior and very senior officials should be made public record and posted on the Office of Government Ethics website.

### Recommendations for Long-term Action

1. **Publish revolving door information.**

The next administration should create a government-wide database of senior officials who go through the so-called “revolving door” to lobby or work for entities with interests before their government employer. When senior officials leave government service, they should receive an ethics memorandum describing the limitations on their future conduct. These memoranda should be publicly available. This can be achieved through executive action; however, to ensure long-term compliance, the requirement could be included in legislation.<sup>8</sup>

## Recommendations for Legislative Action

### 1. **Expand statutory disclosure requirements.**

Although the next administration can expand ethics disclosure requirements voluntarily, the public should not rely on good faith discretion as a long-term solution. The next administration should use its voluntary disclosure regime as a roadmap for legislative reform.

### 2. **Support legislation to establish a new office within the Department of Justice, Civil Division responsible for increasing enforcement of the Lobbying Disclosure Act.**

As recommended by the American Bar Association, the office needs to have authority to conduct investigations and promulgate rules.

### 3. **Support legislation that removes the 20-percent threshold from the definition of lobbyist.**

As recommended by the American Bar Association the 20-percent threshold should be removed to capture more lobbying activity.

### 4. **Support legislation that requires registered lobbyists to report lobbying support services, such as consultants and pollsters as proposed by the ABA Task Force on Lobby Reform.**

Reports should include additional details including specific officials, offices, committees and subcommittees

### 5. **The Lobby Disclosure Act should be amended to include disclosure of Astroturf lobbying.**

Astroturf lobbying means any paid attempt in support of lobbying contacts on behalf of a client to influence the general public or segments thereof to contact one or more covered legislative or executive branch officials (or Congress as a whole) to urge such officials to take specific action with respect to legislation or regulations, except that such term does not include any communications by an entity directed to its members, employees, officers, or shareholders. The public communication must be directed at 500 or more

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<sup>8</sup> Precedent exists for mandatory “revolving door” legislation. Ten years ago, Congress required DoD to create a system for officials to obtain “a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.” That law also required DoD to store those opinions in a database to ensure compliance.

persons, and involve income or expenditures in the aggregate of \$25,000 or more in a quarterly filing period. Required disclosures should include the source and amount of expenditures, source and amount of income received to make those expenditures, the date of the expenditures, and the issue being lobbied.

6. **18 USC 208 should be amending to ensure that officials who have left government service remain legally bound to comply with the revolving door prohibitions agreed to in the ethics pledge.**

The oath taken under law in the ethics pledge should be considered legally binding, but amending the conflict of interest code ensures so.

7. **Codify revolving door restrictions.**

All the restrictions discussed above on the reverse revolving door and the regular revolving door should be codified into statute for future administrations.

## Appendix to Chapter 2: Ethics

### Appendix 2.1: Draft Ethics Executive Order 2.0 (c. 2016-2017)

A group of good government organizations worked extensively in 2016 and 2017 on a proposed ethics executive order designed to update, improve, and fill perceived gaps in the Obama administration's executive order. We recommend this draft, from the Project On Government Oversight's website, as the starting point for the administration's updated ethics executive order:

1. Draft order: <https://www.pogo.org/letter/2017/01/pogo-works-with-bipartisan-coalition-to-propose-expanding-obama-ethics-executive-order/>
2. Summary: <https://www.pogo.org/letter/2017/01/pogo-works-with-bipartisan-coalition-to-propose-expanding-obama-ethics-executive-order/>

### Appendix 2.2: ABA Lobbying Reforms

Many of the lobbying reforms outlined in this draft chapter draw on proposals contained in the American Bar Association's 2011 report, "Lobbying Law in the Spotlight: Challenges and Proposed Improvements."