Accountability 2021

Recommendations for restoring accountability in the federal government

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Introduction: About the Accountability 2021 Project

Accountability 2021 is an agenda to repair critical gaps in transparency, ethics and oversight and to begin to forge a new path toward a long-lasting accountable government.

By “accountable government” we mean transparency and participatory approaches to ensure that government and its employees follow the laws and normative requirements of our democracy. An accountable government also allows the public to assess the performance of our elected leaders.

Access to information and meaningful oversight and accountability are foundational to our democratic forms of government. It is imperative that on January 20, 2021, the president prioritizes accountability in governance, establishing accountability practices throughout the executive branch early on, implementing and enforcing them throughout the next four years. To ensure accountability persists in government policy and practices beyond the next presidential term, the president should actively support enacting new laws to strengthen accountability protections.

Convened by Open The Government, Accountability 2021 brings together into a collective voice numerous experienced individuals and experts from organizations working on accountability issues to develop solutions to longstanding gaps and failures in existing transparency, ethics, and oversight laws and practices. The product of these efforts in the pages that follow are recommendations to rectify the glaring failures of the current “norms” of governance.

This document is not intended to support or oppose a candidate for office or any question on a ballot, but rather to chart a course consistent with the missions of the organizations participating in this effort and common concern about these issues.

About Open The Government

Open The Government is an inclusive, nonpartisan coalition that works to strengthen our democracy and empower the public by advancing policies that create a more open, accountable, and responsive government.

Executive Summary

In January of 2020, nearly two dozen organizations came together to begin work on setting an agenda for a more accountable government. What united them was not a partisan political agenda but the belief that (1) our democratic institutions must be more accountable to the public they serve; (2) and the time is ripe, no matter who holds the office of the presidency in 2021, to set in motion an agenda that advances accountability. Over the months that followed, dozens more organizations joined the effort. The fruits of their efforts are concrete proposals that the president can begin to put in place to advance accountability on January 20, 2021.

But what is an accountable government? For those who contributed to the Accountability 2021 effort, it is a government that is both responsive to and representative of the public. It means the people have access to all government information necessary to hold the government accountable—not just the information those in power wish to disclose for political purposes. It means that the rule of law applies to public servants and that there will be consequences for those who violate the rules. It means that decision-making will consider all perspectives, not just those of the powerful or well-connected, and that the public has a voice in the process. And it means that when the government acts, outcomes are not dictated by whether one lives in a red state or a blue state, or one's economic status, race, ethnicity, religion or gender; rather it is acting in the best interest of the country and its people.

The Accountability 2021 effort recognizes that the president has the power to create a more accountable government and demands that whoever sits in the Oval Office take steps to do so. By encouraging agencies to use compliance mechanisms, hiring qualified personnel and requesting budgets sufficient to ensure agencies can fulfill their mandates, the president can rebuild an ecosystem where regulations actually have the ability to protect the public interest. No single effort can remedy all of the ways our democratic institutions fail the people they are supposed to serve. However, if the president takes steps outlined here (and urges Congress to codify many of these recommendations), he can progress towards creating a government of, by, and for the people.

The Accountability 2021 recommendations are guided by eighteen core principles that fall into broad categories that reflect much of what is necessary to create a responsive government: Open Government, Ethics, Balance of Power, Whistleblowers, Responsive Government. Recognizing that the president will face the continuing fallout of the COVID-19 outbreak, the Accountability 2021 contributors added Pandemic Preparedness and Response as a sixth category in need of accountability reform.

Open Government is at the foundation of an accountable government. We have a right to know what our government is doing, because only by being informed can the public judge whether our elected officials are keeping their promises, whether they are spending taxpayer dollars responsibly and in a way that reflects our values and priorities, and whether our institutions and the people that serve in them are doing their jobs competently, appropriately, and fairly. Crucially, if we do not collect and make public information about our government, we will never be able to understand what is working nor be able to fix what is not. Yet the systems established

to bring transparency to government have proven to have serious, if not fatal, flaws. Agency leadership fails to reward civil servants who work to advance transparency, instead too often consistently violate legal requirements to provide comprehensive, accurate, and timely information to the public; the default to extreme, unwarranted secrecy often puts civil rights and civil liberties at risk; and antiquated technology and the lack of uniform data protocols leave us in the dark.

Principle 1: The public has a right to complete, accurate, and timely information necessary to hold officials accountable and to participate fully in government.

The president must commit to bringing the greatest level of transparency to all aspects of the government, and direct all federal employees to embrace transparency as a core value. On January 20th, he must issue a presidential memorandum on transparency that instructs all federal employees—and in particular agency leadership—to embrace transparency, with particular focus on the Freedom of Information Act. He must also appoint a Chief Accountability Officer—a senior administration official housed in the White House, whose mandate includes setting administration policy on transparency and ethics and who will have access to the president as well as leadership across federal agencies. The president must resume the release of White House visitor logs, as well as initiate the visitor logs of all executive branch agencies.

Principle 2: Secrecy undermines democracy and paves the way for rights violations and abuses.

The flip side of transparency is secrecy, which paves the way for waste, malfeasance, and abuse while harming civil rights and civil liberties. Institutionalized secrecy has long been rooted in the Justice Department's Office of Legal Counsel, which is responsible for a growing body of secret law that has been the basis for many unaccountable and, in some cases, unlawful exercises of executive authority. Secret law is, on its face, antithetical to democracy. The president must end the practice of secret law by directing the Office of Legal Counsel to release final legal opinions to the public, and put measures in place to address secret law going forward.

For too long, secrecy has been used to cover up wrongs committed by the government to underserved communities. In order to fully understand the degree to which communities of color, immigrants and others experience disparate treatment from law enforcement authorities, data collection around police use of force and deaths in custody must improve, law enforcement agencies should be penalized when they fail to comply with reporting requirements, and immigration authorities must respect openness and submit to oversight. The president must improve spending transparency, a powerful tool that not only prevents waste, fraud, mismanagement and corruption, but also enables the public to better understand how government funds are awarded and who has access to performance information.

Just as an effort must be made to shine a light on government activities, the president must take strides to restore **Ethics** within the executive branch. Fewer than twenty percent of Americans trust the government to do what's right, yet trust in our leaders and institutions is necessary for our democracy to function. Systems must be in place to root out corruption and self-dealing,

pay-to-play influence and the revolving door between special interests and government or risk making permanent Americans' loss of trust in government.

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.

Democracy rests on the principle that public officials serve the public, not their own personal interests. The president should issue a memorandum to agency heads to set clear, binding standards and expectations on ethical behavior in the executive branch. The newly appointed Chief Accountability Officer will implement the orders.

The administration should also issue a memorandum from the attorney general 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.

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

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, using their office for personal or private gain to the detriment of the public. An ethics executive order must incorporate best practices from previous administrations' ethics orders, including a strong ethics pledge. The president should require agency heads to take an ethics pledge and to disclose contacts with individuals or entities who have made a substantial campaign contribution in the last ten years to any campaign affiliated with the official. To prevent self-dealing, if senior government officials hold stock, they must do so only in blind trusts or widely held mutual funds.

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.

It should be easy for the public to understand whether officials are acting ethically. 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. Mandatory disclosures by cabinet secretaries and non-career deputy secretaries should include, among other things, tax returns, ethics forms and information regarding ethics recusals and waivers. Additionally, federal contractors and awardees should disclose campaign contributions and independent expenditures.

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 revolving door between government and business or special interests creates an opportunity for unfair special access and influence. Business groups may have outsized influence in government when their executives or other personnel are appointed to key government posts. The movement of public officials to lucrative private sector positions, including but not limited to lobbying, can unfairly benefit the same interests 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.

Transparent government is critical to the principle of **Balance of Power** which the country's founders put in place to ensure the three branches of government would be equal. For too long, the balance of power has been unequally distributed, with the executive branch—and in particular the president—claiming more power for himself while Congress does little to reign him in or exercise its own oversight authority. In addition to acknowledging the checks on the exercise of their power, all public servants must respect the rule of law, which must apply without exception.

Principle 7: The executive branch must respect the limits of the presidency and recognize that it must act as one of three co-equal branches of government.

The president must affirm his commitment to our system of checks and balances by announcing on January 20 his support for congressional authority. He can demonstrate his commitment by immediately sharing with Congress and the American people documents that have been subject to previous congressional information requests.

Principle 8: No one is above the law. Our justice system must serve the vulnerable and marginalized in our society rather than merely the politically powerful.

An accountable government means that the rule of law must apply fairly, to everyone. The president must mitigate the impact of a dual and unequal system that offers special treatment for powerful or connected members of society. He can begin by reiterating his administration's

commitment to defending the constitution—not politically powerful individuals—and directing the Department of Justice to investigate, charge and sentence without political interference.

Even as the administration takes strides to shore up accountability, it must acknowledge that bad actors, negligence or gross incompetence may undermine the proper functioning of our democratic institutions. **Whistleblowers** play a critical role in exposing and remedying abuse, fraud and waste, and must be respected and protected.

Principle 9: Whistleblowers play a critical role in constitutional checks and balances and exposing executive branch abuses; therefore, they must have meaningful channels to make disclosures and solid protections from retaliation.

Whistleblowers are instrumental in uncovering waste, fraud and abuse throughout government and are therefore critical to fostering accountability. In order to feel confident reporting about dangerous situations, negligence, or even criminal activity, they must be protected from retribution or retaliation. Unfortunately, whistleblowers are chilled from speaking truth to power because the laws that protect them remain inadequate.

The president must elevate the protection and support of whistleblowers by appointing a Special Assistant to serve inside the Domestic Policy Council to review and suggest reforms to the federal whistleblowing system. Additionally, the Special Assistant should work to improve interagency coordination regarding whistleblower matters. The president must also communicate to federal employees that they will be protected against retaliation and that they are expected to speak up when they witness wrongdoing. Finally, the president must nominate qualified candidates to the Merit Systems Protection board to address the largest backlog of cases in the board's history.

Fundamentally, an accountable government is a **Responsive Government**. It is a government that balances the interests of the public when creating regulations that ensure that our food is healthy, our children's toys are safe, our air and water are clean, dangers in our workplaces are reduced or eliminated, and our economy functions efficiently and effectively. Despite the importance of these essential governmental functions, the regulatory process has been skewed in favor of regulated entities and against consumers, workers, minorities, and others.

Principle 10: Existing deregulatory maneuvers, which have undermined public health, safety, environment, equity, civil rights, fairness, justice and democracy, should be repealed.

Recognizing that regulations are necessary for agencies to fulfill their public service missions, the president should rescind deregulatory executive orders, delay implementation of final rules not yet in and impose a moratorium—with limited exception—on rules in the regulatory pipeline, and establish a task force to identify regulations that need to be redone. The task force should prioritize rules that might have been "tainted" due to conflicts of interest, willful violations of the rulemaking process, suppression of science or undue influence by corporate interests. It should also recommend revising rules that have harmed consumers,

workers, and the environment, along with rules that disproportionately targeted vulnerable populations.

Principle 11: The regulatory process should be rebalanced to advance health, safety, justice, democracy and equity values and priorities and to ensure appropriate consideration is given to non-monetary benefits.

Future rulemakings should reduce the outsized role that economic cost-benefit analysis currently plays in the rulemaking process. Agencies should account for compelling public needs, such as to improve the health and safety of the public, the environment, or the well-being of the American people, when promulgating or enforcing regulations.

Principle 12: Centralized review of regulatory action should be revamped to promote timely rulemaking to strengthen public protections.

The president should advance systems to ensure that agencies are held accountable for their regulatory actions, and that agencies coordinate to ensure policies are consistent across government. By issuing executive order, the president can establish a new role for the Office of Information and Regulatory Affairs that will better protect statutory mandates and embrace the president's affirmative agenda to adopt a robust set of public protections.

Principle 13: Citizens should be empowered to participate to make regulations work, and undue influence of regulated entities in rulemakings should be ended.

In order to give the public a voice in the regulatory process, the president should announce his intention to create the Office of the Public Ombudsman. The Public Ombudsman would be charged with advancing the public interest in the rulemaking process, ensuring that the public and public interest organizations are as involved in rulemakings as affected industries, and he or she would be charged with ensuring that communities of color and other traditionally under-represented communities are involved and represented in rulemaking proceedings.

Principle 14: When rules are challenged, agency expertise should be given deference.

When carefully crafted agency protections are challenged in court, the agency's expertise, rather than the interests of regulated entities, should be given deference when establishing the intent of a law. To protect the public interest, Congress should codify the doctrine of Chevron deference.

Principle 15: Regulatory enforcement and accountability for regulatory violations should be strengthened.

Regulations cannot protect the public interest if they are not enforced. The president must encourage agencies, by way of a presidential memorandum, to use the compliance

mechanisms at their disposal. Not only will regulatory enforcement advance the public interest when regulations promote racial justice and equity, protect consumers from dangerous products, or address the climate crisis, enforcement also benefits regulated communities that can rely on fair and predictable compliance approaches.

Perhaps nothing has demonstrated the need for an accountable government as much as the government's **Pandemic Response** to the current COVID-19 crisis. Vulnerable communities disproportionately bear the devastating impact of the pandemic, underscoring the need for a transparent and responsive government to provide accurate information, track the spread of the virus, provide protective equipment to medical professionals, and mitigate the economic impact of vast unemployment. The continued fallout from the virus, the rollout of a possible vaccine, and preparation for future catastrophes demand that, going forward, the executive branch's actions are informed by science, free of political ideology and interference, and transparent to the public.

Principle 16: In order to protect the health and wellbeing of the public during and after the coronavirus pandemic, government decisions must be transparent, and government decision-making must be informed by science, expert opinion must be shared with the public and must not be constrained by political interference, fear of retribution or suppression.

As the pandemic spread through the country, scientists and other experts were reportedly prevented from participating in key decision-making. Meanwhile, the public received misleading information about the spread, impact and treatment of the disease. In order to prioritize the health of the nation, the president should commit to ensuring that major policy decisions related to the coronavirus pandemic are informed by medical, scientific and health experts within the government. Those experts should have the right to communicate research findings and expert opinions directly to the public and the media. The president should also call for greater transparency at the Food and Drug Administration around data on medications and vaccines and should prevent waste by requiring the Department of Health and Human Services to make publicly available all contracts, funding arrangements, and other agreements related to COVID-19 treatments and vaccines.

Principle 17: The consequences of the pandemic should not be unfairly borne by the economically vulnerable, communities of color, and other under-represented communities.

The president should create a COVID-19 taskforce or advisory committee based at the Centers for Disease Control and Prevention to oversee a coordinated federal response to the pandemic, with particular attention to addressing the needs of those communities most impacted by the pandemic. The committee should also provide information to the public as well as state and local governments. All communication should be effectively tailored to the needs of the diverse

populations affected, including those that prefer to receive information in a language other than English.

The president should direct relevant agencies, including DHS and the Department of Commerce to collect information on the disparate health and economic impact of COVID-19 on communities of color and other vulnerable populations. Where data indicates that health needs are not being met, the president should commit to providing resources to address those needs, including invoking the Defense Production Act. Likewise, the president should extend data collection on the pandemic's economic impact on vulnerable communities by directing the U.S. Census Bureau to continue to extend the Household Pulse Survey and expand its outreach to include offline surveying, to avoid potentially skewing the survey's results to only populations with internet access.

Principle 18: Access to Information, including around government supplies, research, spending, and health data related to COVID-19 will result in better preparedness for future pandemic or other crises that impact the health of the population.

On January 20, the president should announce his intent to launch a commission to understand and learn from the United States' pandemic response. The commission should be in the style of the National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission, and should review the chain of command when dealing with a public health emergency; the fastest ways to leverage resources and scale up response; the capacity of the nation's health system; and the spread of disinformation. The commission should put forward recommendations to improve the country's ability to respond to the next pandemic.

The vision for democratic governance outlined by the principles and recommendations here are based on the philosophy that an accountable government is one where our institutions serve us all, acting with integrity and fairness. These steps will forge a new path toward long-lasting oversight and accountability, helping to restore trust in government. Whoever is sworn in on January 20, 2021 must commit on Day One to these accountability principles and begin to implement many of the recommendations outlined here. However, in order to create lasting, systemic change, the administration must look past the first day or first 100 days, and commit to advancing accountability throughout his term. The organizations who have developed and recommended these changes will monitor their progress—looking to whether robust measures have been implemented and are being enforced, calling out failures and calling on Congress to codify accountability measures where needed. Our democracy is at a crossroads, and the integrity of our institutions is in question. Now is the time for the president to demonstrate the leadership necessary to restore an accountable government that is responsive to us all.

Chapter 1: Open Government

Chapter Overview

The last four years have revealed that when the foundations of our democracy are under attack, an open government is more than an abstract principle—it is a structural necessity. The public needs complete, accurate, and timely information to hold government officials accountable and to enable the public's full participation. Yet too many of the systems established to bring transparency to government have proven to have serious, if not fatal, flaws. The COVID-19 pandemic and the failure of agencies across the government to respond to public records requests for key data and health and safety information exposed the degree to which the Freedom of Information Act is broken. Extreme government secrecy has put a wealth of data, documents, decisions, and essential government information beyond the public's reach, often putting civil rights and civil liberties at risk. Antiquated technology and the lack of uniform data protocols have left us in the dark. The occupant of the White House in January faces the daunting task of not only fixing all this, but also going further to make our government truly open and accountable to the public.

Toward that end, both the message and the medium are critical to restoring and reinforcing mechanisms for holding officials accountable. Most critically, the president must express a commitment to bringing the greatest level of transparency to all aspects of the government, and direct all federal employees to embrace transparency as a core value.

The president should follow up this message with a series of short- and long-term steps that place responsibility for bringing a new level of transparency in key agencies. Those steps must include mechanisms for the public to access information, including through the Freedom of Information Act and agency proactive disclosures. As part of an effort to address systemic racial inequality, the administration must bring a greater level of transparency to how law enforcement and immigration authorities function. To counter the problem of over-classification, the administration must review and revise its classification policies and procedures and open up to public scrutiny documents concerning a range of issues from the use of lethal force overseas to classified national security spending. The administration must improve data quality and usability. The administration must commit to adequately funding agency Freedom of Information Act processes and efforts to improve technology government-wide. Perhaps most essential to all these efforts, the administration must address recordkeeping problems at agencies and the White House to ensure full compliance with statutory obligations. This is not an exhaustive list, but it illustrates the depth of the problem and the need for a complete overhaul of the mechanisms for and policies governing an open government.

Principle 1: The public has a right to complete, accurate, and timely information necessary to hold officials accountable and to participate fully in government.

The Problem

When political agendas dictate whether or what type of information is made public, when Congress' ability to conduct meaningful oversight is thwarted, and when there are no reliable records of what has been said or promised behind closed doors, we face a crisis in our democracy. Incidents that include making unrecorded promises to foreign leaders, conducting important government business over ephemeral off-the-books channels, and failing to adequately document government actions such as the separation of families at the border, have all created gaps in the record of our government's decision-making that prevent accountability, enable corruption, and leave an enormous hole in the historical record. Recent administrations have contributed to this significant problem, but the Trump administration has accelerated this trend, ushering the country into a new Dark Age of disinformation and secrecy.

Recommendations for Action on Day One

1. **Appoint a Chief Accountability Officer.**

   The president should appoint a Chief Accountability Officer, housed in the White House, to elevate transparency and ethics measures. The Chief Accountability Officer will set administration policy and coordinate interagency collaboration on records management, proactive disclosure, and the Freedom of Information Act. He or she will also direct the administration's ethics agenda, including 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.

2. **Issue a Presidential Memorandum on Transparency.**

   The president must start his administration or next term with a strong public commitment to transparency by issuing a day-one memorandum that affirms his administration's commitment to an open and accountable government. The memorandum should convey the importance of transparency in a democratic government and instruct all federal employees - and in particular agency leadership - to embrace it as a core value. The memorandum should also include tangible steps to promote transparency, starting with restoring and reforming the executive branch's commitment to public records and public meetings laws, especially the Freedom of Information Act. The Freedom of Information Act has been strained and under-resourced for years; however, the Trump administration's abuses and neglect of the Act have resulted in a Freedom of Information Act process that, in many respects, is broken. Therefore, while affirming his commitment to strengthening all available tools to increase transparency, the president should place particular emphasis on the Freedom of Information Act. Appendix 1.1, within the appendix to this chapter, lists detailed recommendations for the content of a presidential memorandum on transparency.

3. **Resume the release of White House visitor logs.**

   On January 20, 2020, the president should resume the release of White House visitor logs, as well as proactively disclose the visitor logs of all executive branch agencies. For details, please see Appendix 1.2 at the end of this chapter.

Recommendations for Short-term Action (First 100 Days)

1. **Direct agencies to disclose important categories of records.**

   The president should immediately instruct agencies, via a memorandum to the Office of Management and Budget, to require the executive branch to proactively release a broad set of documents to the public, including calendars for agency heads and Inspector General Reports. For a list of the basic categories of records that should be included, please see Appendix 1.3.

2. **Direct the attorney general to issue a Memorandum on Freedom of Information Act Implementation.**

   Within a month of assuming office, the attorney general should issue a memorandum to all agencies updating its guidance on implementing the Freedom of Information Act to, for example, limit discretionary redactions and withholdings. See Appendix 1.4 for additional provisions to strengthen FOIA implementation.

3. **Review pending Freedom of Information Act litigation and set new litigation criteria.**

   The number of Freedom of Information Act requests and lawsuits has increased exponentially under the Trump administration. This increase reflects a heightened level of concern by the public with the administration's controversial and, in many cases, legally suspect actions and policies. To address this backlog and the problem of any administration abusing the Freedom of Information Act to shield it from public accountability, the attorney general should commit to a review of all pending Freedom of Information Act litigation, to be completed within two months, with a set of criteria for when the Department of Justice will and will not continue defending agencies in ongoing litigation. The criteria should include, among other things, the age of the requested documents, the extent to which they reveal evidence of wrongdoing or misconduct, and the extent to which disclosure would significantly aid the public's understanding of a policy or practice of public interest or of questionable legality.

4. **Ensure Freedom of Information Act compliance is part of general counsel job descriptions.**

   To reinforce the importance of Freedom of Information Act compliance in our democracy, agencies should work with the Office of Personnel Management to ensure that job descriptions for all agency general counsels include compliance with the Freedom of Information Act. Adherence to recordkeeping requirements, including electronic records preservation rules, and pro-transparency practices should also be a part of the job description and performance standards of all federal employees.

5. **Enforce compliance with the Freedom of Information Act's "Rule of Three" and the required creation of a national Freedom of Information Act portal.**

   The administration should direct the Department of Justice's Office of Information Policy to reinforce the Freedom of Information Act's "Rule of Three," which requires agencies to proactively disclose documents that have been requested and released at least three times, as required by the 2016 FOIA Improvement Act. Additionally, the Office of Information Policy should produce a plan to comply with the FOIA Improvement Act by fulfilling its requirement to create within one year a single, consolidated online portal for Freedom of Information Act requests.

6. **Develop a uniform data format for proactive disclosures.**

   Because of the inadequacies of digital disclosures, which have fallen far behind modern technological capabilities, the government must focus on solving this problem by developing a uniform data format for proactive disclosures. This standard should ensure functionality such as searchable, sortable, and downloadable formats, while protecting the rights of members of the public who are vision-impaired or have other accessibility challenges.

7. **Add line-item Freedom of Information Act budgets.**

   To address the problem that scarce agency resources have posed for robust Freedom of Information Act compliance, every agency should be directed to assess its budgetary needs for Freedom of Information Act compliance that would, among other things, eliminate backlogs, and request a dedicated, line-item Freedom of Information Act budget commensurate with those needs.

8. **Invest in technology and common-sense electronic preservation.**

   The government should have a uniform, modern, and integrated approach to recordkeeping and Freedom of Information Act processing that leverages modern technological tools. Instead, it has lurched into the digital era in fits and starts. While email and other electronic applications have proliferated the volume of government records, agencies' archival practices have not kept pace, letting documents fall through the digital cracks and disappear. At the same time, individual bad actors within agencies and the executive branch are exploiting applications that prevent the preservation of records in the first place.

   Addressing this multifaceted, systemic problem must be a top priority for the administration. Appendix 1.5 to this chapter specifies actions to modernize access to information.

9. **Demonstrate support for the National Archives and Records Administration.**

   Many recordkeeping problems arise because the agency in charge of ensuring the government's most important records are preserved for future generations, the National Archives and Records Administration, is understaffed and underfunded. If the status quo continues and National Archives and Records Administration's budget does not increase, the agency will be unable to fulfill its mission. A presidential visit to the National

Archives and Records Administration expressing the Executive's support for the agency and its mission, as well as working with Congress to increase its budget, would signal that the agency's work is a priority for the administration.

10. **Modernize access to Alien Files outside of FOIA.**

    Requests for Alien Files (or A-files) are by far the largest set of recurring requests processed under the Freedom of Information Act each year. In FY2018, the four immigration offices (three within the Department of Homeland Security and one within the Department of Justice) received more than 400,000 Freedom of Information Act requests, which represented more than 46% of all FOIA requests received by the entire federal government that year. The vast majority of these requests are from individuals, or their lawyers, seeking their own A-files.

    Generally, processing of these requests remains slow and costly. The U.S. Citizenship and Immigration Services, which processes the most requests of the four immigration offices, averaged a processing time of just over 70 business days per request for the 178,502 requests it processed in 2018.

    The administration, led by DHS, should initiate a major effort to modernize the creation and management of immigration records in digital format with all legitimately categorized law enforcement information either maintained in separate records or segregated into easily redacted fields. The process should involve chief technology officers and key personnel from other agencies that have developed systems to provide direct access to first party records. The Department of Veteran Affairs, which developed a system to grant veterans easier access to medical records, and the Internal Revenue Service, which developed a system to grant taxpayers easier access to their return information should be included in the effort to streamline access to information outside of the FOIA process.

11. **Preserve presidential records.**

    The importance of the Presidential Records Act and preserving presidential records has never been clearer. From high-level meetings with foreign leaders, to presidential transition materials used after the inauguration by the administration, more needs to be done to preserve these documents. The administration should take the following steps toward that end:

    a. Direct the Archivist of the United States to monitor, review and report publicly on the Executive Office of the President's compliance with the Presidential Records Act, and commit to getting the Archivist of the United States to sign off on White House record keeping guidelines and practices.

    b. Require the White House Office of Administration to monitor and report on compliance with the Presidential Records Act by the Executive Office of the President.

    c. Commit to complying with congressional oversight requests that pertain to the Presidential Records Act.

12. **Improve data quality and usability of USAspending.gov.**

    The primary vehicle for federal government spending transparency is USAspending.gov. Despite years of work and improvements, the site does not deliver a full set of robust tools for accountability for federal spending. The next administration can take several steps to improve the quality of data and expand the level of detail for the information presented. These actions are detailed in Appendix 1.6.

    Additionally, information the government already collects about recipients of financial awards should be linked to USAspending.gov to help the public understand how taxpayer dollars are being spent. Performance data on USAspending.gov should include data from the Federal Awardee Performance and Integrity Information System and the System for Award Management and its successor websites. Finally, the public is entitled to know how many full-time and part-time jobs are being created through these awards and whether personnel are receiving various types of benefits (e.g., health care, paid leave), along with other social equity information.

    The president should also establish a task force composed of governmental and nongovernmental experts to identify additional data to be integrated into USAspending.gov. The task force's plan should be subject to public input and the final plan should require the Department of Treasury and Office of Management and Budget to propose annual goals for incorporating the new data sources.

13. **Require unique recipient identifiers.**

    Unique identifiers for entities doing business with the federal government are necessary to link data collected under different federal programs and requirements managed by various agencies. These unique identifiers need to allow all subsidiaries, mergers, partnerships, successor entities, and other relationships within a corporate "family" to be matched with the parent company entity, which, in turn, has unique identifiers. The ownership and control of these identifiers must be kept in the public domain and updated regularly. The administration should announce its intention to establish such a recipient identifier system within the first 100 days and commit to implementation within the first year.

Recommendations for Long-term Action

1. **Improve the role of the Office of Information Policy in Freedom of Information Act compliance.**

   Any solution to the systemic problems with agency compliance with the Freedom of Information Act will require a level of leadership we have not yet seen from the Justice Department's Office of Information Policy, which, often, has been part of the problem, not the solution. The Office must assume a leadership role in ensuring the Freedom of Information Act is implemented in a manner that maximizes transparency and accountability, rather than an approach that too-heavily weighs an agency's political and parochial interests. Toward that end, the Office of Information Policy should do a survey of best technology practices across all agencies that includes remote search functionality, proactive disclosures, and Section 508 accessibility requirements. Based

on the results, the Office of Information Policy should develop a plan to integrate agency technology and data staff with agency Freedom of Information Act offices to ensure the use of best practices and all available tools.

To address the problem of agency Freedom of Information Act processes being politicized, the Office of Information Policy should develop guidance on communications between Offices of General Counsel and agency Freedom of Information Act offices. This guidance should also establish protocols for communicating with the White House about pending Freedom of Information Act requests.

2. **Ensure public disclosure is the remedy in cases of failed proactive disclosure.**

   The attorney general should clarify for agencies that the remedy for failures of proactive disclosure must not be to simply give the information to the wronged requestor, but to ensure that the public has access to the information that should have been proactively disclosed in the first place.

3. **Improve compliance with federal accessibility standards.**

   Agencies have claimed an inability to meet federal accessibility standards mandated by section 508 of the Rehabilitation Act of 1973 to justify their failure to provide wider access to an array of government documents, including those with historic significance. To begin addressing this problem, the executive branch, through the Chief FOIA Officers Council or another entity designated by the attorney general, should require agencies to identify on their websites all agency databases and technology that are not compliant with section 508 or that do not meet other governing standards and to produce a plan to come into compliance.

4. **Disclose all court-ordered production schedules.**

   Freedom of Information Act requesters - and litigators - are frequently stymied by agency claims that the scope of litigation demands must take precedence over processing Freedom of Information Act requests. As a first step toward addressing this problem, agencies should be required to post in their Freedom of Information Act reading rooms all court-ordered production schedules.

5. **Promote historical preservation**.

   The administration should refocus agency attention on the importance of preserving historical records. Toward that end, the administration should:

   a. Order the establishment of historical review boards for each agency that handles classified information.

   b. Delegate historical declassification authority and prioritization to the National Archives and Records Administration (with input from the Public Interest Declassification Board), and task the Public Interest Declassification Board to annually identify targets for declassification.

6. **Disclose beneficial owners**.

Beneficial owners are the natural persons who ultimately own or control a legal entity or arrangement, such as a company, a trust, a foundation, etc. The issue of ultimate beneficial owners or controllers plays a central role in transparency, the integrity of the financial sector, and law enforcement efforts. Companies with anonymous owners are easily formed in the United States and can be used to defraud businesses, taxpayers, and the government, and place national security at risk. Federal contracting regulations already require reporting of "highest-level" and "immediate" owners, and the Defense Department requires beneficial ownership information in certain real property leases.

The administration should require all entities that bid on federal contracts, sub-contracts, grants, subgrants, and loans to disclose their beneficial owner(s)—the true, natural persons who ultimately own and/or control such entity—and such beneficial ownership information should be posted on USAspending.gov for those provided financial awards.

7. **Improve accountability for spending of taxpayer dollars**.

   Too often, federal agencies are able to bypass established regulations on how contracts and grants are awarded. Additionally, the public is best served when there is competition in bidding for contracts. Several steps that can be taken to level the playing field and improve the contracting process can be found in Appendix 1.7.

8. **Improve disclosures of tax expenditures.**

   Tax expenditures were defined by the 1974 Budget and Impoundment Control Act as "revenue loss attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preference rate of tax, or a deferral of tax liability." While both the President's Budget Request and annual Joint Committee on Taxation's documents include all individual and corporate income tax effects of tax expenditures, they do not reveal purpose, function or efficacy. The Department of the Treasury should develop a system to conduct a thorough analysis of several different tax expenditures annually on a rolling basis to give the public and policymakers a greater understanding of its purposes, use, and effectiveness.

Recommendations for Legislative Action

1. **Support strengthening the Freedom of Information Act.**

   The administration should pledge its support for the following amendments to the Freedom of Information Act:

   a. The addition of a balancing test that requires agencies and courts to weigh the need for withholding the requested information against the public's interest in the information.

   b. Revision to Exemption 4 to state that it applies only where disclosure of the records would be likely to cause substantial competitive harm to the submitter.

   c. A provision that defines records pertaining to prisons or detention centers contracting with or receiving funding from federal agencies as under the control

of the contracting or funding agency, and therefore subject to the Freedom of Information Act.

d. A clarification that the authority of federal courts to hear Freedom of Information Act cases includes the power to order an agency to make records publicly available, including on an ongoing basis, under Section (a)(1) and (a)(2), as well as the authority to provide any other equitable relief the court deems appropriate.

2. **Declassify historical records.**

   The administration should work with Congress and agencies on an omnibus Historical Records Act mandating the declassification of historically significant information that also promotes consistency and efficiency in declassification as well as a reduction in agency backlogs.

3. **Disclose beneficial ownership.**

   The administration should encourage Congress to require all persons who form corporations and limited liability companies in the United States to disclose the beneficial owner(s) of such entities to government authorities at the time of formation, and update such information upon any change unless such entity already discloses such information to authorities. Such beneficial ownership information should, at a minimum, be made available to law enforcement agencies at the federal, state, local and tribal levels, to law enforcement authorities of foreign countries through appropriate treaties, conventions, and agreements, and to those in the private sector with legally mandated anti-money laundering responsibilities

4. **Expand USAspending.gov.**

   The Recovery Accountability and Transparency Board was created to stop fraud in spending the $840 billion economic stimulus program from 2009. One lesson from its successful operation was that a greater level of spending transparency is a powerful tool in preventing waste, fraud, mismanagement, and corruption. Equally important is that the Board had dedicated funding to build Recovery.gov and related tools. The CARES Act provides similar transparency and accountability measures.

   Congress should appropriate money for the improvements in the USAspending.gov described herein, including for the collection of addition information and linkage of new data about recipients and subrecipients of government funds to ensure that federal spending goes to programs rather than being siphoned off with little, to no, public benefit.

   To make this spending through the tax code more transparent and accountable, the administration should work with Congress to direct the Internal Revenue Service and Treasury Department to work with appropriate agencies to provide the public increased information about each tax expenditure. This information should be made public on USASpending.gov and include:

   a. Purpose (description of public policy outcome to be achieved by the expenditure)

   b. Design (exclusion, exemption, deduction, credit, preferential rate, deferral)

c. Restrictions (aggregate claim caps, eligibility restrictions)

d. Performance measure (if any) to monitor success in achieving purpose

e. Evaluating agency

f. Supporting or competing program goals in other funded programs

g. Date of enactment, expiration date or part of permanent law

h. Annual cost for each of previous ten-years (initially and then ongoing)

i. Usage (number of tax return, AGI (in bands), location (zip code), and taxpayer type)

5. **Improve the Federal Advisory Committee Act.**

   The administration should work with Congress to close the FACA loophole that the federal government has relied on to allow subcommittees and working groups to escape disclosure requirements.

Principle 2: Secrecy undermines democracy and paves the way for rights violations and abuses.

The Problem

Excessive government secrecy paves the way for waste, malfeasance, and abuse, in part by impeding efforts at public oversight and accountability. Unnecessary secrecy has enabled government agencies to violate human rights and civil liberties, and even cover up or destroy evidence of government wrongdoing, such as the Central Intelligence Agency's illegal use of torture and destruction of tapes documenting it. Also troubling is the secrecy of formal written legal opinions issued by the Justice Department's Office of Legal Counsel, which are responsible for a growing body of secret law that binds the executive branch. The Office of Legal Counsel's opinions have been relied upon as the basis for many unaccountable and, in some cases, unlawful exercises of executive authority, including President Trump's barring the testimony of former White House counsel Donald McGahn before the House Judiciary Committee; the Bush administration's systematic policy of torture of detainees; and the Bush, Obama, and Trump administrations' extrajudicial lethal force policies that have caused an untold number of deaths of civilians, including U.S. citizens by drone strike. Administrations have fought tooth and nail to withhold legal memoranda justifying these and other rights-violating policies from the public, often successfully, even though secret law has no place in a democracy.

Recommendations for Action on Day One

1. **Direct the Department of Justice's Office of Legal Counsel to release all final legal opinions to the public.**

Opinions of the Office of Legal Counsel set forth the authoritative legal interpretations of the executive branch, and the public and government should be on equal footing in their understanding of the law. On Day One, the president should direct the Office of Legal Counsel to publish all formal written legal opinions that are prepared pursuant to the procedures in Office of Legal Counsel's Best Practices Memorandum on an ongoing basis - and establish a process for doing so. The Office of Legal Counsel should immediately publish an index of all existing Office of Legal Counsel opinions, to be updated every time a new opinion is issued. Beginning on Day One and on an ongoing basis, all Office of Legal Counsel opinions, including those that are classified, should be submitted to Congress immediately.

2. **Initiate a declassification review of classified Office of Legal Counsel opinions.**

   The administration should also initiate a declassification review of all classified Office of Legal Counsel opinions, and, where an opinion or portions of an opinion absolutely must be withheld, release all segregable portions and a detailed unclassified summary. This process should be completed within one year, and for future opinions, the full opinion (or an unclassified summary of a classified opinion) should be published within 30 days of the memoranda becoming final.

3. **Provide transparency around law enforcement and immigration authorities.**

   The administration should make law enforcement and immigration authorities accountable to the public they serve. Data collection around police use of force and deaths in custody must improve, law enforcement agencies should be penalized when they fail to comply with reporting requirements, and immigration authorities must respect rights and submit to oversight. For a list of measures to improve transparency and accountability around law enforcement, please see Appendix 1.8.

Recommendations for Short-term Action (First 100 Days)

1. **Direct federal agencies to release all final legal memoranda.**

   The president should require all federal agencies to release all final legal memoranda in full, or a detailed unclassified summary of any classified legal memoranda. Agencies should also commit to a prospective policy of releasing their final legal memoranda, or anything they consider to be "working law," going forward.

2. **Restrict the use of “national security agency” designations.**

   The “national security agency” designation circumvents public records laws to exempt important information from disclosure, and is applied with little transparency or oversight. The Office of Personnel Management should review the agencies to which it has given the "national security agency" designation and, at minimum, rescind that authority specifically for Customs and Border Protection, Immigration and Customs Enforcement, and the Department of Homeland Security’s Office of Intelligence and Analysis. The president should also set a policy narrowing the circumstances in which such designations are granted.

3. **Provide transparency around the use of lethal force overseas.**

In recent years, the White House, Pentagon, and intelligence agencies have reduced already severely limited transparency concerning the use of lethal force overseas. The president should reverse this trend and go much further than the Obama administration, releasing information that informs the public of past U.S. actions overseas. The minimum categories of information that should be declassified and released are listed in Appendix 1.9 at the end of this chapter.

4. **Publish presidential directives.**

   The administration should make publicly available unclassified presidential directives (currently designated National Security Presidential Memorandums), as well as redacted (to segregate only legitimately classified information) or summarized versions of classified directives. The administration should also promptly inform the public about, and make publicly available in unclassified or (where necessary) redacted/summarized form, any changes to previous presidential directives.

5. **Initiate a "bottom up" review of national security classification policy.**

   The administration should perform a fundamental review of the most basic premises of national security classification policy. It should consider questions such as: What is classification for? What are the unintended negative consequences of classification and how can they be mitigated? What types of information should be eligible for classification? What categories of information should be excluded from classification controls? How can the scope and duration of classification be kept to the minimum necessary?

   For the first time in decades, such questions should be systematically addressed through a process that is open to all stakeholders, including representatives of classifying agencies as well as public interest organizations and others, in order to help define a new national security classification policy that will replace the dysfunctional and overly-secretive legacy system that currently exists.

6. **Promote responsible exercise of classification authority.**

   The administration should make its national security information practices as rational, transparent, and minimally burdensome as possible. It should, at a minimum:

   a. Provide periodic reporting on the invocation of the state secrets privilege. Department of Justice policy already requires the administration to report to Congress periodically on the invocation of the state secrets privilege in litigation. But over the past decade only one such periodic report—in 2011—has ever been produced. Regular reporting on invocation of the state secrets privilege should immediately be resumed, annually at minimum.

   b. Institute a uniform prepublication review policy to clarify, narrow, and expedite the process. Millions of current and former government employees are obligated to submit their proposed publications to government censors, who review the proposed publications for classified information or other information the agencies deem sensitive. This process is overbroad, inconsistent across agencies, slow,

and often capricious. Prepublication review procedures should be standardized and revised to minimize and expedite review.

c. Recognize and reward appropriately limited classification activity in employee performance assessments, with an emphasis on the necessity and importance of government transparency. The proper and limited use of classification authority should be included as a factor in assessing the performance of government employees. In order to promote sound classification practices, including the avoidance of over-classifying information by default, the exercise of good judgment in classification should be rewarded in a tangible way, and its opposite should be discouraged.

7. **Provide for expedited declassification review on subjects of significant public interest.**

   The Mandatory Declassification Review process should include an expedited review option similar to that found in Freedom of Information Act.[1] Additionally, in cases where there is a particularly compelling interest for disclosure, the administration should develop a process by which members of the public may nominate classified documents or topical areas for direct, expedited declassification review by the Interagency Security Classification Appeals Panel. The Interagency Security Classification Appeals Panel should conduct such direct, expedited review if it determines that the document or topical area, if declassified, would contribute significantly to an ongoing, important policy debate. In cases of topical reviews, the Interagency Security Classification Appeals Panel should evaluate and amend, as appropriate, the relevant agency classification guidance.

8. **Operationalize the Public Interest Declassification Board to help resolve classification disputes.**

   Many problems in classification policy naturally arise due to conflicting perspectives and assessments regarding the need for secrecy in a particular instance. Disagreements over the need for secrecy routinely occur between agencies, between Congress and the executive branch, and between government and the public. Currently, such disputes tend to linger for years and then to default to the status quo of secrecy.

   The Public Interest Declassification Board was established by statute to advise the president and other executive branch officials as well as Congress on classification and declassification matters. Its members are appointed by officials at the highest levels of government, including the president and the majority and minority leaders of the House and Senate.

   The Public Interest Declassification Board therefore has unique standing to provide an impartial forum for reconciling conflicts over classification and declassification. But it has never yet fulfilled its potential as an adjudicator of classification disputes, nor has it even been asked to do so. (Several Board positions are currently vacant and should be

[1] 5 USC 552(a)(6)(E)

promptly filled.) The time has come to put this under-utilized entity to work in support of a public interest classification and declassification policy.

9. **Strengthen oversight of classification policy.**

   The National Declassification Center, housed at the National Archives and Records Administration, should be given the authority to declassify the archival records within its purview, i.e. without requiring prior review by the agencies that originated the records. Only by doing so will the National Declassification Center begin to reach its potential as one of the most important transparency initiatives of the last three decades.

10. **Invest in technology modernization.**

    The optimal implementation of changes to classification policy will require modernization of the existing classification and declassification infrastructure. In the majority of cases, human review of documents for declassification should no longer be necessary. The technology needed to update classification and declassification practices is well within reach. Some dedicated funding will be required to bring it to full maturity, and some skillful management will be needed to bring it into consistent and widespread use. But this is an investment that would quickly be recovered in increased productivity and efficiency.

    Annual reports from the Information Security Oversight Office to the president previously provided, among other data points, the total cost of security classification activities, including costs of classification management and declassification. The Information Security Oversight Office no longer reports on these critical figures because of challenges in collecting and analyzing agency statistical data. Any modernization of classification practices should be coupled with a requirement that agencies' systems are able to accurately report the cost and size of their classification systems.

Recommendations for Long-term Action

1. **Reduce secrecy in the Oval Office.**

   The White House should resume the practice of releasing full, properly (for limited and legitimate reasons) redacted readouts of the president's conversations with foreign leaders, and release those of his predecessor. The president should also order both the Central Intelligence Agency and the Office of the Director of National Intelligence to produce unclassified versions of the President's Daily Brief for the public.

2. **Review and narrow executive branch privileges.**

   The attorney general should conduct a comprehensive review of the executive branch's practices in asserting privileges, including executive privilege (such as the presidential communications privilege), the deliberative process privilege, and the state secrets privilege, and issue narrower standards. In particular, the administration should commit to only asserting the state secrets privilege as a last resort, and only when the head of an agency determines that the public interest in disclosure is outweighed by the risk to national security.

3. **Declassify the CIA torture program**.

   The president should declassify and release all records related to the Central Intelligence Agency's torture, detention, and rendition programs, and current detainee treatment policies. The full Senate torture report should be among those records declassified and released to the public as a priority, and distributed throughout the executive branch.

4. **Establish an Open Source Intelligence Agency to produce intelligence products that are unclassified and publicly accessible.**

   The Central Intelligence Agency's Foreign Broadcast Information Service once nurtured generations of scholars, journalists and public officials with its translations and analyses of foreign publications. But today, open source intelligence products generated by the US intelligence community are, with few exceptions, restricted from general distribution. This denial of access is particularly incongruous now, when the public itself faces direct threats from cybersecurity intrusions, foreign information operations, and a global pandemic. The administration should create a worthy successor to the Foreign Broadcast Information Service that will produce and provide public access to substantive open source intelligence products.

5. **Disclose top-line spending for each of the intelligence agencies.**

   The "Black Budget" is an informal term that refers to classified national security spending. It includes spending for intelligence, classified operations, and classified military procurement.

   Since 2007, a single aggregate budget figure for the National Intelligence Program, comprised of 17 intelligence agencies, has been published annually. But the total spending levels of each component agency remain classified. So does spending for classified operations and procurement.

   Black Budget spending is not merely secret. It also produces a distorted public perception of the open budget. That is because secret spending is often appropriated for one agency and then secretly transferred to another. So, for example, the budget for the Air Force has sometimes been used to conceal funding for the Central Intelligence Agency, so that the Air Force budget appears to the public much larger than it actually is.

   This kind of pass through arrangement undermines the integrity of the budgeting process and should be abandoned.

   In 2018, a bicameral, bipartisan group in Congress called for disclosure of top-line spending levels for each of the intelligence agencies. (The group included Sens. Ron Wyden (D-OR) and Rand Paul (R-KY) and Reps. Jim Sensenbrenner (R-WI) and Peter Welch (D-VT).) This is a logical step that can be adopted without legislation. It will also make it possible to eliminate the deceptive budget pass through practice once and for all, since there will be no need to conceal any agency's funding in another agency's budget.

Additionally, every federal agency should annually disclose top-line appropriations for its Black Budget. In this way, the agency disclosure can be compared with the congressional appropriation figure (see legislative priorities).

Recommendations for Legislative Action

1. **Codify disclosure of top-line Black Budget of each intelligence agency.**

   The administration should work with Congress to require the president's annual budget request to identify the amount requested by each intelligence agency. Congress should also identify top-line appropriations for each agency. Finally, Congress should prohibit agencies from secretively transferring Black Budget appropriations from one agency to another.

Appendix to Chapter 1: Open Government

Appendix 1.1: Presidential Memorandum on Transparency

A presidential memorandum on transparency should, at a minimum, address longstanding problems with the federal Freedom of Information Act. Such a memorandum should:

1. Commit to seeking funds for Freedom of Information Act offices that match the demand for public records (taking into account backlogs *and* rising trendlines in annual requests);
2. Reiterate a steadfast commitment to the presumption of openness, as codified in the FOIA Improvement Act of 2016, and commit to releasing information through the Freedom of Information Act unless the harm to a government interest would outweigh the benefit conferred to the public by disclosure. Specifically, the memorandum should instruct agencies to minimize the use of discretionary exemptions (e.g., those covered by Exemption 5) to protect legal or significant policy deliberations;
3. Commit to ending political interference in agency Freedom of Information Act processing by requiring agency heads to refer final decision-making over redactions and withholdings to career officials;
4. Express support for all Freedom of Information Act personnel, including the Office of Government Information Services;
5. Express support for Presidential Records Act and Federal Records Act reform, to modernize the law, strengthen congressional oversight of records management, and give the National Archives and Records Administration greater authority to ensure adequate preservation.

Appendix 1.2: Visitor Logs

The White House and executive branch agencies should proactively disclose their visitor logs:

Not later than 30 days after Inauguration Day and updated every 30 days thereafter, the United States Secret Service should report to the Congress and make contemporaneously available

online a searchable, sortable, downloadable database of visitors to the White House and the Vice President's residence that includes the name of each visitor, the organizational affiliation of the visitor, the date of the visit, the name of the person being visited, the name of the individual who requested clearance for each visitor and a general description of the reason for the visit. The executive branch agencies should do the same with agency visitor records.

Agency visitor logs should include 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.

Notwithstanding this requirement, the U.S. Secret Service, after consultation with the president or his designee, may exclude from the database any information that would 1) implicate personal privacy or law enforcement concerns or threaten national security, or 2) relate to a purely personal guest. In addition, with respect to a particular sensitive meeting, the Secret Service shall disclose each month the number of records withheld on this basis and post the applicable records no later than 360 days later.

Appendix 1.3: Proactive Disclosure

Categories of records that should be proactively disclosed by all agencies, at minimum:

1. Agency organizational charts with contact information, an index of agency datasets, and calendars of agency heads and agency component heads;
2. The ten largest contracts, task orders and grants (by dollar value) made by the government agency as well as all contractors'/grantees' Disclosure of Lobbying Activity Forms (LLL forms);
3. Interagency or intergovernmental agreements or contracts;
4. Materials related to the operations and establishment of Federal Advisory Committee Act committees, including events, timelines, agendas, minutes, transcripts, recordings, committee member names and biographies, conflict of interest waivers, committee charters, and any other related materials;
5. A list and summary of all classified inspector general reports;
6. All unclassified reports, requests, and testimony provided to Congress; and
7. Proposed records retention schedules.

Appendix 1.4: Attorney general memorandum on the Freedom of Information Act

An attorney general memorandum on the Freedom of Information Act should strengthen implementation of the Act in several ways. Specifically, the memorandum should include:

1. An interpretation of the Freedom of Information Act's "foreseeable harm" standard that matches congressional intent behind the statutory provision, added in the 2016 Freedom of Information Act amendments, and that adopts a presumption against the use of

discretionary redactions and withholdings unless a specific foreseeable harm is articulated contemporaneously to the withholding or redaction;

2. A requirement that agencies provide requesters with articulated and concrete foreseeable harm justifications in response to a Freedom of Information Act appeal or on the date on which the agency serves its Answer in litigation under the Act;
3. A directive that for certain categories of records there is a presumption of no harm that an agency must overcome to withhold information; failure to do so means the Department of Justice will not defend if the agency is sued;
4. A requirement that for all documents older than a specified time limit of no more than 10 years, agencies cannot assert The Freedom of Information Act's Exemption 5 (which incorporates discovery privileges such as the attorney client, work product, and deliberative process privileges) to withhold information unless the agency's Chief FOIA Officer certifies that disclosure would harm specific ongoing interests of the United States (such as ongoing litigation or investigations in which the privilege protected by the exemption is still at issue);
5. A commitment to defend agencies sued under the Freedom of Information Act only if they meet these directives;
6. A requirement that agencies use pre-litigation processes, including the Office of Government Information Services, and other alternative dispute resolution processes to the extent that such processes ensure fair and timely resolution of Freedom of Information Act requests;
7. A directive that agency Freedom of Information Act personnel be given direct access to agency electronic records for purposes of Freedom of Information Act searches and productions;
8. A requirement that agencies accept Freedom of Information Act requests and subsequent administrative correspondence electronically.

Appendix 1.5: Technology to Improve Access

The administration should take the following actions to begin addressing problems with technology and common-sense electronic preservation:

1. Reform technology acquisition to make archiving and declassification considerations a core part of information technology requirements and procurements. Require all newly-purchased agency systems to produce permanent records in formats acceptable to the National Archives and Records Administration, including explicit metadata and standardized mechanisms for transferring permanent records to the National Archives and Records Administration. Coordination among agencies or adopting a system-of-systems approach under the direction of a designated agency or agent will be helpful when seeking these new technologies.

2. Mandate that an automatic declassification date be embedded in newly created electronic records. Doing so would save considerable time and resources and enable agencies to actually adhere to automatic declassification guidelines.
3. Direct the National Archives and Records Administration to 1) complete and issue guidance on web records and social media records and to 2) consult with outside subject-matter expertise regarding records retention schedule appraisals.
4. Ban the use of disappearing messaging applications for government business and mandate that messaging applications are only permissible for government business if the technology automatically captures communications used in official business for records management and archival purposes. Exceptions for whistleblowers, who are engaging in legally protected activity over these applications to prevent reprisal, should be made.
5. Direct every agency to issue an order in writing in the first 100 days outlining how the agency plans to enforce these requirements. The enforcement plan should include an annual agency-level assessment.

Appendix 1.6: Data quality and usability of USAspending.gov

To improve data quality and usability of USAspending.gov administrators should be directed to:

1. Extend and expand inspector general audits of the data presented on USAspending.gov. The DATA Act mandates that every two years through 2021 the Inspectors General will the data quality and usability on USAspending.gov. To improve the data presented to the public, the audits should continue to occur every two years through the administration's term. The audits should also be expanded to include sub-recipient reporting.
2. Disclose award documents (e.g., contract and grant awards). Currently, scant summaries of financial awards, instead of copies of the awards themselves, are on USAspending.gov. These meager descriptions do not lead to meaningful accountability. Full copies of all award documents should be publicly available with the understanding that proprietary information will be redacted.
3. The administration should seek input from government accountability experts as well as business on how to define what should be redacted.
4. Disclose more information related to the financial awards tracked on USAspending.gov by fully integrating information available through the System for Award Management modernization site with the information on USAspending.gov. More precisely, the administration should include on USAspending.gov:
    a. Needs assessment and acquisition planning records
    b. The solicitation, including the solicitation number, the statement of work or performance Work Statement, the competition type, small business set aside information, offeror instructions, evaluation factors, and the award decision process

c. Key elements of all bids and proposals or other submissions, including offeror identity, beneficial ownership information, subcontracting plans, subcontractor identity, and subcontractor beneficial ownership

d. Bid and/or proposal evaluation documents

e. The award decision and any justifications and approvals

f. Bid protest records

g. Performance records, including information on delivery or task order competitions and awards, exercised options, modifications and amendments, payments, and subcontractor payments

h. Performance dispute records, including termination and cost complaints and decisions

i. Past performance reviews

j. Oversight and accountability records, including investigative and audit reports

k. Subsequent close-out records

5. Improve the quality of data reported. The Office of Management and Budget should issue a directive setting higher standards requiring more consistent and detailed reporting for critical data elements such as award descriptions, place of performance, sub-recipient awards, executive compensation, and ownership/subsidiary relationships, as required by law. The directive should instruct agencies to develop policies to ensure procurement and grant officials, as well as award recipients, fully understand and meet the higher standards.

6. Better track spending on national emergencies. The Office of Management and Budget should establish unique coding to track financial awards distributed in response to natural disasters, health crises, or other unique events. This unique coding should be similar to the National Interest Action code currently used for contracts only. The new approach should also establish clear standards for the use of such codes, including specific reporting procedures for starting and stopping the use of the code. The code will help to assess whether funds are reaching the targeted locations and audiences and in a timely manner. USAspending.gov should update the advanced award search function to allow users to filter awards by new emergency code fields.

7. The administration should encourage agencies to adhere to the DATA Act Data Exchange Standards and prioritize timely, accurate reporting. The existing standards should be reviewed to verify whether they need to be updated.

8. The Office of Management and Budget and the Treasury Department should establish an interagency committee to recommend standards for ultimate recipient reporting. The Office of Management and Budget and Treasury Department should seek public input on the standards. Once these standards are established, The Office of Management and Budget should share the standards with agencies and establish an implementation schedule that agencies must follow when reporting data to USAspending.gov.

Simultaneous to these actions, the Treasury Department should seek public input on the best ways to provide subrecipient data on USAspending.gov and implement the best approach.

Appendix 1.7: Accountability for Spending Taxpayer Dollars

The following principles should be followed to strengthen accountability for spending of taxpayer dollars:

1. Recipient responsibility rule. The administration should reinstate a Federal Acquisition Regulation (FAR) that makes clear that in determining whether a prospective contractor has a satisfactory record of "integrity and business ethics," contracting officers may consider compliance with the law, including labor laws, employment laws, tax requirements, environmental laws, antitrust laws, and consumer protection laws. The administration should also issue a similar rule for grants and other financial assistance awards going to non-individuals. These rules should include language that makes clear that recipients—prime contractors, state agencies, grant recipients, etc.—are expected to also consider responsibility performance when awarding subcontracts and sub-awards.
2. Open, transparent contracting process. The federal contracting process should be an open process. Contractors are often opposed to disclosure of contract information because they argue that sharing such information about their commercial contracting process would undermine their ability to compete against other companies. E.O. 12600, "Predisclosure Notification Procedures for Confidential Commercial Information," allows entities to object to the release of certain information. The administration should amend Executive Order 12600 to inform Freedom of Information Act requesters when a 12600 review was conducted and to label as "12600" any information that was redacted subsequent to that review.
3. Certify costs for noncompetitive contracts or commercial items. While taking steps to increase competitive contracting, the administration should ensure that that prices are fair and reasonable for sole source contracts by requiring certified cost or pricing data to be submitted to contracting officers.
4. Restore the government's ability to audit federal contract spending. The administration should restore the government's ability to audit federal dollars by increasing forward pricing audits (pre-award audits to prevent wasteful spending) and by conducting contract close-out audits on flexibly priced contracts in a timely manner to ensure that cost-reimbursement contracts are not closed out prior to an actual examination of a contractor's claimed costs.

Appendix 1.8: Transparency and Accountability for Law Enforcement and Immigration Authorities

Transparency and accountability measures for law enforcement and immigration authorities:

1. Require the Department of Justice to establish a comprehensive federal database of use of force incidents involving police and civilians, and tie federal grant funding to compliance with reporting this data.
2. Require the Justice Department to begin full implementation of the Deaths in Custody Reporting Act of 2013, which has been inexplicably delayed since the bill's passage seven years ago, including by issuing funding penalties to states that do not comply with Deaths in Custody Reporting Act reporting requirements.
3. Create a national, public police misconduct database that includes the names of police officers who have been the subject of complaints, license revocation, or termination as a result of misconduct.
4. Increase transparency into the federal government's use of novel and invasive surveillance technologies, such as StingRay devices, including which federal agencies are using them, how frequently, and for what types of investigations; how agencies are using the data collected; and how that data is being shared among federal, state, and local law enforcement entities.
5. Require all agencies to publish their policies surrounding the collection, use, and retention of biometric data, as well as any memoranda of understanding regarding sharing of biometric data and/or the interoperability of databases containing biometric data.
6. Commit to disclosing policies and privacy and civil liberties safeguards governing Joint Terrorism Task Forces and intelligence fusion centers, including policies and agreements governing sharing of information with state, local, and tribal government entities and the use of investigative technologies.
7. Require the Department of Justice and Federal Bureau of Investigations to provide information regarding their use of resources to address white nationalist violence, including data regarding investigations, prosecutions, and convictions.
8. Require the Department of Justice to promulgate new pro-transparency rules governing the immigration court system, which is housed within the Justice Department's Executive Office for Immigration Review.
9. Require the Justice Department Executive Office for Immigration Review to proactively disclose immigration data to individuals in removal proceedings without the need to file a Freedom of Information Act or Privacy Act request.
10. Require Immigration and Customs Enforcement to report publicly on use of force incidents and deaths within detention facilities.
11. Require federal law enforcement employees, including contractors and subcontractors, to display clearly visible identifying information, including the federal agency and name or unique identifier of the officer, when engaged in crowd control, riot control, or the arrest or detainment of individuals engaged in protests, demonstrations, or riots

Appendix 1.9: Use of Legal Force Overseas and Military/Contractor Deployment

Information to release regarding use of lethal force overseas and military/contractor deployment:

1. Declassify and publicly release information about lethal strikes by intelligence and military entities outside "areas of active hostilities," including the number and location of alleged combatants and civilians killed as a result of U.S. use of force.
2. Resume disclosing U.S. military personnel and contractor numbers in Afghanistan, Iraq, and Syria.
3. Provide meaningful public transparency into the Central Intelligence Agency and military agencies' use of lethal force abroad, including all legal interpretations and policies and legal and policy analyses on how the new and previous administrations interpret their authority to use force abroad, as well as full and timely compliance with mandatory reporting to Congress on civilian casualties and the legal and policy frameworks for use of force, maximizing the amount of information included in unclassified reporting.
4. Make public the total size and the annual and lifetime cost of the U.S. nuclear stockpile.
5. Require the Department of Defense to include in its annual budget documents how Overseas Contingency Operations funds were spent in the previous year and make any requests for reprogramming these accounts public.
6. Require the Department of Defense to produce, as the State Department does for foreign assistance, an annual budget justification document for all Department of Defense-funded military assistance that includes country-specific justifications and strategic objectives. Require the State, Defense, and Commerce Departments to publicly disclose the specific country recipient, type of weapon, and final dollar amount of security assistance delivered each year.
7. Disclose the status and results of investigations into civilian harm and credibly alleged wrongful killings abroad to the public and to affected civilians, including accountability measures taken, with appropriate privacy safeguards.
8. Publicly acknowledge any U.S. role in partnered operations that involve the use of force, including acknowledging reports of civilian harm or human rights violations.
9. Declassify and release publicly all previous 48-hour War Powers Resolution notifications to Congress, and commit to making future notifications in unclassified form or, at minimum, with an unclassified summary.

Chapter 2: Ethics

Chapter Overview

Fewer than 20 percent of Americans express trust in the government in Washington to do what is right.[2] 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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[2] 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 Officers 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.[3] 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

[3] 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.[4] 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

[4] *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)[5];

   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

[5] 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").[6] 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

[6] 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.[7]

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**.

[7] 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.[8]

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

[8] 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."

Chapter 3: Balance of Power

Chapter Overview

The country's founders recognized that a system of checks and balances is critical to preventing a concentration of power, and they were especially wary of power amassing to the executive. The equal distribution of power they sought has shifted over the decades as Congress has acquiesced to presidential power grabs that expand the limits of their authority. The shift poses an existential threat to our democracy, limiting oversight in a way that allows officials to act with impunity, allowing agencies to be run by unconfirmed—and often unqualified—individuals, and instilling a system where the rule of law does not apply equally to everyone. If left unchecked, the unequal distribution of power will result in the country moving closer to authoritarianism—far away from the ideals the constitution's framers intended.

The president must reverse this trend and demonstrate respect for the balance of power by allowing Congress and Inspectors General the opportunity to engage in meaningful oversight. He must review and rescind sometimes decades-old national emergency declarations as well as those that address circumstances that do not rise to the level of a true emergency. The president must also respect the advice and consent authority of Congress and should commit to depoliticizing law enforcement matters, especially at the Department of Justice.

Principle 7: The executive branch must respect the limits of the presidency and recognize that it must act as one of three co-equal branches of government.

The Problem

Over the last several decades, Congress has ceded authority to the president in areas of critical importance, and the executive branch has seized the increased authority to abuse its power, often in secret, and unchecked by oversight. As a result, unconfirmed acting officials are running executive branch agencies; the U.S. military is engaged in conflicts without Congress having exercised its sole authority to declare war; and taxpayer funds are spent not as mandated by Congress through the appropriations process, but at the will of an executive branch abusing the power of the National Emergencies Act.

Recommendations for Action on Day One

1. **Reopen the Executive to scrutiny from Congress and the People.**

   The president will take office or begin a new term after four years of unprecedented secrecy and assertions of extreme executive powers vis-a-vis Congress and the People. He will have an historic opportunity to reopen the government to appropriate scrutiny

from co-equal branches and the public and to reset the balance of power to what the Framers intended. He can do that by taking these steps on Day One:

a. Announce his intent to follow the law and respect Congress's oversight authority; Initiate a review of congressional information requests[9] to the administration over the past four years and determine what documents previously withheld should be shared with Congress and which of those documents should be shared simultaneously with the American people through an easily accessible web portal;

b. Direct the Office of Legal Counsel to develop a new publication procedure for its unclassified opinions such that draft opinions are subject to public comment and review.

Recommendations for Short-term Action (First 100 Days)

1. **Initiate a review of all Office of Legal Counsel opinions regarding the power of the presidency and institute a transparent and timely process for withdrawal or revision where warranted, in addition to opinion publication.**

   The president should commission an independent review of significant Office of Legal Counsel opinions on presidential power. Recommendations should be made public and should guide Office of Legal Counsel revisions, rescissions, or reaffirmations.

2. **Pledge nonpolitical inspectors general appointments and firings only for good cause.**

   Beyond adhering to existing statutory requirements, the president should prioritize nominating qualified individuals to fill vacant inspector general positions, including pledging to not nominate as an inspector general anyone who has held a political position in his White House or Cabinet. The president should commit to removing an inspector general only for cause, and shall not do so until he communicates to Congress the detailed and specific reasons why the inspector general is no longer able to fulfill their important mission.

3. **Commit to following statutory lines of succession for vacancies of advice-and-consent positions.**

   Where both an agency-specific statute and the Vacancies Act may be available to fill a vacancy temporarily, the president should commit to defaulting to the agency-specific statutory line of succession.

4. **Revise personnel composition of the Office of Legal Counsel at the Department of Justice.**

[9] In conducting the review, the administration should prioritize those information requests related to (1) ethical violations by government officials, (2) lawbreaking by government officials, (3) family separation and the treatment of refugees, and (4) receipt or solicitation of assistance from foreign governments in federal election campaigns,

The president should commit to working with the attorney general to ensure that the Office of Legal Counsel is staffed by career civil servants with only the role of assistant attorney general at its helm as a presidential appointee; and pledge to diversify the background of Office of Legal Counsel hires, including those with congressional and advocacy professional expertise.

5. **Conduct a review of ongoing national emergencies.**

   The president should direct a review of all national emergency declarations still in effect, including declarations dating to the Carter Administration. Emergency declarations that no longer meet the statutory requirements upon which they were based, that have a history of abuse as a mechanism for pursuing non-emergency policy goals, or that do not practically rise to the level of an exigent national emergency should be rescinded.

6. **Disclose Presidential Emergency Action Documents to the Gang of Eight.**

   Consistent with post-Watergate reforms that require the executive branch to disclose covert military and intelligence planning and operations to at least some members of Congress, Presidential Emergency Action Documents should be confidentially shared with the Gang of Eight to facilitate basic and essential congressional oversight. The administration should also work with Congress to develop protocol for the timely disclosure of future Presidential Emergency Action Documents.

7. **Initiate a review of all relevant Office of Management and Budget guidance regarding budget and appropriations law.**

   The president should prioritize a comprehensive review of all relevant Office of Management and Budget guidance from the prior administration or term that provides instructions regarding federal agency (including White House) prerogatives in budget and appropriations law in order to revise, rescind, or reaffirm them.

8. **Instruct federal agencies to report Anti-Deficiency Act violations identified by the Government Accountability Office.**

   Federal agencies are required by law to report Anti-Deficiency Act violations to the comptroller general, the president, and Congress, including violations identified by the Government Accountability Office with which an agency disagrees. Despite this, the Office of Management and Budget has issued guidance that agencies need not report violations if an agency and the Office of Management and Budget disagree with the Government Accountability Office's determination. This guidance should be immediately rescinded and proper reporting requirements reinstated.

9. **Instruct the Office of Management and Budget to make apportionments of appropriations transparent.**

   The Office of Management and Budget should regularly collate, centralize, and make accessible apportionment decisions. A system for easily accessing apportionment decisions should be built by the Office of Management and Budget that allows for publication of data in a timely manner and that is accessible to the public.

Recommendations for Legislative Action

1. **Amend the Federal Vacancies Reform Act.**

   The president should support an amended Federal Vacancies Reform Act that would: (1) clarify that the Act does not supersede agency-specific succession statutes; (2) extend all protections intended to guard inspectors general independence to acting inspectors general; (3) require that "first assistants" be in place prior to a vacancy, and that any individual who becomes an acting officer by way of 5 USC 3345(a)(1) has been serving in the role of the first assistant for at least 90 days in the year prior to the vacancy; and (4) establish new enforcement mechanisms available to Congress should the executive bypass Senate consent to fill key federal offices.

2. **Protect the integrity of inspectors general.**

   The president should support codifying stronger standards that protect the independence and integrity of the federal government's inspectors general. Foremost, this should include support for legislation that gives inspectors general protections against removal without good cause. Congress should also protect the identities of all whistleblowers that come to inspectors general and the ongoing investigations in an office by prohibiting the president from appointing acting inspectors general who would simultaneously hold other political positions within the executive branch. (See also Chapter 4, "Whistleblowers")

3. **Amend the National Emergencies Act.**

   The president should voice his support for a reinvigorated role for Congress in addressing national emergencies by endorsing legislation that would require that Congress must agree with the president in order to renew an emergency declared by the president and thus maintain presidential access to the statutory emergency powers unlocked by the declaration. An amended National Emergencies Act should include an initial sunset period of 30 days after an emergency declaration, subject to regular renewal votes. Further, should Congress decline to renew a national emergency, the president must be prohibited from unilaterally circumventing that outcome by declaring another emergency concerning the same circumstances.

4. **Amend the War Powers Resolution of 1973.**

   Drawing on his unique understanding of the essential role for Congress in foreign policy and matters of war and peace, the president should support legislation that would strengthen requirements that the Executive branch report to Congress all uses of force or engagement in hostilities, regardless of the underlying legal authorities for the activity; clarify the definition of "hostilities"; make public reports on the uses of military force; provide for automatic funding cut-offs for military operations that do not comply with the provisions of an amended War Powers Resolution; and authorize fines and other penalties for failures to report to Congress.

5. **Establish new Authorizations for Use of Military Force requirements.**

The president should press for updated Authorizations for Use of Military Force requirements that would specify, at minimum, that: (1) the 2001 Authorization for use of Military Force sunsets automatically within one year of enactment; (2) subsequent Authorizations for Use of Military Force specify the individual groups or nations against which Congress is authorizing the use of force, as well as the specific countries where such force may be used; and (3) each future Authorization for Use of Military Force automatically expires after two years, at which time Congress may vote to extend it.

6. **Modernize nuclear command and control protocols.**

   The president should recognize that no one person should have authority to or bear responsibility for launching nuclear weapons and thus all-but-ensuring casualties of unfathomable proportions among civilian populations abroad and even at home. He should support legislation that would establish that (1) the president may not use United States armed forces to conduct a first-use nuclear strike unless such a strike is conducted pursuant to a declaration of war by Congress that expressly authorizes it; and (2) that the president does not enjoy unilateral authority to launch a nuclear weapon, but instead must obtain the concurrence of at least two named senior officers, such as the Secretaries of State and Defense.

7. **Prevent unconstitutional encroachments on Congress's power of the purse.**

   The president should endorse new legislation that would (1) close historically abused Impoundment Control Act and National Emergencies Act loopholes; (2) establish new transparency mechanisms, such as requiring the Office of Management and Budget to make apportionments and any legal opinions on budget laws regularly and publicly available; (3) update executive reporting requirements on Impoundment Control Act and Anti-Deficiency Act violations; and (4) establish new enforcement mechanisms, such as clarifying Government Accountability Office authorities to obtain information and sue agencies in violation of the law and authorizing administrative discipline for offending officials, and requiring the Department of Justice to investigate reports of criminal violations.

Principle 8: No one is above the law. Our justice system must serve the vulnerable and marginalized in our society rather than merely the politically powerful.

The Problem

Although the justice system has always worked to the benefit of the powerful while being unfairly applied to the politically vulnerable, the Trump administration exploited the system by weaponizing the Department of Justice as a personal political tool. The DOJ, in turn, has placed loyalty to the president over fidelity to the law. The Department of Justice must be left to independently handle law enforcement matters, without being weaponized against political

opponents or steered away from investigations into political allies. The DOJ must defer to expert civil servant advice on matters such as security clearances, sentencing recommendations, and federal contracting,

Recommendations for Short-term Action (First 100 Days)

3. **Make "dissent channels" available in each federal agency.**

   The president should prioritize the institutionalization and protection of dissent across government. Each agency should at minimum create a "dissent channel" —modeled after the Dissent Channel at the Department of State and the Direct Channel at the United States Agency for International Development—that allows civil servants and federal contractors to voice objections to policies, corruption, or inappropriate interference by political appointees, and clarify that any civil servant or contractor that appropriately utilizes the channel for those purposes will be protected from retaliation under applicable whistleblower protection laws.

4. **Establish an Oath of Office training for all civil servants and political appointees.**

   Deploy a government-wide training program for federal employees on their oath of office, their duty to serve the public interest—not the president's—and the responsibilities, avenues, and protections available to them to report wrongdoing.

5. **Initiate a Department of Justice internal review of law enforcement politicization.**

   Independent of the White House, the attorney general should direct a department-wide review of any instances of politicization of law enforcement activities, including investigations, charging or sentencing decisions, and where it is determined that such politicization occurred. The Department of Justice should ensure that career law enforcement are able to pursue those cases and investigations without any political interference whatsoever.

6. **Promulgate and publicly publish new White House-law enforcement contact policies to prevent political interference in criminal law enforcement.**

   The White House should immediately establish clear policies governing contact with federal law enforcement agencies, including, at minimum: the disclosure to Congress of all contacts between White House officials and agencies regarding specific-party enforcement matters, and an express ban on White House officials directing agency decisions on individual investigations and prosecutions. Additionally, the White House should require all executive agencies with a law enforcement role to promulgate equivalent public policies governing contacts with the White House on specific-party matters.

7. **Repair and strengthen the security clearance process.**

   The president should issue an executive order to strengthen the objectivity of processes used to determine access to classified information. At minimum, security clearance holders should be protected from discrimination or retaliation for First Amendment activity and have clear access to recourse, such as through an independent appeal

process, in the event that a clearance is denied. The executive order should also limit the length of time that White House officials may operate with interim clearances.

8. **Commit to good faith pardons.**

   The president should commit to (1) ensuring transparency of the pardon process, and (2) using pardons for mercy and justice and never for personal protection or political favor.

9. **Provide available records to Congress regarding pardons and commit to transparent pardon processes**.

   Available records of both actual and dangled pardons should be provided to Congress. Transparency of the pardon process will serve the public interest function of evaluating whether pardon powers have been used for corrupt or unlawful purposes, as well as aid in reestablishing norms governing the judicious and circumspect use of presidential pardons as an instrument of justice and mercy in a fallible legal system.

Recommendations for Legislative Action

1. **Empower agency inspectors general to investigate improper interference in law enforcement matters.**

   The president should support an expansion of the jurisdiction of agency inspectors general to expressly include investigations into improper interference in law enforcement functions. A statutory expansion should specifically ensure that oversight into any professional misconduct of prosecutors—including the U.S. attorney general—is not outside the jurisdiction of the Department of Justice's Office of Inspector General, and does not exclusively reside within the purview of the Department of Justice's Office of Professional Responsibility.

2. **Protect the integrity of the security clearance process.**

   The president should endorse legislative efforts to strengthen the objectivity of processes used to determine access to classified information. Specific provisions for legislation to protect security clearance reviews are included in Appendix 3.1.

3. **Require policies to prevent inappropriate political influence in specific-party matters at law enforcement agencies.**

   In order to prevent improper political interference in law enforcement matters, model legislation should:

   a. Bar the president or other White House staff from ordering agencies to begin, continue, or end an investigation or prosecution, or otherwise influence agency decisions with respect to a specific matter. This prohibition would carry criminal penalties, though would in no way bar the president from setting generally-applicable policies or making appropriate judgments in cases implicating national security and foreign policy.

   b. Require the White House and law enforcement agencies to log all communications pertaining to specific cases or investigations that an agency

might undertake or is undertaking; and direct an agency's Office of the Inspector General to review the logs and to notify Congress if any are inappropriate from a law enforcement perspective or raise concerns about interference.

c. Require the White House to issue and publish policies identifying which White House officials are authorized to communicate with law enforcement agencies about individual law enforcement matters. Law enforcement agencies should be required to promulgate equivalent policies identifying officials who may speak with the White House about such matters.

4. **Reaffirm that criminal laws apply to the president.**

   The president should endorse new legislation that the president, like every American, is subject to the rule of law. Congress should clarify and affirm that criminal laws apply to the president just as they apply to any person within the jurisdiction of the United States, even when a president is purporting to act in his or her official capacity. Additionally, legislation should clarify that a president's term of office does not count toward a statute of limitations for criminal charges against the president. This tolling of statutes of limitations would apply prospectively, consistent with the Ex Post Facto Clause, to (1) offenses committed before or during the president's term of office, and (2) any statute of limitations that has not yet expired at the time of the legislation's passage.

5. **Require disclosure of underlying investigatory materials to Congress for pardons in select circumstances.**

   In accordance with the president's commitment to a constitutional and transparent use of the pardon power, he should support legislation that requires the attorney general and the White House Counsel's Office to share underlying investigative materials and materials regarding the consideration of a pardon in three types of situations: when the president grants or offers to grant an individual a pardon for an offense against the U.S. that arises from (1) a charge of criminal contempt of court for violating others' constitutional rights in defiance of a court order to stop; (2) a charge of willfully making false statements to Congress in order to mislead or sabotage a congressional investigation, or (3) an investigation in which the president, or a relative of the president, is a target, subject, or witness.

6. **Permit statutory damage suits against federal officials who violate an individual's constitutional rights.**

   The president should support the enactment of a general statute providing for damages suits against federal officials who act unlawfully to violate an individual's constitutional rights—as exists for state and local officials. The absence of such a statute ensures that federal officials enjoy broad immunity even when acting unconstitutionally. Congress should provide for damages suits against federal officials, including the president and other White House staff, where plaintiffs can demonstrate a reasonable basis to believe that their constitutional rights have been violated by an individual acting under color of federal law.

Appendix to Chapter 3: Balance of Power

Appendix 3.1: Security Clearance Reviews

The president should support legislation to improve the objectivity of criteria applied in security clearance reviews. Model legislation would:

1. Impose guardrails to prevent discrimination or retaliation for First Amendment protected activity;
2. Ensure that there is a clear, fair, and efficient independent appeal process available for people who have been denied security clearances;
3. Limit the length of time that White House officials may operate with interim clearances;
4. Require notifications to the congressional intelligence committees and an independent appeals board any time the White House overrules a security clearance determination by career professionals; and
5. Require that the director of the White House personnel security office be a career professional with specific expertise in the security clearance process.

Chapter 4: Whistleblowers

Chapter Overview

For too long, efforts to silence those who speak uncomfortable truths have succeeded. More than one-third of federal workers recently said they were less likely to make whistleblowing disclosures because they fear retaliation that threatens their careers, livelihood and even their safety. The administration should show their support for those who speak out when they witness wrongdoing, reaffirming the value of whistleblower disclosures, strengthening government programs to protect employees who make such disclosures, and protecting whistleblowers. It can accomplish these objectives through better educating government employees of their rights, better vetting presidential appointees to ensure a commitment to whistleblowing, and improved efforts to ensure compliance by ensuring policies and practices are consistent with the law and adequately hold retaliators accountable.

Principle 9: Whistleblowers play a critical role in constitutional checks and balances and exposing executive branch abuses; therefore, they must have meaningful channels to make disclosures and solid protections from retaliation.

The Problem

Currently, whistleblowers are chilled from speaking truth to power across the federal government. Long before President Trump attacked both confidential and public whistleblowers (such as the Ukraine whistleblower and the Health and Human Services' Dr. Rick Bright), whistleblowers faced demotions and harassment. Agency officials are increasingly retaliating against whistleblowers with impunity, according to inspectors general, and a *Government Executive* survey indicates that the president's rhetoric during impeachment made more than one-third federal workers less likely to make whistleblowing disclosures.

While Congress has advanced whistleblower protections in the public and private sectors significantly over the past decade, the laws that protect whistleblowers from retaliation remain inadequate. Protections for national security whistleblowers, in both the intelligence community and the military, are particularly weak because of executive branch opposition to providing them meaningful protections.

The president must reverse this dangerous trend that keeps whistleblowers from exposing dangerous wrongdoing that can put us at risk. Whistleblowers must be valued for their role in quickly identifying issues for further investigation and potential corrective action. The administration must reenergize bipartisan support for truth-tellers and revitalize our whistleblowing programs, ensuring functional channels for reporting disclosures and encouraging their use by increasing protections from retaliation.

Recommendations for Action on Day One

1. **Appoint a Special Assistant to the president to review and suggest reforms to the federal whistleblowing system.**

   The president must appoint a Special Assistant to serve inside the Domestic Policy Council to address structural and cultural issues that plague whistleblowing systems across the federal government. This Special Assistant, who ideally has a deep understanding of our complex federal whistleblowing system, should review the structure of the federal government's internal whistleblowing systems and form recommendations to enhance these systems and repair cultural issues. Additionally, the Special Assistant should work to improve interagency coordination regarding whistleblower matters.

2. **Declare support for whistleblowers.**

   The administration must take immediate steps to change the executive branch's anti-whistleblower culture by communicating to all federal employees that they will be protected against retaliation and that they are expected to speak up when they witness wrongdoing. Federal employees must be made aware that one of the 14 General Principles from the Standards of Ethical Conduct for Executive Branch employees provides: "employees *shall* disclose waste, fraud, abuse, and corruption to appropriate authorities." (emphasis added).

3. **Nominate qualified individuals to lead the Merit Systems Protection Board who are dedicated to upholding the federal merit system.**

   The Merit System Protection Board (MSPB), a quasi-judicial administrative board that adjudicates federal workers' claims (e.g., whistleblowing retaliation cases), has not had a quorum for over three years. As a result, there was a backlog of over 2,500 cases in January of 2019. Its acting chief executive told Federal News Network in January 2020: "That 2,500 number does represent 2,500 cases where individuals are choosing to get in line to wait for a board to come. It's a large number, by far the largest backlog there's ever been at MSPB."[10] Appointing qualified individuals is imperative to dig out from under this backlog, alleviating a hardship thousands of federal workers currently face.

Recommendations for Short-term Action (First 100 Days)

1. **Plan a bipartisan Rose Garden ceremony honoring federal government whistleblowers.**

   Every year Senator Charles Grassley asks the president to honor federal whistleblowers on National Whistleblower Day through a Rose Garden ceremony.[11] No previous president has answered his request. Given Sen. Grassley's role as the Republican Co-Chairman of the Senate Whistleblower Protection Caucus, committing to plan such a ceremony would demonstrate support for whistleblowing as a government ideal. This is

[10] https://federalnewsnetwork.com/workforce/2020/01/lack-of-quorum-hits-3-year-mark-at-mspb-with-no-clear-end-in-sight/
[11] https://www.grassley.senate.gov/news/news-releases/grassley-urges-president-change-culture-bureaucracy-honoring-whistleblowers-rose

a first step to restoring the unity behind federal whistleblowers and contributing to a changed culture that supports them.

2. **Ensure agency non-disclosure agreements comply with whistleblower laws.**

   Many agencies require their workforce to sign non-disclosure agreements that do not comply with the anti-gag provisions found in federal whistleblower laws. These laws prohibit the government from placing restrictions on employees' free speech without making it clear those restrictions do not remove their rights to disclose wrongdoing. According to an April 2014 report by Senator Grassley, only one of fifteen agencies was able to document implementation of the anti-gag provisions (eight agencies only partially implemented the provisions, while two were unable to demonstrate even partial compliance). This trend continues in the current administration. These non-disclosure policies and agreements falsely chill whistleblowers from exercising their right and duty to report wrongdoing. Requiring general counsels to review all of their agency's policies and agreements for compliance would render federal workers more welcome to blow the whistle.

3. **Ensure agencies hold whistleblower retaliators to account.**

   The administration should make clear that whistleblower retaliation will not be tolerated. Recently departed Department of Defense (DoD) Inspector General Glenn Fine shared a concerning observation with the House Committee on Oversight and Reform: "Recently, we've seen a disturbing trend of the [DoD] disagreeing with the results of our investigation or not taking disciplinary action in whistleblower reprisal cases without adequate or persuasive explanations. Failure to take action sends a message to agency managers that reprisal will be tolerated and also to potential whistleblowers [that they] will not be protected." Agency heads must discipline whistleblower retaliators for violating whistleblowers' legal protections. The administration should either ensure that agencies do not tolerate retaliation (once substantiated by an inspector general or a similar agency) or require agencies to provide specific explanations as to why they disagree with Inspectors General's findings.

4. **Train political appointees on their subordinates' whistleblowing rights.**

   While Inspectors General and other entities train federal workers on their whistleblowing rights and responsibilities, political appointees are trained less frequently. Political appointees are likely to interact with whistleblowers, usually from a position of power. They should be trained on the whistleblowing processes and protections to ensure they do not infringe others' rights.

5. **The Presidential Personnel Office should ensure that all candidates for presidential appointment honor, understand, and value whistleblower protections.**

   When the Presidential Personnel Office evaluates candidates for presidential appointment, they should include a survey question asking whether or not that candidate will protect whistleblowers inside their workforce from retaliation. Only candidates who commit to whistleblower protection should be considered for appointment.

6. **Review the whistleblowing system for inspector general personnel.**

   The Council of the Inspectors General on Integrity and Efficiency's Integrity Committee receives whistleblowing disclosures made against inspectors general or their senior staff, but rarely conducts fulsome investigations into whistleblowers' concerns. The administration should review the processes by which the Committee investigates whistleblowing disclosures against Inspectors General, as well as their historical track record, in consultation with civil society. Additionally, Intelligence Community whistleblowers who are also inspector general personnel should be afforded the same protected channels as other Intelligence Community personnel under President Obama's Presidential Policy Directive-19; the Integrity Committee should not be their only outlet for relief.

7. **Expand Intelligence Community whistleblowers' right to counsel and attorney-client privilege.**

   Not all whistleblowers who participate in inspector general investigations, as either original sources or corroborating witnesses, are afforded counsel at all stages of their saga. Even when they are, their attorneys are occasionally barred from receiving the full record. The administration should declare that all complainants and witnesses in inspector general investigations are allowed to have counsel participate at all stages of investigations. Furthermore, all agencies should process a complainant's preferred counsel for access to any classified information relevant to the complaint, and the Director of National Intelligence in his or her capacity as Security Executive Agent should issue a directive establishing a uniform process for such counsel access. Additionally, an agency that conducts prepublication review of any attorney-client communications should treat such communications as privileged and not disseminate them beyond the office conducting the review, unless specifically directed by the general counsel of the agency on a document-by-document basis. The Security Executive Agent and the attorney general should issue public guidance for how to conduct prepublication review on privileged communications.

8. **Appoint qualified individuals to run the government's whistleblowing agencies.**

   Beyond the Merit System Protection Board (discussed above), the government requires qualified individuals to run the varying agencies, boards, and components that enforce whistleblower protections. As a start, the Secretary of Labor should promptly appoint a new Administrative Review Board that shares the administration's commitment to whistleblower protection. Workers outside the federal government rely on this Board to enforce their whistleblowing rights under the law, and the Administrative Review Board's decisions can be adopted by federal courts. An Administrative Review Board hostile to whistleblowers undermines the spirit of our whistleblower laws.

9. **Assess Internal Revenue Service compliance with 2019 Taxpayer First Act whistleblower provisions.**

The Internal Revenue Service's whistleblower program does not adequately work with whistleblowers and keep them apprised of updates in their cases, despite mandatory notification requirements[12] in the 2019 Taxpayer First Act. The administration should assess Internal Revenue Service compliance with these requirements.

Recommendations for Legislative Action

1. **Support cornerstone improvements to the Whistleblower Protection Act of 1989.**

   The administration should support legislation which establishes, among other reforms, jury trials for federal whistleblowers, designation of retaliatory investigations as prohibited personnel practices, and realistic standards to obtain temporary relief in cases that drag on for years.

2. **Intelligence Community whistleblower reform.**

   The administration should support legislation that establishes independent due process for Intelligence Community whistleblowers to enforce their whistleblowing protections, as well as a lack of prior restraint in making congressional disclosures, among other necessary reforms. The reforms contained in the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence's Fiscal Year 2021 Intelligence Authorization Acts should be a starting point, but further reform is necessary to ensure a strong, internal process that limits unauthorized disclosures of classified information.

[12] https://www.irs.gov/compliance/whistleblower-reforms-under-the-taxpayer-first-act

Chapter 5: Responsive Government

Chapter Overview

Federal regulations are critical elements to implementing public policy. They provide the protections the country needs to ensure that our food is healthy, our children's toys are safe, our air and water are clean, dangers in our workplaces are reduced or eliminated, and our economy functions efficiently and effectively. Despite the importance of these essential governmental functions, for at least a generation, many politicians and social commentators have taken aim at these protections.

The attack on regulation reached new heights over the past few years. President Trump has proudly promoted a massive attack on sensible safeguards. "We're here today to celebrate and expand our historic campaign to rescue American workers from job-killing regulations," he told an audience at the White House in July 2020. "Before I came into office, American workers were smothered by a merciless avalanche of wasteful and expensive and intrusive federal regulation… Nearly four years ago, we ended this regulatory assault on the American worker, and we launched the most dramatic regulatory relief campaign in American history by far."

Lost in these discussions is the benefits derived from such regulations. Instead, government has prioritized the costs—and mainly the costs to the regulated entities. Simply returning to the pre-Trump administration days is not an acceptable solution because even then the regulatory process was unfairly tilted in favor of regulated entities against consumers, workers, minorities, and others. The current health pandemic has demonstrated the importance of government regulation that puts people first. These recommendations present a reboot, a new way to view regulation as a way to protect the most vulnerable in our society and to pursue the common good.

Principle 10: Existing deregulatory maneuvers, which have undermined public health, safety, environment, equity, civil rights, fairness, justice and democracy should be repealed.

Recommendations for Action on Day One

1. **Rescind Executive Orders Undermining Important Public Protections**

   Rescind the deregulatory executive orders (and accompanying implementation memos) that undermine agencies' ability to fulfill their public-service missions. These orders include Executive Orders 13771 (1-in, 2-out), 13777 (regulatory reform officers in each agency and deregulatory task forces), 13783 (promoting fossil fuels), 13891 (discouraging agency guidance), 13892 (standards for enforcement actions), and 13924 (suggesting waivers of regulatory requirements made during the COVID-19 pandemic should be made permanent).

2. **Delay implementation of rules not yet in effect.**

   The administration should actively use all available tools to delay implementation of rules that have been finalized but are not yet in effect. First, following recent common practice during administration transitions, it should issue a memorandum directing all agencies to delay implementation of final rules not yet in effect for 60 days, and, with limited exception, impose a moratorium on rules in the regulatory pipeline. Second, it should direct agencies to issue new interim final rules or to propose new rules to delay implementation of problematic rules, to give itself time to issue new rules to rescind or improve the underlying substantive rules. Third, the administration should make liberal use of Section 705 of the Administrative Procedure Act, which permits an agency to delay implementation of a rule that is being reviewed by a court.

3. **Begin rulemakings to reverse key, problematic rules issued during the past four years and, as a parallel process, establish a Task Force to identify regulations that need to be redone.**

   During the transition, identify regulations issued in the past four years that should be prioritized for reversal and commence rulemakings at the inception of the new administration. Work on these rules should not be delayed or deferred pending the Task Force process described immediately below.

   At the outset of the new administration, issue a Presidential Directive creating an interagency task force to identify rules issued in the past four years that fall into two distinct but overlapping areas that should be prioritized for new rulemakings: (1) rulemakings that were “tainted” or “corrupt” due to conflicts of interest, willful violations of the rulemaking process, suppression of science or undue influence by corporate interests and (2) regulatory changes that harmed consumers, workers, and the environment, along with rules that disproportionately targeted and hurt women, minorities, LGBTQ communities, and other vulnerable populations such as children, the poor, and the elderly.

   The Task Force should solicit comments from the public on rules that fall into either category. The Task Force should submit its prioritized list to the president no later than four months after being formed. The president should provide a timeframe for agency heads to undertake new prioritized rulemakings.

Principle 11: The regulatory process should be rebalanced to advance health, safety, justice, democracy and equity values and priorities and to ensure appropriate consideration is given to non-monetary benefits.

Recommendations for Action on Day One

1. **Avoid the false tradeoff between health and the economy.**

   The next administration should reduce the outsized and harmful role that economic cost-benefit analysis currently plays in the rulemaking process. One important step is for the president and administration officials to avoid using language or adopting policies that reinforce the false premise of a trade-off between protecting the public through new regulations and promoting economic growth. The COVID-19 pandemic underscores both the interconnectedness and complementary nature of public health and a strong economy, and the dangers in presenting them as competing values.

   The president should direct the director of the Office of Management and Budget to inform agency heads that they should be guided by the following principles and priorities and to develop a new regulatory executive order reflecting these principles:

   a. Agencies should promulgate regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as the need to ensure market rules adequately protect or improve the health and safety of the public, the environment, or the well-being of the American people.

   b. In deciding whether and how to regulate, agencies should assess statutory requirements; where these requirements designate criteria for regulatory decision-making, they must take precedence over any requirements established by the administration.[13]

   c. As agencies consider statutory standards or cost-effective approaches to rulemakings, they must analyze distributive impacts of such approaches and prioritize those approaches that have beneficial effect on equity and those the regulation is intended to benefit.

   d. Incentives to regulatory entities that include compliance flexibility should only be considered upon certifying that workers and the public are protected to the maximum extent permitted by law.

   e. Agencies must have plans for strong, consistent and predictable enforcement and compliance.

[13] See: https://www.politico.com/news/2020/10/02/trump-white-house-coronavirus-positive-425229ask)

Recommendations for Short-term Action (First 100 Days)

1. **Regulatory review executive orders.** The administration should issue a new executive order to update Executive Orders 13563 (issued Jan. 18, 2011) and 12866 (issued Sept. 30, 1993) that have guided regulatory review activities. The updated executive order should address more than the regulatory review process:

    a. Regulatory decisions should be timely and responsive to public need. It takes far too long to complete most rules. Timely action is a benefit to public and business interests. Government must actively assess public needs, identify where regulatory gaps exist, and act to address such gaps. Regulatory decisions should be based on the best available information, balanced with the need to act in a timely manner. Precautionary considerations are an appropriate basis for regulatory action. That is, regulators may appropriately err on the side of caution in assessing scientific and other uncertainties.

    b. The regulatory process must be transparent and improve public participation. Too many important regulatory decisions are made behind closed doors. Openness, from pre-rulemaking to publication, is essential to meaningful accountability. The Internet age affords new ways of fostering meaningful public participation.

    c. Regulatory decisions should be based on well informed, flexible decision making. The regulatory process under the Trump administration consists of unprecedented levels of suppressing, altering, and discrediting the information used to support regulatory decisions. There needs to be a premium on placing authority within regulatory agencies to decide what information is critical to effective regulations.

    d. Authority to make decisions about regulations should reflect the statutory delegation granted by Congress. Federal agencies are given the responsibility to implement legislation and have the substantive expertise necessary to develop effective standards. That expertise should be recognized and provide the foundation for sound regulatory decisions.

    e. A robust and equity-focused approach to analyzing costs and benefits should be adopted.[14]

    Whether or not the administration determines that it wishes to maintain cost-benefit analysis as a feature of its regulatory decision making, the new executive order should clarify:

[14] Cost-benefit analysis has been required by presidential executive orders, and OMB Circular A-4 (Regulatory Analysis) provides guidance to how agencies are to conduct such analysis. Those developing these recommendations had differing views on the utility of cost-benefit analysis, particularly for social regulations, and could not reach consensus on its use for regulatory decision-making.

a. Cost-benefit analyses must properly weight benefits and costs, and not overemphasize costs. No government document or public statement should reference the cost of regulation without raising the benefits derived from such regulation.

b. Cost-benefit analyses must take into account co-benefits (benefits from regulatory action distinct from the explicit objective of the action).

c. Cost-benefit analyses must include non-monetized considerations such as fairness, distributional equity, community protection, and redressing racial and other historic discriminatory actions.

d. Cost-benefit analyses should squarely address where costs and benefits are not precisely quantifiable, including the nature, scope and importance of such non-quantifiable costs and benefits.

e. Cost-benefit analyses should include an explicit statement about who benefits and who bears the costs.

f. Information and assumptions used in cost-benefit analysis should be transparent and allow for the analysis to be replicated. The analysis should include statements of uncertainty about the assumptions.

Recommendations for Legislative Action

1. **No judicially imposed cost-benefit analysis.**

   Congress should adopt legislation clarifying that agency decisions should be made based on criteria stated in their organic statutes and that judicial review should apply the same criteria. Judges should not impose cost-benefit standards where not required by statute.

Principle 12: Centralized review of regulatory action should be revamped to promote timely rulemaking to strengthen public protections.[15]

The president has an appropriate interest in ensuring that agencies proactively carry out his policy priorities and that agency actions are coordinated. The centralized review of regulatory action should be undertaken exclusively by the Office of Information and Regulatory Affairs and should be geared to affirmatively advancing the president's priorities. With due regard to ensuring that agency action is supported by evidence and defensible from legal challenge, OIRA must not impose needless delays and impediments to adopting strong public protections.

[15] Centralized regulatory review has been debated for at least 40 years. Those developing these recommendations had differing views on centralized regulatory review and did not have a consensus on the subject. Accordingly, the committee agreed to recommend changes to the current review process.

Recommendations for Short-term Action (First 100 Days)

1. **Executive Order: A New Role for OIRA.**

   The relationship between the Office of Information and Regulatory Affairs and regulatory agencies should be refashioned to be synergistic rather than oppositional. Regulatory decisions should presumptively come from the expert agencies, and the Office of Information and Regulatory Affairs should take care not to mandate one-size-fits-all approaches to promulgating rules. Together, OIRA and the agencies should ensure respect for statutory mandates and embrace the president's affirmative agenda to adopt a robust set of public protections—to address both immediate needs, such as responding to Covid-19, and long-term, systemic change, such as advancing racial justice.

   With this new approach, the new role of the Office of Information and Regulatory Affairs should:

   a. Hold agencies accountable for their priorities and regulatory actions and coordinate those actions among federal agencies. Taking this approach, the Office of Information and Regulatory Affairs should communicate to the agencies that the Unified Agenda is a serious planning tool that can be used to enhance policy goals and hold agencies accountable. The Agenda can become a tool for achieving policy consistency government-wide and spotting interagency policy conflicts before significant resources are spent on individual rules. A mechanism like the Regulatory Working Group may serve to resolve interagency conflicts, and the Office of Information and Regulatory Affairs could facilitate that dialog among agencies and clarify presidential priorities. The Office of Information and Regulatory Affairs should use "prompt letters" when an agency is falling behind timetables identified in the Agenda or failing to act nimbly in response to changed circumstances. The Office of Information and Regulatory Affairs should also help agencies utilize fully the range of regulatory authorities they have, and help them meet agency objectives through novel exercise of existing authority.

   b. Help identify regulatory gaps and inconsistencies with the president's policy priorities. When the president wishes an agency to act, particularly in addressing regulatory gaps, the Office of Information and Regulatory Affairs should communicate this message to the agency head through a "prompt letter." It should be the agency head's responsibility to implement the president's priorities. This should not be construed as a recommendation for the Office of Information and Regulatory Affairs to engage in approval or disapproval of agency regulatory plans.

   c. Help to achieve consistency in regulations in policy areas that cut across agencies, such as food safety. Having identified such a cross-cutting area through the Unified Agenda as one in which multiple agencies are taking action, the Office of Information and Regulatory Affairs should ensure that regulatory

outcomes are consistent with each other. This should not be construed as a recommendation for the Office of Information and Regulatory Affairs to review and approve all individual rules proposed but rather as a responsibility to coordinate regulatory activities before agencies have expended time and resources developing regulations that conflict with other agency actions.

d. Facilitate interagency comments on significant proposed and final rules. The interagency review process plays a critical role in ensuring rules benefit from the full range of expertise in the executive branch. However, this interagency comment process should not be an excuse for delaying regulatory decisions, especially if the Office of Information and Regulatory Affairs has successfully coordinated agencies at the planning stage. Nor should the interagency comment process be an excuse for delaying regulations through de facto vetoes over the types and quality of the underlying information.

e. Help agencies address a range of other information resources management issues. The Office of Information and Regulatory Affairs was created by the Paperwork Reduction Act which has a statutory requirement to address information resources management needs of agencies, such as helping with the use of interactive technologies to improve agency dissemination practices as required under the Paperwork Reduction Act. These skills may also help agencies in finding new and better ways of engaging the public in rulemakings.

f. Expedite its review process. The new executive order should establish that OIRA review should emphasize final rules that meet the threshold of significance or are otherwise designated as benefitting from interagency review. Office of Information and Regulatory Affairs review should aim to be completed within 45 days.

Principle 13: Citizens should be empowered to participate to make regulations work, and undue influence of regulated entities in rulemakings should be ended.

Recommendations for Short-term Action (First 100 Days)

1. **Create the Office of the Public Ombudsman.**

   The Public Ombudsman would be charged with advancing the public interest in the rulemaking process. The Public Ombudsman would monitor rulemakings across the government to make sure that the public and public interest organizations were as involved in rulemakings as affected industries. The Public Ombudsman would be empowered to file their own comments, particularly on procedural matters and the failure to tailor rulemakings to promote public engagement or reflect the interests of those who are traditionally underrepresented. The Public Ombudsman would be charged with paying particular attention to the interests of communities of color and other traditionally

under-represented communities, in order to ensure their active involvement in rulemakings as well as represent their interests in rulemaking proceedings.

2. **End negotiated rulemaking.**

   Except as required by statute, adopt a policy to end negotiated rulemaking, which invites industry to negotiate the rules they must follow, empowers corporations to delay the rulemaking process and excludes the general public.

Recommendations for Legislative Action

1. **Authorize deadline lawsuits.**

   Environmental statutes such as the Clean Air Act authorize citizen suits for agency violations of the underlying statute. Congress should enact a general statutory provision that establishes a prospective legal claim, in the name of the government, for public interest organizations to sue agencies for failure to issue prescribed rules within one year or the statutory specified period.

2. **End the Small Business Regulatory Enforcement Fairness Act (SBREFA) review process.**

   Practical experience shows that this process does not aid small business, but in fact allows powerful trade groups to get a sneak peek at certain regulations and weaken or delay them before they are ever made public.

Principle 14: When rules are challenged, agency expertise should be given deference

Recommendations for Legislative Action

1. **Codify Chevron.**

   Congress should codify the precedent of judicial deference to agency expertise in decision-making established by the U.S. Supreme Court in Chevron v. NRDC. Under Chevron, federal courts follow a two-step process for reviewing an agency's interpretation of a statute. First, the court assesses whether a statute provides clearly stated Congressional intent about an issue. Second, if the statute is silent or ambiguous, courts are to defer to the agency's interpretation, so long as it is reasonable.

   Too often, regulatory entities are able to defeat in court carefully crafted agency protections, as judges rely on information from regulated interests or even their own knowledge over the more expert opinion of agencies. By contrast, Chevron and the doctrine of agency deference elevates agency expertise.

Principle 15: Regulatory enforcement and accountability for regulatory violations should be strengthened.

Recommendations for Short-term Action (First 100 Days)

1. **Bolster agency regulatory enforcement budgets:** In its first budget, the new administration should bolster each agency's regulatory enforcement budget by at least 50 percent and it should specify the dollar amount available for each agencies' regulatory enforcement division. Then the administration should work with Congress to secure the budgetary increases needed to make up for government-wide degradation of enforcement capacity.
2. **Government must do a better job of encouraging compliance with existing regulations and fairly enforcing them.** Agencies have too often been discouraged or prevented from using their compliance and enforcement tools to achieve effective compliance. A Presidential Memorandum should establish that regulatory enforcement is a priority, including to advance racial justice and equity considerations and to prevent climate catastrophe. In order to strengthen public protections and provide regulated communities with fair and predictable compliance approaches, agencies must be enabled to more effectively meet both current and new demands and work to improve regulatory compliance.
3. **Company disclosure of regulatory violations:** The Securities and Exchange Commission should adopt a rule requiring corporations to disclose publicly, on their websites, and in investor filings regulatory violations and fines paid to resolve those violations over the previous 10 years. These violations are of material interest to investors and the public generally.
4. **Corporate crime and wrongdoing database**: The Department of Justice should establish a publicly accessible and searchable database compiling crimes, regulatory violations and settlements entered into by corporations. This information is relevant for sentencing for future violations, procurement decisions, emerging trends in corporate wrongdoing that may require the attention of policy makers, and to enable the public to encourage corporate responsibility.

Recommendations for Legislative Action

1. **Criminalize corporate action that recklessly endangers the public:** Congress should pass the Hide No Harm Act to criminalize actions by corporations and their executives that recklessly endanger the public or conceal product defects or workplace hazards that imminently threaten American lives or serious harm.

2. **Citizen enforcement of regulatory protections:** Congress should adopt legislation that empowers individuals or organizations to bring enforcement actions, either as victims of wrongdoing or as private attorneys general, against corporations that are violating regulatory safeguards. Such private rights of action have proven workable and vital to

environmental protection and disability rights, to name two important examples. Where such private rights do not exist, corporations may ignore regulatory standards with little consequence.

Chapter 6: Pandemic Preparedness and Response

Chapter Overview

The coronavirus pandemic has tested the government's ability to respond to a global health crisis while continuing to uphold the transparency, accountability and oversight principles at the heart of our democracy. The response to the pandemic—which evidence shows has been driven repeatedly by political considerations rather than the best interest of the country—has been plagued by misinformation and spin, while the devastating health and economic impact has been borne disproportionately by people of color, low-wage workers and other vulnerable populations.

To begin to restore trust in the government's response, measures already taken by government actors as well as the extraordinary recovery effort that will be needed going forward will need to be transparent, fact-based and equitable. Crucial interventions from vaccine creation to disease surveillance mechanisms must be informed by medical, scientific and health experts within the government. Those experts should have the right to communicate research findings and expert opinions directly to the public. In addition, mechanisms should be in place that limit waste and ensure resources, from stimulus funds to protective equipment, are properly and fairly disseminated. Policy makers and the public must have access to information that contributes to understanding how and why the pandemic had the impact it had on the country as a whole, and to specific populations, in order to recover from the current crisis and to ensure we are better prepared for a future catastrophic event.

Principle 16: In order to protect the health and wellbeing of the public during and after the coronavirus pandemic, government decisions must be transparent and informed by science, and expert opinion must be shared with the public and not be constrained by political interference, fear of retribution or suppression.

The Problem

Efforts to undermine scientific integrity across the government have compromised policymakers' ability to make informed decisions in response to the coronavirus pandemic and the public's ability to trust any subsequent government-issued guidance. The administration prevented experts from speaking freely or directly to the public from the outset of the pandemic, censoring experts' statements and elevating ideological beliefs over scientific evidence. At the same time, the administration allowed political appointees with limited expertise to lead an unaccountable shadow pandemic response team that fueled public uncertainty. Several months after the World Health Organization declared the pandemic, the United States government's failure to foster

independent science, transparent decision making, scientific free speech or statutory compliance resulted in devastating consequences for the public.

Recommendations for Action on Day One

1. **Ensure that major policy decisions related to the coronavirus pandemic are informed by medical, scientific and health experts within the government, including the Department of Health and Human Services, Food and Drug Administration, and the Centers for Disease Control and Prevention.**

   The White House and federal agencies must develop internal policies that ensure that experts from across relevant agencies can access meetings and contribute to materials such as reports, plans or recommendations.

2. **Ensure scientists have the right to communicate research findings and expert opinions directly to the public, including the media.**

   The public needs to hear directly from experts during public health crises as severe as the coronavirus pandemic. Public-facing officials, including the president, must commit to the principles of the Scientific Integrity Act and follow the recommendations in the Centers for Disease Control and Prevention's crisis and emergency communication guidebook. Scientific integrity policy and practices at the Centers for Disease Control and Prevention and other federal agencies must be strengthened to ensure experts can freely communicate up-to-date science that serves the public interest. No federal official should block government experts from communicating with the public, including the press, during the remainder of the pandemic or afterward.

3. **Create a COVID-19 taskforce or advisory committee based at the Centers for Disease Control and Prevention.**

   The advisory committee should bring together a collection of experts to oversee a coordinated federal response to the pandemic. The committee should provide oversight of vaccine and treatment developments and dissemination of vaccines to communities most in need by supporting research into testing, treatments and vaccines; ensuring they go through appropriate approval processes; and ensuring that production and distribution are efficient and equitable. The committee should also provide information—including standards for data collection, guidance on acquiring medical supplies, best practices for testing and contact tracing, and analysis of the latest evidence on measures to prevent disease transmission—to the public and state and local governments. All communication should be tailored to the needs of the diverse populations affected, including those that prefer to receive information in a language other than English.

4. **Affirm to international partners that the United States is committed to collaborating on pandemic response.**

   The United States must join in international coordination and information sharing efforts to contain the virus and mitigate the economic and social impact of the disease. International efforts should include expanded scientific and medical collaboration; providing surplus personal protective equipment to countries lacking supplies; supporting the warehousing of preparedness supplies for a future pandemic; strengthening the Global Outbreak Alert and Response Network; participating in the Global Health Security

Agenda; and rejoining World Health Organization efforts (including the COVID-19 Technology Access Pool) to combat pandemics and live up to our founding commitments to the organization.

Recommendations for Short-term Action (First 100 Days)

1. **Direct agencies and the White House Office of Science and Technology Policy to strengthen scientific integrity policies and the infrastructure to enforce them, and improve the accessibility and visibility of key coronavirus information.**

    a. The Office of Science and Technology Policy should create an assistant director for scientific integrity with sufficient authority to make scientific integrity a priority for the office.

    b. The Office of Science and Technology Policy should direct relevant agency heads to appoint (or assign, where the position already exists) an official to oversee scientific integrity; this official should be insulated from political appointees and report to the agency's highest-ranking civil servant. This official should develop an agreement with the agency's inspector general to address misconduct and should work with the Office of Science and Technology Policy on cross-government coordination of scientific integrity practices.

    c. The Office of Science and Technology Policy should direct the designated federal official to review and, as needed, improve existing scientific integrity policies to ensure they include provisions that:

        i. Protect the right of scientists to communicate with the public and lawmakers about the pandemic, free from political interference or vetting, and to review content that will be released publicly in their names or that significantly relies on their work.

        ii. Explicitly prohibit retaliation against government employees who raise concerns about scientific integrity or offer scientific opinions related to COVID-19 that differ from those of the administration or their agency.

        iii. Provide a clear, detailed policy and procedure for addressing allegations of scientific integrity violations, including appeal rights, and for publicly reporting their resolution.

        iv. Encourage the agency to conduct training on scientific integrity for all federal employees who use science or manage science programs to a significant degree in their jobs.

2. **Restore protections for government scientists, solidify safeguards for whistleblowers, and ensure that work environments across federal agencies support and celebrate scientists' critical efforts to combat and control COVID-19.**

    a. Direct the White House Office of Management and Budget not to interfere with, filter or alter scientific findings.

    b. Issue a memorandum instructing agencies to allocate grant program funding based on evaluations from experts with relevant qualifications, in response to

criteria that are publicly available, to safeguard against the political vetting of research grants.

c. Issue an executive order committing to filling open science positions in accordance with the limits set forth by the Federal Vacancies Reform Act and requiring all science agencies to have chief science officers. Analogous to evaluation officers required by the Foundations for Evidence-Based Policymaking Act, a chief science officer would oversee strategic coordination of agency science that informs decisions, as well as the implementation of policies affecting federal scientists. The executive order should note that existing offices of the chief scientist satisfy this requirement.

d. Ensure that each agency's budget request includes funding for enough full-time equivalent positions to effectively conduct work related to the pandemic.

e. Roll back rules and guidance that inappropriately restrict the types of science that can be used in policymaking or agency scientific work, including current guidance and expected rules at the Department of Interior and Environmental Protection Agency that would significantly limit the research and data that the Environmental Protection Agency can use to make informed policy decisions under major public health and environmental laws, including the Clean Air Act, Safe Drinking Water Act, and Toxic Substances Control Act, all of which affect environmental factors that can increase risk for severe cases of COVID-19. See Appendix 6.1.

3. **Ensure the proper staffing, functioning and transparency of scientific advisory committees shaping government response to the pandemic.**

The president should rescind E.O. 13875 and issue a new executive order encouraging agencies to reestablish necessary federal advisory committees pursuant to the pandemic. The new order should include steps to:

a. Publish clear criteria for nominating and selecting qualified committee members, with a clear prohibition of veto power by current members over candidates. These criteria should include measures to identify and make public the process used for committee formation, including how agencies screen members and assess committees for balance.

b. Make rosters public after selecting the first round of candidates for membership, and request public comment.

c. Publish basic information on each committee member on a public government website (e.g., integrity.gov), including information on qualifications, background, employers, and funding sources for at least the previous five years, along with any conflict of interest waivers granted.

d. Instruct agencies that when they allow a federal advisory committee to expire, they should archive the committee's website and all related documents so that the information is still publicly accessible.

e. Appoint committee members as special government employees and vet members for financial conflicts of interest. Committee members should recuse themselves from scientific discussions for which they have a direct conflict of

interest, and those recusals should be announced to the public at the start of meetings and be included on meeting notes, reports, and other documents.

f. Ensure scientists who have taken public positions on issues or received government funding for scientific work are not a priori excluded from advisory committees.

4. **Disclose executive branch decisions in response to the pandemic.**

   The president should publicly disclose all executive branch guidance or interpretations of legal aspects of the pandemic or pandemic response. The White House and Department of Justice must disavow censorship power and commit to not using the president's purported censorship power to justify distorting or suppressing research important for public health. The president and the attorney general should specifically instruct the Office of Legal Counsel and any relevant agency General Counsel that the executive branch expressly waives any claim of privilege over any records documenting guidance or interpretations of legal aspects of the pandemic or pandemic response, and that no legal office in the executive branch may assert or defend a claim of privilege in such records.

Recommendations for Long-term Action

1. **Call for review by inspectors general (or the Government Accountability Office) of key agencies leading pandemic response.**

   The president should take steps to ensure ongoing reviews, in accordance with the Inspector General Act, are continued in the event the president determines to replace inspector general leadership posts.

2. **Call on the Department of Justice's Office of Legal Counsel to proactively consider potential constitutional or other challenges to restrictions on individuals or operations to combat the pandemic.**

   The president or attorney general should tailor proposals for responses to best withstand such challenges, and to pass constitutional and other legal muster.

Recommendations for Legislative Action

1. **Call for the passage of the Scientific Integrity Act and fully and aggressively support its implementation.**

   The Scientific Integrity Act would ensure scientists can carry out their research—and communicate it with the public—without fear of political pressure or retaliation. It would protect the ability of scientists to share their expertise with reporters, in scientific journals, and at scientific conferences. The president should help ensure scientists can conduct research regardless of whether their findings align with political preferences and publicly communicate their findings and expert opinions.

2. **Support legislation to restore protections for government scientists, solidify safeguards for whistleblowers, and ensure that work environments across federal agencies support and celebrate scientists' critical efforts to combat and control COVID-19**.

The legislation should codify rules preventing the White House Office of Management and Budget not to interfere with, filter or alter scientific findings.

Principle 17: The consequences of the pandemic should not be disproportionately worse for the economically vulnerable, communities of color, and other under-represented communities.

The Problem

Government officials referred to the novel coronavirus as the great equalizer at the onset of the pandemic, but evidence shows the disparate impact of COVID-19 on vulnerable communities across the country. Black, Native American and Latino populations have all suffered higher mortality rates when compared to their white counterparts. Black business owners are more likely to be denied coronavirus aid from the federal government than their white peers. Elderly people across all races and ethnicities are more vulnerable to COVID-19 than younger populations. Without reliable, disaggregated data that captures crucial information such as race, ethnicity, age and gender, communities of color and underserved populations will not have the resources to respond to, survive, and ultimately recover from the pandemic.

Recommendations for Short-term Action (First 100 Days)

1. **Address differing needs of communities affected by the coronavirus pandemic**.

   The pandemic has affected frontline workers especially hard, with worse outcomes for Black, Hispanic and Native American communities, among others. As a result, impacted communities across the country require varying levels of government support to withstand and ultimately recover from the pandemic. The president should address the social determinants (i.e. where individuals are born, grow, live, work and age) that alter the impact of the pandemic on vulnerable communities. The president also should call for response efforts to address not only immediate needs but also root problems to long-standing inequities, including environmental, social and economic factors, so that all communities are able to sustainably adopt and benefit from public health guidance that can mitigate the effect of the pandemic.

2. **Make publicly available information on both the distribution of government-supported contact tracers and the administration of a coronavirus vaccine (once available).**

   This data should capture the sociodemographic characteristics of communities where these resources are distributed to encourage equitable distribution.

Recommendations for Long-term Action

1. **Improve preparedness to protect vulnerable populations**.

   The president should require greater preparedness standards to protect residents and workers in long-term care facilities, senior care facilities, prisons, and other environments particularly vulnerable to the spread of coronavirus.

Principle 18: Access to Information, including around government supplies, research, spending, and health data related to COVID-19 will result in better preparedness for future pandemic or other crises that impact the health of the population.

The Problem

When the novel coronavirus began threatening communities across the United States, the administration failed to provide clear or accurate information about its severity or about pandemic response plans or capabilities. The administration improperly classified COVID-19 meetings, dangerously limiting the public's access to critical public health information. When demand for medical supplies and personal protective equipment was at its peak, the government did not have clear or readily available information about strategic national stockpile supplies or how states could acquire them. Limited transparency around pandemic-related supplies, research, spending and health data has endangered the physical health of communities across the country leaving the public unable to make informed decisions about how to protect their health. Similarly, the distribution of funds under the economic stimulus package suffered from too few accountability mechanisms, leaving the program ripe for waste and limiting the publics' understanding of the efficacy of the economic intervention.

More recent claims that the administration is moving "warp speed" to develop safe and effective COVID-19 vaccines and treatments leave the public unsure if they will be safe. Having repeatedly ignored and buried evidence of the impact of COVID-19 while inappropriately endorsing ineffective treatments like hydroxychloroquine actions that attempted to create political gain but offered minimal added protection to the public against the coronavirus. Without transparency around supplies, research, spending or health data, the public will not have reason to support further economic relief efforts or trust that government recommended vaccines and treatments are in fact safe—a scenario that could extend the pandemic and its devastating impact even longer.

Recommendations for Action on Day One

1. **Declassify COVID-19 information and commit to keeping future meetings and documents related to the pandemic response unclassified.**

   Records of meetings, stockpile formularies, and policy and legal rationales used to distribute stockpile supplies should be declassified. Unnecessary classification of meetings addressing the pandemic prevented key experts from participating in conversations or receiving materials regarding health and safety information. Inappropriately classifying these discussions or documents hinders the government's ability to respond effectively and get key information to the public.

2. **Launch a commission to understand and learn from the United States' pandemic response.** The commission should be in the style of the National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission, and should review the chain of command when dealing with a public health emergency; the fastest ways to leverage resources and scale up response; the capacity of the nation's health system; and the spread of disinformation. The commission should put forward recommendations to improve the country's ability to respond to the next pandemic.

3. **Call for the Food and Drug Administration to release key data, including data on medications and vaccines related to the COVID-19 pandemic.**

   The Food and Drug Administration should release information on who it is funding and what the funding is for. Drug manufacturing companies should provide details on their supply chains, including where drugs are coming from, where there is a shortage, and how actual or potential shortages can be addressed. Federally funded science conducted by companies should be publicly available to the maximum extent possible. That includes study designs; summary data statistics; results (both positive and negative) of experiments and trials; and proposed next steps.

   For any drugs or vaccines for which an emergency use authorization request is approved by the Food and Drug Administration, that agency should release all research data supporting the request at the time of approval (while protecting patient privacy). Likewise, when the Food and Drug Administration approves a drug or vaccine for COVID-19, the agency should provide an explanation of the evidence (including all data, when not infringing research participant confidentiality) on which it based decisions regarding the safety and efficacy of the products. Likewise, when the Food and Drug Administration approves a drug or vaccine for COVID-19, the agency must immediately release at the time of approval all data regarding the safety and efficacy of the products.

   The Food and Drug Administration should disclose the basis of medication shortages due to the coronavirus pandemic, which could include any shortage of ingredients.

4. **Require the Department of Health and Human Services to make publicly available all contracts, funding arrangements, and other agreements related to COVID-19 treatments and vaccines.**

Recommendations for Short-term Action (First 100 Days)

1. **Extend data collection on the pandemic's economic impact.**

   The president should direct the U.S. Census Bureau to continue to extend the Household Pulse Survey and expand its outreach to include offline surveying, to avoid potentially skewing the survey's results to only populations with internet access.

2. **Direct agencies to improve tracking of pandemic-related spending through USAspending.gov.**

   These improvements should:

   a. Establish a search filter that would allow users to more easily find pandemic awards.

   b. Ensure that agencies report direct assistance and loans to individuals, which should be aggregated to protect privacy in the smallest geographic areas possible, such as zip codes.

   c. Ensure that sub-award data from state agencies, contractors, and lenders receiving loan guarantees gets fully reported.

   d. Audit for data quality of award data and recipient reported data.

3. **Call for quarterly reporting from key agencies and departments working to address the pandemic and its economic impact.**

   The president should require the Office of Management and Budget and the Pandemic Response Accountability Committee to establish a process for collecting quarterly reporting from recipients of large awards, as mandated under the *CARES Act*.

4. **Direct agencies to establish standard procedures for the collection, disclosure, and maintenance of data related to the pandemic.**

   Agencies should be required to:

   a. Follow uniform disease monitoring and reporting requirements that enable identification of health disparities by multiple characteristics (including age, gender, race, ethnicity, sexual orientation, gender identity, disability status, and poverty level), and ensure that data collected by the Centers for Disease Control are made publicly available in a timely manner.

   b. Make research and data that are digitally formatted and in the public domain available online, non-proprietary, and freely accessible to the general public, to the extent permitted by law and with protections for individuals' privacy, with only the minimal necessary restrictions upon their use.

   c. Provide full public access to government-supported publications' metadata (such as unique, persistent ID; author(s) names with associated persistent identifier(s); title and abstract of article or paper; license information; journal or serial title with identifier (ISSN); and name(s) of funding agency or agencies with award numbers) without charge upon first publication.

d. Encourage technical and legal interoperability to facilitate international sharing of government-supported scientific data, using compatible, publicly available, and open source formats.

e. Collect data from settings such as long-term care facilities, correctional facilities, military bases and ships, and workplaces that have large numbers of cases, to ensure that areas of high transmission can be identified and addressed.

f. Require Occupational Safety and Health Administration to report on the number and type of complaints related to insufficient safeguards against coronavirus transmission, and on the agency's response to the complaints.

5. **Direct agencies to transparently manage coronavirus-related data.**

   The president should issue a memorandum requiring federal agencies to ensure management of scientific data throughout its lifecycle, to include compliance with Federal Records Act requirements related to records scheduling and preservation, and ensure scientific data is sufficiently described to enable its use. The memorandum should establish certain standards and requirements, including:

   a. Reminding agencies of their statutory obligation to properly schedule and preserve government research and data, and provide advance public notice before removing or altering significant information products.

   b. Instructing agencies to provide public access to all relevant scientific data to the greatest extent possible without compromising privacy, and creating an enforcement mechanism to ensure compliance with public access requirements. This should include remedies for noncompliance that provide for disclosure of the improperly withheld information and restoration of improperly removed information.

6. **Require agencies to release key COVID-19 research and development findings.**

   Agencies should disclose and make publicly available research, data aggregated sufficiently to preserve human participants' privacy, and know-how for COVID-19 medical countermeasures developed with federal funding, including sharing with the WHO's COVID-19 technology access pool.

7. **Ensure federal funding opportunities for COVID-19 initiatives or research follow reporting requirements**.

   All federal funding opportunities for clinical trials must register and provide result reporting at ClinicalTrials.gov, as is already required of National Institute of Health grantees.

8. **Ensure government loans awarded in response to the pandemic are properly reported on and tracked.**

   The president should call for specific reporting on Federal Reserve lending facilities. This reporting should apply to entities that receive the funds and capture what they are reporting out for staff on payroll, number of people employed, wages and benefits. The president should also direct the Federal Reserve to ensure that the loan award data that

the Federal Reserve discloses closely matches the data structure and specificity of award data released through USASpending.gov.

9. **Support ethical data collection for technology-assisted contact tracing of COVID-19 transmission.**

   The executive branch should carry out privacy impact assessments and publicly disclose how tracing measures will protect privacy. The president should outline a base set of digital contact tracing technology features that protect privacy, with layers of additional capabilities that users can choose to activate.

Recommendations for Long-term Action

1. **Establish fixed standards for when to invoke the Defense Production Act to mitigate shortages triggered by the pandemic.**

   Standards should address use for both preparedness and distribution of health resources. The president should also create a mechanism for real-time public dissemination of Defense Production Act orders.

2. **Establish an oversight entity for the strategic national stockpile.**

   This entity should independently assess the stockpile and report annually to Congress on the stockpile's status and maintenance.

3. **Improve coordination between agencies responding to the pandemic.**

   The president should establish a mechanism to coordinate across agencies on global defense and biodefense topics to ensure that agency leaders are communicating with each other about potential and current threats. This mechanism should include, but not be housed at, the National Security Council. Technical leadership and coordination should be vested in the CDC. The White House should assure agencies are held accountable for fully cooperating on technical matters and policy as well as coordination with states and tribes.

Recommendations for Legislative Action

1. **Call on Congress to reestablish and properly fund an Office of Technology Assessment to ensure Congress has access to technical experts to advise on the government's response to the pandemic.**

   The Office of Technology Assessment, before its funding was cut in 1995, was an independent body of experts that utilized the peer review process, received bipartisan support, and succeeded in its mission to provide Congress with new and effective means for securing competent, unbiased information concerning the physical, biological, economic, social and political efforts of technological applications.

2. **Call on Congress to pass a bill creating a roadmap for providing health services in future pandemics.**

   The legislation should clarify how diagnosis, treatment, and prophylaxis would be covered.

3. **Call on Congress to ensure ethical data collection for technology-assisted contact tracing of COVID-19 transmission.**

   Any legislation should involve stakeholder input, be built for sustainability and include strong safeguards, be narrowly tailored to target the ongoing epidemic, and include an exit strategy. The resulting system for technology-assisted contact tracing should be non-punitive, non-discriminatory, auditable and fixable, voluntary, sustainably maintained, privacy preserving, and data minimizing. It should also have a measurable impact and minimal reliance on central authorities, and avoid data leakage or displacing non-technical measures.

4. **Call on Congress to improve reporting for COVID-19 research and development efforts.**

   Upon submission for regulatory approval or the grant of an Emergency Use Authorization, Congress should require pharmaceutical corporations to disclose disaggregated information regarding research and development costs, including the extent to which research and development was supported by the federal government, as well as manufacturing and other expenditures.

5. **Call on Congress to ensure transparency for all future federally-funded pandemic response efforts**.

   Congress should expand the Freedom of Information Act to apply to coronavirus-related government contractors.

6. **Call on Congress to bolster transparency and oversight mechanisms of past coronavirus-response legislation.**

   These fixes should include measures to: strengthen protections for inspectors general, facilitate and expand the Freedom of Information Act, broaden whistleblower protections, promote court access for the public; narrow the CARES Act secrecy exemption; fortify the CARES Act oversight mechanisms; disclose “secret law” (opinions from the Department of Justice’s Office of Legal Counsel) related to the pandemic; and fund congressional oversight.

7. **Call on Congress to report on the local-level distribution, implementation and economic impacts of relief funding triggered by the pandemic.**

   Legislation should ensure:

   a. Recipients of funding provide electronically accessible data on the economic impacts of that funding on employment, estimated economic growth, and other key economic impact factors. Data on businesses receiving federal funds should include demographics and size, such as average annual revenue.

   b. Collection of data on unemployment insurance payments (including if they are issued in a timely manner) and checks to households (to see if all eligible individuals received checks).

8. **Call on Congress to track state and local budget shortfalls following the economic uncertainty that began in March 2020.**

These shortfalls can reveal where the greatest stressors are on the economy across the country, where fungible funds may have been reallocated, and where layoffs might occur in the future.

Appendix to Chapter 6: Pandemic Preparedness and Response

Appendix 6.1: Rules and Guidance to Rollback

The incoming administration should roll back the following rules and guidance that inappropriately restrict the types of science that can be used in policymaking or agency scientific work:

1. Strengthening Transparency in Regulatory Science - this is a misleading rule that stipulates that when the Environmental Protection Agency utilizes a scientific study to support public health protections, the raw data supporting the rule (potentially including personal medical data) must be publicly available and the studies must be able to be validated by a separate Environmental Protection Agency review. This wide-ranging proposal would significantly limit the research and data that the Environmental Protection Agency can use to make informed policy decisions under major public health and environmental laws, including the Clean Air Act, Safe Drinking Water Act, and Toxic Substances Control Act.
2. Fully rescind Science Advisory Board directives that restrict the ability of academic experts to participate on advisory panels. Ensure that expert panels are reconstituted and fully engaged for issues such as air pollution, environmental justice, chemical safety and other public health threats.
3. Roll back changes to cost-benefit analysis requirements that down weight or ignore indirect benefits or co-benefits to the public of government actions.
4. Rescind policies that minimize or waive reporting monitoring and pollution control requirements for industry. Re-fund environmental and public health enforcement staff and programs.
5. End waivers from the National Environmental Policy Act that restrict the ability of the public to access and comment on proposals for oil, gas and construction projects.