

UNSTACKING THE DECK:

A New Agenda to Tame Corruption in Washington

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THE
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DEMOCRACY
INITIATIVE



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Executive Summary

In an October 2017 poll, Americans named “corruption of government officials” as their top fear, ranking it above North Korea’s use of nuclear weapons.¹ According to the Pew Research Center, the last decade has been the longest stretch of low trust in government since 1958, when Americans were first polled on this question.²

It is widely accepted that corruption is a fundamental impediment to shared prosperity in the developing world. In 2013, the president of the World Bank declared that corruption is “public enemy number one.”³ Over the years, the U.S. has put into place tough laws to stop American companies from engaging in corruption overseas. Despite evidence of corruption in our own government, however, we too often accept it rather than put forth ideas to curtail it.

There are significant economic implications when corruption persists. Instead of investing in the “real” economy—by building new plants, buying vital equipment, or hiring more workers—firms might instead divert these resources to lobbying and influencing. In addition, when the largest and most entrenched firms invest heavily in lobbying and influencing, they can use this power to rig the rules against innovators that might challenge their dominance. Moreover, if entering a market requires hiring former government officials to engage in lobbying and influencing, smaller and newer firms may be blocked from competing at all.

Corruption is a vehicle for the powerful and the connected to foreclose opportunities for the companies and communities that don’t have access to lawyers and lobbyists. Corruption also reduces the voices and obstructs the participation of marginalized communities in our economy and democracy. Building a more productive and equitable economy—and society—rests on our ability to tame government corruption.

In public policy debates, there has been considerable attention to the role of *money in politics*: the ways in which campaign contributors can influence who gets elected and which positions a candidate takes. But in this paper, we argue that we must also directly confront the impact of *money in government*: the ways in which money influences government

¹ “America’s Top Fears 2017: Chapman University Survey of American Fears,” Wilkinson College of Arts, Humanities, and Social Science, Chapman University, last modified October 11, 2017, <https://blogs.chapman.edu/wilkinson/2017/10/11/americas-top-fears-2017/>.

² “Public Trust in Government Remains Near Historic Lows as Partisan Attitudes Shift,” U.S. Politics and Policy, Pew Research Center, last modified May 3, 2017, <http://www.people-press.org/2017/05/03/public-trust-in-government-remains-near-historic-lows-as-partisan-attitudes-shift/>.

³ “Corruption is ‘Public Enemy Number One’ in Developing Countries, says World Bank Group President Kim,” World Bank, December 19, 2013, <http://www.worldbank.org/en/news/press-release/2013/12/19/corruption-developing-countries-world-bank-group-president-kim>.



agencies, especially regulators and law enforcement officials, to act for the benefit of special interests rather than the broader public good. We highlight the corrosive impact of these forces and explore potential policy options to root out the soft corruption driving the public's distrust.

Today's anti-corruption infrastructure was largely developed in the wake of Watergate, but we identify four major problems that must be addressed going forward.

- First, enforcement of anti-corruption laws for officials in federal government agencies is lackluster. Existing investigative bodies either lack the authority to curtail corruption or focus their attention outside of federal officials and those who seek to influence them.
- Second, ethics and transparency laws that are supposed to protect the public from conflicts of interest by government officials are inadequate and outdated.
- Third, the revolving door—where individuals move between government service and special interests—contributes to “cultural capture,” where officials in federal government agencies see their interests as more closely aligned with the entities they regulate, rather than the interests of the public.
- Fourth, the public lacks the information and tools required to identify conflicts of interest and stop unseemly actions that benefit special interests at the public's expense.

Throughout history, Americans have taken action to confront corruption, particularly after major scandals. There are number of steps to take to address the current issues plaguing our system.

To root out corruption and restore faith and trust in our government, we outline a series of ideas and policy options. We discuss the establishment of a new public integrity agency that consolidates the balkanized enforcement and oversight authorities into a singular, accountable watchdog. We also outline a set of tougher restrictions on the revolving door to curb the influence of special interests during and after a public official's service. We also describe new tools to empower the public and deter corrupt practices.

These approaches are not meant to be exhaustive or definitive; they are meant to spark greater discussion about the ways we can reduce corruption and increase government's accountability to the public interest, rather than to special interests.



Introduction

Through the actions they take, our government agencies have the power to create or foreclose opportunities for businesses and individuals. Agency actions impact crucial issues, including public safety, the environment, and our economy—the outcomes of which determine how society works and for whom. While our democratic system seeks governance by and for the people, this power is too easily coopted by economic interests for their own private gain.

Too often, federal government officials seem to be working in their own personal interest or on behalf of the companies they regulate, rather than in service of the public. The Food and Drug Administration (FDA), for example, is charged with approving new drugs after ensuring they are safe for use. Once a product is approved, companies stand to gain immensely in sales, profits, and surging stock prices. One recent analysis of FDA employees responsible for the approval of certain blood cancer drugs revealed that more than half of the reviewers later left the agency to work for the biopharmaceutical industry,⁴ raising questions about whether future employment prospects impact decision-making within agencies.

Similarly, in high-stakes mergers, companies that fail to get appropriate regulatory approvals often see their stocks tumble. After a controversial push by Comcast to obtain approval to purchase NBCUniversal, the companies succeeded when the Federal Communications Commission (FCC) green lit the deal. Just a few months later, FCC Commissioner Meredith Attwell Baker accepted a job with Comcast.⁵ And when a nonprofit advocacy group criticized the move, a Comcast public relations executive threatened to cut off grant funding for the organization.⁶ Did the prospect of a lucrative post-government job impact her assessment of the deal? And should large companies use their resources to amplify or censor certain points of view?

Anti-corruption laws in the United States put a high premium on quid pro quo, but it would be a mistake to view corruption solely through these exchanges—less obvious forms of influence can also be deeply pernicious. When government officials take actions where they have a direct financial interest, they can be criminally prosecuted. But it is difficult to know—let alone prove—whether the prospect of future financial gain led to an official government action. It's even more challenging to trace how corporate donations to the think tanks and advocacy groups that inform policymakers impact decision-making.

⁴ Jeffery Bien and Vinay Prasad, "Future Jobs of FDA's Haematology-oncology Reviewers," *BMJ* 354, no.5055 (September 2016), <http://www.bmj.com/content/354/bmj.i5055>.

⁵ Katy Bachman, "FCC Commissioner Baker Headed for NBCU," *Adweek*, May 11, 2011, <http://www.adweek.com/digital/fcc-commissioner-baker-headed-nbcu-131536/>.

⁶ Cecelia Kang, "Comcast Yanks Funds for Nonprofit after Tweet about FCC Baker's Jump," *The Washington Post*, May 19, 2011, https://www.washingtonpost.com/blogs/post-tech/post/comcast-yanks-funds-for-nonprofit-after-tweet-about-fcc-bakers-jump/2011/05/19/AF7aGG7G_blog.html?utm_term=.c993683a920b.



In this paper, we describe a number of situations that illustrate the role of money in influencing government—outside of campaigns and elections. While we might traditionally think of corruption as a company offering a bribe to a public official in exchange for an official action, it is also important to highlight forms of “soft corruption,” the arrangements where it is virtually impossible to detect a *quid pro quo*.⁷ This soft corruption operates outside of our existing laws, even though it may be just as pernicious to the public interest. While some defenders of the status quo might justify these arrangements as perfectly appropriate, at a minimum, these practices contribute to a *perception* of corruption.

First, even the *perception* of corruption incentivizes private special interests to continue spending heavily on influence-peddling, creating an arms race in high-stakes policy battles. Once market participants perceive that they are disadvantaged if they don’t engage in influence-seeking activities, expenditures on political influence will continue to rise, siphoning off resources for wages and capital investment in the real economy.

Second, widespread corruption disadvantages small enterprises, particularly local and nascent businesses. While many point to the impact of the cost of compliance of federal regulations on small business, there is less discussion about how high-cost political influencing activities benefit large corporations over smaller enterprises looking to challenge established incumbents.

Third, and perhaps most obvious, corruption harms individual citizens and communities. When official government actions are not in the public interest, the net result is a wealth transfer from the entire citizenry to the purchasers of political influence. Undoubtedly, soft corruption is harmful to all of us.

After illustrating the various vehicles of corruption outside of the campaign finance system, we assess how the existing anti-corruption infrastructure, largely developed in the 1970s after Watergate, is inadequate to police these vehicles.

As a starting point for discussion, we outline potential improvements to this infrastructure, including the formation of an independent agency charged with increasing transparency, reducing conflicts of interest, and prosecuting wrongdoers.

⁷ “Soft corruption” is similar to the concept of “honest graft,” which was the concept of profiting off of politics and public service without bribery or direct theft from the public treasury. The term was coined by George Washington Plunkitt, a leader of the Tammany Hall political machine.



Corruption and Conflicts of Interest

Laws seeking to prevent conflicts of interest that would skew public policy were developed over time. In 1863, Congress enacted laws to address concerns about government employees participating in decisions involving banks, corporations, and mercantile firms where they held financial interests.⁸ Nearly a century later in 1974, Congress imposed limits on political contributions to individual candidates for federal office. By 1995, the Lobbying Disclosure Act would establish a new reporting system for lobbyists.

But there has been less attention paid to other forms of influence-peddling by special interests (like regulated corporations), especially the tactics targeted at the executive branch. Below, we outline some of the main channels of influence-peddling, including the role of the revolving door, using purchased connections to obfuscate established protocol, and the impact of think tanks and advocacy groups.

THE REVOLVING DOOR

Political scientists in the United States do not have a uniform definition of the revolving door.⁹ But generally speaking, it refers to an institutionalized system or culture of integration between government officials and regulated economic interests. While the revolving door is most often attributed to government officials departing to the private sector, in this paper, we also closely consider the reverse situation: when individuals from regulated economic interests enter government service. See appendix for further details.

There are three primary issues and concerns with the revolving door. First, government officials' actions may be motivated by the prospect of future employment with an economic interest, rather than the public interest. Second, government officials drawn from those

⁸ U.S. Office of Government Ethics, *Report to the President and Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment* (Washington, DC, January 2016), [https://www.oge.gov/web/oge/nsf/Legal%20Interpretation/2992B018CA57C5B985257E96006A91E8/\\$FILE/Report%20to%20the%20President%20and%20Congress%20on%20Ethics.pdf](https://www.oge.gov/web/oge/nsf/Legal%20Interpretation/2992B018CA57C5B985257E96006A91E8/$FILE/Report%20to%20the%20President%20and%20Congress%20on%20Ethics.pdf).

⁹ Here, the Japanese concept of *amakaduri* is noteworthy; government ministries would actually help retiring officials find employment in the industry they regulated. See van Wolferen's *The Enigma of Japanese Power*, 1989.

previously engaged in political and policy influencing in the private sector may not be sufficiently independent. Finally, firms may feel they have to hire government officials or cultivate their own employees to seek roles in government in order to stay competitive. Collectively, the revolving door can undermine trust in our democratic institutions and lead to outcomes divorced from the public interest.

While its supporters would argue that the revolving door provides government officials and business leaders alike with real-world experience that help make both the public and private sector more effective, there is a broader level of criticism about the negative impacts on the public interest. By more than a 3-to-1 margin, voters believe that government contracts are more likely to be awarded on the basis of political connections, rather than on the basis of quality and price.¹⁰

There is certainly value in attracting talent from the private sector to the public sector. These individuals might have unique expertise and skills that can be used to make government more effective and efficient. For example, a senior manager with private sector experience overseeing the maintenance of a large fleet of vehicles for a delivery company would be quite useful for a government agency that also maintains a fleet of vehicles.

This value is much more questionable when the individual is a lobbyist on behalf of a regulated company or industry. For example, an industry trade association employee whose primary job objective was to reduce the likelihood of regulation who then seeks to enter government would raise more questions of appropriateness than someone who was not previously employed as a lobbyist.

It is important to distinguish between revolving door issues when officials depart government separately from the issues raised when officials enter government from industry, and we consider these two categories of government officials below.

Departing Government

There are two major concerns for those departing government service. First, are departing officials taking actions that benefit a prospective future employer? Second, do government officials see the higher-paid senior business leaders that they regulate as peers, leading them to adopt similar outlooks and views?

¹⁰ "Connections Are Key with Government Contracts," Politics, Rasmussen Reports, last modified April 26, 2017, http://www.rasmussenreports.com/public_content/politics/general_politics/april_2017/connections_are_key_with_government_contracts.

Research suggests that a company hiring a government official yields benefits prior to the departure. A study by Cayanaz et al. shows that employers who eventually employ government officials earn excess stock market returns during the two years before the official joins them.¹¹ We find similar effects in other industrialized economies, where hiring former government officials might yield benefits long even after their departure from government. In Japan, a study of government contracts revealed that 70 percent of awards conducted outside of a competitive bidding process went to firms that hired former government officials.¹²

Outside of public procurement, we see a number of potential examples at regulatory agencies where a revolving door critic might raise concerns about benefitting future employers or where an official might be more influenced by whom they see as a “peer.” Take the example of Walter Lukken, a commissioner and chairman of the Commodity Futures Trading Commission (CFTC) during the 2000s. Agencies like the CFTC play a major role in our financial markets; lax oversight can lead to spikes and instability in prices for energy and food. While not an agency well-known to the public, it is certainly well-known in the financial industry. CFTC commissioners frequently attend events, speeches, and conferences alongside financial industry players, many of whom earn substantial compensation, far exceeding that of a government appointee.

Lukken was restrained when the price of oil futures surged to unprecedented levels in 2008. His speeches and testimony suggest that he did not believe market manipulation by speculators was contributing to the shocking run-up, closely adopting an industry viewpoint. He now serves as president and CEO of the Futures Industry Association—the futures industry’s global lobbying association—joining the individual firms he likely frequently interacted with as a regulator.

In another example at the CFTC, days after Commissioner Scott O’Malia announced his resignation from the Commission, the International Swaps and Derivatives Association announced that he would be the lobbying group’s new top executive. Two years before, O’Malia voted against new requirements for swap dealers. The association he would now be leading sued the CFTC over its cross-border swaps rules.¹³

As administrator of the Center for Medicare and Medicaid Services, Marilyn Tavenner played a pivotal role in the implementation of the Affordable Care Act, including overseeing HealthCare.gov. Months after leaving the Obama administration, she became president and CEO of the nation’s top health insurance lobby, America’s Health Insurance Plans (AHIP).

¹¹ Mehmet Canayaz, Jose Vicente Martinez, and Han N. Özsöylev, “Is the Revolving Door of Washington a Back Door to Government Contracts and Excess Stock Market Returns?,” (December 20, 2016) <http://dx.doi.org/10.2139/ssrn.2596520>.
¹² “Firms with ‘Amakudari’ Ties Win Government Projects with No Bids,” *The Asahi Shimbun*, June 25, 2017, <http://archive.li/45PJB>.
¹³ “Former Trading Regulator Scott O’Malia to Lead Derivatives Group,” *The New York Times*, July 23, 2014, Dealbook, <https://dealbook.nytimes.com/2014/07/23/former-trading-regulator-to-lead-derivatives-group/>.

The purpose of highlighting these examples is not to suggest any impropriety. Independently, each of these arrangements may not only be legal, and might even be ethically appropriate; there are certainly a host of reasons why, *individually*, these hiring decisions were appropriate without any hopes of political influence. But even if these were individually appropriate, they are not rare occurrences and may contribute to the public’s mistrust for government. Moreover, this kind of revolving door pattern leads to an understanding in the marketplace that allocating resources for the purpose of installing or hiring a government official is a worthwhile investment.

Small enterprises and new startups seeking to challenge existing incumbents generally don’t possess the relationships or resources to attract senior government officials. If these officials are only providing benefits to large firms, small businesses will suffer.

Entering Government

Compared to post-government employment restrictions, there are almost no disqualifying pre-employment factors, though pre-employment characteristics of an incoming official can also be problematic. When an official enters government from a regulated company or another special interest, there might be concern that the individual is not sufficiently independent or aligned with the public interest. Relatedly, a new government official, particularly one expecting to serve for a relatively short duration who, knowingly or not, might return to their previous employer, might seek to create benefits for their former employer.

In some cases, U.S. laws actually enable the revolving door problem. Consider “golden parachutes,” which exist when a departing business executive receives accelerated bonuses and stock awards upon departure due to a change in control of the corporation.¹⁴ Historically, these provisions were triggered when an executive’s departure was involuntary. But more recently, there have been incidents where incoming senior government officials have received large payouts when departing the firm to enter government service.

A 2004 Internal Revenue Code rule change facilitated large payouts to people leaving firms for government service by exempting from taxation accelerations for pursuing government service. According to a 2013 analysis by the Project on Government Oversight, many major financial institutions now offer these accelerated bonuses, further solidifying increased interchange between government and Wall Street.¹⁵ As former Chair of the Federal Deposit Insurance Corporation Sheila Bair said:

¹⁴ Peer Fiss, “A Short History of Golden Parachutes,” *Harvard Business Review*, October 3, 2016, <https://hbr.org/2016/10/a-short-history-of-golden-parachutes>.

¹⁵ Michael Smallberg, “Big Business Offers Revolving Door Rewards,” Project on Government Oversight, March 21, 2013, <http://www.pogo.org/our-work/reports/2013/big-businesses-offer-revolving-door-rewards.html>.



“Only in the Wonderland of Wall Street logic could one argue that this looks like anything other than a bribe.”¹⁶

While supporters of these provisions claim that this behavior ensures that employees are not financially punished for serving the public, why would shareholders and management subsidize this unless they thought it was a worthwhile investment? In the financial sector, a number of senior officials benefitted from these provisions. According to news reports, former Treasury Secretary Jack Lew, former Vice Chair of the Federal Reserve Board Stanley Fischer, and former Deputy Secretary of State Tom Nides all reportedly received extraordinary benefits for entering senior government service.¹⁷

THINK TANKS AND ADVOCACY GROUPS

While corporations, foreign governments, and other economic interests seeking to impact public policy are limited in how they can provide gifts and donations to public officials, there are other ways they can influence public policy. Increasingly, we find that conflicts of interest are also plaguing these new vehicles of influence.

Research and advocacy play outsized roles in shaping public opinion and policy. Research provides the factual basis to demonstrate why a policy intervention is worthwhile, while advocacy helps to elevate these arguments. When conducted independently and without bias, research and advocacy advance the public interest. But too often that independence is compromised.

Rather than pursuing issues of greatest concern to the public, corporations and other special interests may be buying a think tank’s veneer of independence to pursue their own agendas. Importantly, the ability to sculpt a think tank’s research agenda is usually out of reach for marginalized communities and small businesses, providing further advantages to those who already have money and power. In addition, the role of money and the appearance of conflicts of interests reduce the reliability of the work of these organizations in several ways, even when it is truly independent.

First, corporate influence over think tanks and advocacy groups can lead to policy recommendations that are not based on independent analysis, but biased toward the donor. Second, think tanks and advocacy groups might shy away from confronting certain policy issues to avoid offending donors. Finally, think tanks and advocacy groups face extremely limited disclosure requirements related to the funding of their research and issue campaigns. All of these concerns warrant attention.



For example, if the soda industry published a study claiming that soda is part of a healthy diet, few would believe it. But if a seemingly independent entity called the “Global Energy Balance Network” published a study claiming that physical fitness was far more important than nutrition when it comes to a healthy lifestyle, it would be more believable. And if dieticians spoke out against proposed soda taxes, it might even be newsworthy.

This happened. The Global Energy Balance Network was paid millions by the Coca-Cola Company,¹⁸ which acted not just as hands-off donors, but the company even owned the organization’s website.¹⁹ And the dieticians were even paid by the company, too.²⁰

Think Tanks

Thank tanks have long played a role in policy analysis in Washington. While many were initially focused on foreign policy research, new think tanks emerged to analyze a wider range of policy issues. But for much of their history, nonprofit think tanks acted to help clarify policy details and legislative options. “They saw it as their role to inform but not quite to advocate—to help clarify policy alternatives, but generally not to choose among them,” wrote former Deputy Secretary of Health and Human Services and conservative activist Tevi Troy.²¹

But that would quickly change. In 1971, the American Enterprise Institute conducted analysis about supersonic aircraft funding for the Department of Defense. The analysis was withheld until after the Senate voted on the measure (which was defeated). After learning about the incident, congressional aides developed a vision for a new think tank that would be more explicitly engaged in advancing the conservative agenda—and the Heritage Foundation was born.

Heritage would end up providing much of the intellectual basis for President Reagan’s policy agenda. The Democratic Leadership Council, a hub for moderate Democratic leaders, soon founded a sister think tank, the Progressive Policy Institute.

¹⁸ Anahad O’Connor, “Coca-Cola Funds Scientists Who Shift Blame for Obesity Away from Bad Diets,” *The New York Times*, August 9, 2015, <http://well.blogs.nytimes.com/2015/08/09/coca-cola-funds-scientists-who-shift-blame-for-obesity-away-from-bad-diets/>.

¹⁹ Anahad O’Connor, “Coca-Cola Funds Scientists Who Downplay Diet’s Role in Obesity,” interview by Robert Siegel, *All Things Considered*, NPR, August 10, 2015, audio, <https://www.npr.org/2015/08/10/431343137/coca-cola-funds-scientists-who-downplay-diets-role-in-obesity>.

²⁰ Kerry Lauerman, “Big Soda Sponsored 96 Health Groups – Big Conflict of Interest, Study Says,” *The Washington Post*, October 10, 2016, https://www.washingtonpost.com/news/to-your-health/wp/2016/10/10/big-soda-sponsored-96-health-groups-a-big-conflict-of-interest-study-says/?utm_term=.df99146d1d48.

²¹ Tevi Troy, “Devaluing the Think Tank,” *National Affairs* 34, (Winter 2012): 79 <https://www.nationalaffairs.com/publications/detail/devaluing-the-think-tank>.



By publishing research that advanced an agenda aligned with a specific political party, think tanks began to serve a more explicit advocacy function. But given the heavy reliance of funding for think tanks from corporations, foundations, and other large donors, the lines would blur, creating the conditions for conflicts of interest and corrupted advocacy we see today.

Special interests know that it is challenging to find opportunities to directly influence key policymakers. This is especially true for foreign governments, who are neither constituents of any elected officials, nor eligible to make political contributions. An internal report commissioned by the Norwegian Foreign Affairs Ministry noted the challenge of accessing policymakers in Washington. “Funding powerful think tanks is one way to gain such access, and some think tanks in Washington are openly conveying that they can service only those foreign governments that provide funding,” the report noted.²² Donations to think tanks from foreign governments can also help a country insulate itself from criticism by policy experts, given the power of donors to shape an institution’s agenda.

Think tank scholars can double as paid agents of economic interests with a policy agenda. Former Carter administration official Robert Litan was a longtime senior fellow at the Brookings Institution. After testifying before a Senate committee against the Obama administration’s proposal to reduce conflicts of interest for investment advice, it would later be revealed that he was personally compensated tens of thousands of dollars by a company that would have been impacted by the administration’s rulemaking.²³

Even academic research can be skewed by corporate influence. In one case, a payday lender provided financial support to researchers who published findings friendly to the industry. E-mail correspondence revealed that the industry edited certain parts of the paper that were unflattering.²⁴

Advocacy Groups

Just as think tank “scholars” can have their agendas shaped by corporate donors or even direct financial payments, advocacy groups can also be used for private gain. Advocacy groups are organizations that have a charitable or public mission and seek to advocate for

²² Eric Lipton, Brooke Williams, and Nicholas Confessore, “Foreign Powers Buy Influence at Think Tanks,” *The New York Times*, September 6, 2014, https://www.nytimes.com/2014/09/07/us/politics/foreign-powers-buy-influence-at-think-tanks.html?_r=0.

²³ Barbara Roper, “In Litan Scandal, It Isn’t the Money, It’s the Economics,” *Huffington Post*, Blog, October 2, 2015, https://www.huffingtonpost.com/barbara-roper/in-litan-scandal-it-isnt_b_8232494.html.

²⁴ “CfA Report Reveals Payday Lenders Paid for At Least One Favorable “Academic” Study,” Campaign for Accountability, November 12, 2015, <http://campaignforaccountability.org/cfa-report-reveals-payday-lenders-paid-for-at-least-one-favorable-academic-study/>.



specific causes that serve the greater good. They can be distinguished from industry trade associations or other organizations that work to advance the political goals of an industry or company.

However, advocacy groups might also see their agenda and work product sculpted by corporate interests through financial support. While disclosure of financial benefactors can help mitigate some of these concerns, the soft corruption can be difficult to detect when a think tank or advocacy group takes no position at all. Think tanks and advocacy groups that are the recipients of corporate donations might simply self-censor when a position might offend a major donor, even if it might ordinarily be squarely in the organization's mission.

Advocacy groups tend to draw special consideration from the media, since they are seen as independent and aligned with the broader public good. There are many times, though, when advocacy groups, including charitable organizations, weigh in on issues that might seem remote from their core mission. When an organization advocates on an issue unrelated to its mission or expertise, this can raise questions about whether it was truly acting independently.

For example, when AT&T sought to rally support for its bid for T-Mobile that required approval of the Federal Communications Commission, nonprofit advocacy groups, including chapters of the Boys & Girls Club of America and the Gay & Lesbian Alliance Against Defamation (GLAAD), backed the proposal. Many of the organizations that submitted formal comment letters to the FCC supporting the merger were recipients of donations from AT&T, though not all explicitly referenced the company's financial support in their comment letter. After controversy erupted that led to the resignation of its leader, GLAAD withdrew its support.²⁵

By offering financial support to advocacy groups, corporations can “launder” their political goals through an entity that appears to be independent. This can reduce the level of honesty and transparency in public policy debates. See appendix for further discussion of nongovernmental independent watchdogs.

²⁵ Jennifer Martinez, “GLAAD Not Off the Hook Yet,” *Politico*, June 19, 2011, <https://www.politico.com/story/2011/06/glaad-not-off-the-hook-yet-057324>.



Cultural Norms and Transparency

While codified laws can directly impact the behavior of political actors and firms seeking to influence political outcomes, cultural and historical norms also play an important role in our democratic society. Here, we briefly discuss a few of the norms related to the presidency, using examples of presidential pardons, financial holdings, and nepotism. As with other examples noted above, violations of these norms may be individually appropriate, but, collectively, they contribute to a perception that one has a better chance of advancing a policy agenda by advancing the financial or professional interests of the president, his family, and his staff. This perception can be deeply damaging.

Longstanding norms of ethics and transparency can be powerful even when not codified into law. But when these norms decline or are disrupted, conduct that is misaligned with the public interest can proliferate.

Longstanding norms of ethics and transparency can be powerful even when not codified into law.

Expectations of integrity and transparency can help police a wide range of conflicts of interest. However, there has been significant debate about the president's observation of established norms in the last generation. Presidential pardons—a power specifically granted in the Constitution—are one example of norms that, when broken, can reduce the public's trust in the broader institution of government.

Normally, pardons are subject to vetting and a recommendation by the Office of the Pardon Attorney (OPA). They are generally subject to a five-year waiting period *after* the individual's confinement or conviction. In recent years, however, this norm has been violated, opening the door to both real and perceived conflicts of interest.

For example, on January 20, 2001, just hours before leaving office, President Bill Clinton issued a presidential pardon to Marc Rich and his business partner Pincus Green. In 1983, Rich was indicted by a grand jury on more than 50 counts of wire fraud, racketeering, and for evading more than \$48 million in income taxes. The government alleged he had illegally conspired with Iran to move millions of barrels of oil in violation of the trade embargo.



Rich hired Jack Quinn, who had served as President Clinton’s White House counsel and Vice President Al Gore’s chief of staff. Quinn asked then-Deputy Attorney General Eric Holder to set up a meeting for his client with key prosecutors. Rich’s ex-wife Denise would also be enlisted in the effort. She had donated to Clinton’s legal defense fund and his presidential library fund, as well over \$1 million in political contributions to candidates.

The pardon was highly unusual because Rich had been on the run, never facing his charges in court, and subsequently faced intense criticism. A month after the pardon, former President Jimmy Carter said, “I don’t think there is any doubt that some of the factors in his pardon were attributable to his large gifts. In my opinion, that was disgraceful.” Clinton later stated his regret for issuing the pardon.

More recently, President Donald Trump’s decision to ignore norms regarding conflicts of interest has also drawn scrutiny. Because President Trump did not liquidate or move his assets into a blind trust or release any tax returns, his vast holdings in enterprises across the world have raised concerns about how foreign business interests and governments can exercise influence over American policy. Federal conflict of interest laws preventing executive branch officials from participation in matters where they have a financial conflict of interest have generally exempted the president and vice president.²⁶ While presidential candidates are required to file financial disclosures, they are not required by law to release their federal income tax returns.

In the last 40 years, every president has taken steps to minimize the appearance of conflicts of interest. Presidents frequently make use of blind trusts, where assets are deposited into a trust and controlled by independent trustees, rather than the president or his family. This helps create some sense of separation between the president’s actions and his family’s financial interests. Moreover, since President Ronald Reagan was elected until 2016, every major presidential candidate had released his or her tax returns. While there have been variations in the number of tax returns released, there was always a clear expectation from the public that the media would get to scrutinize the candidate’s sources of income.

The Trump presidency has also renewed debate about nepotism. Fifty years ago, Congress enacted prohibitions on a public official advocating for the hiring of a relative. While often explained as a reaction to President John F. Kennedy’s appointment of his brother as Attorney General, there had also been ongoing concerns of the spouses of members of Congress working for other members or congressional committees. The anti-nepotism statute largely prohibited this practice.²⁷ President Trump has appointed members of his family as senior advisers. The administration argues that these are not in violation of the law, because the family members are foregoing pay.

²⁶ Laurence H. Silberman, letter to Howard W. Cannon, September 20, 1974, <https://fas.org/irp/agency/doj/olc/092074.pdf>.

²⁷ Olivia B. Waxman, “Behind the Law That May Keep Donald Trump’s Children From the White House,” *Time*, November 18, 2016, <http://time.com/4574971/donald-trump-transition-jared-kushner-legal-anti-nepotism-law/>.



Disruption of these norms contributes to increased power for special interests over the public good. First, special interests can obfuscate ordinary protocol for seeking government action through special access channels. Second, special interests can make financial contributions that benefit individuals with little disclosure to legal defense, presidential library, and other funds. Third, the president may be able to hire members of his family to government positions, rather than relying on those most qualified. Finally, the public may be unable to judge financial conflicts of interest with the president and vice president with their personal financial holdings.

Disruption of these norms contributes to increased power for special interests over the public good.

Abiding norms of ethics and transparency, even when not established and enforced as law, can be influential. If these norms are neglected or disregarded, conduct that serves the greater good of the public can decline.



Summary of Key Problems

Our existing system of preventing corruption in government, especially the executive branch, was largely shaped by reforms made 40 years ago—in the wake of the Watergate scandal. In the last several decades, economic interests have identified new ways to invest in influencing activities that disadvantage small enterprises and the public at large.

To address the changing nature of influencing activities, we must address four key problems:

1. PERSONAL PROFIT FROM PUBLIC SERVICE

Whether it is incoming government officials accepting a government service golden parachute or a departing government official getting specialized access to help an economic interest, there are new ways of monetizing public service that may be completely legal under the letter of the law, but certainly not the spirit of the law.

A rational observer would likely conclude that Marc Rich’s hiring of former White House Counsel Jack Quinn played a pivotal role in obtaining his pardon from President Clinton. Quinn’s relationship with the president, his former boss, and then-Deputy Attorney General Eric Holder gave him unique access outside of the normal procedures followed by the Office of the Pardon Attorney.

Darleen Druyun, a Pentagon official, accepted a lucrative job with Boeing soon after passing along competitive information from Airbus and awarding a significant contract to the company. Several years before, she had forwarded resumes of her family members, who were ultimately hired by Boeing. Even though no money may have changed hands, Druyun certainly received a benefit.

There are countless examples of special access gained by former officials to advance the cause of an economic interest and non-monetary benefits obtained due to one’s official position. Existing law is inadequate to guard against this conduct.

2. CAPTURE

Regulatory capture occurs when government agencies and regulators advance the interests of the regulated rather than the public. While the revolving door helps to create an exclusive, club-like community of regulators and the regulated, there are other structural features of government decision-making that minimize the representation of and consideration for the general public.

Each agency will tend to develop its own relationships with repeat players, including trade associations and industry giants. While government officials are supposed to serve the public interest, the outsized—and often unbalanced—presence of the viewpoints of economic interests can erode a public interest mission.

For example, the Office of Information and Regulatory Affairs (OIRA) oversees a centralized review process of rulemaking. According to a study of OIRA meeting logs, the economic interests of impacted corporations leads to a massive overrepresentation of the corporate sector relative to the public interest. Over a decade-long study period, 73 percent of OIRA meetings involved only industry representatives with no public interest participation, while just 7 percent had public interest groups without industry.²⁸

Corporate capture is further expanded by the ability of economic interests to shape the agendas of think tanks and researchers, who we typically rely upon to provide independent assessments of policy proposals. Even if corporate donors do not skew the results of independent research, analysis that may be unflattering or unhelpful to a donor's policy agenda may simply go unpublished.

3. LACKLUSTER ENFORCEMENT

While there are several entities charged with ensuring high levels of public integrity, there appear to be relatively few instances where investigative bodies have meaningfully taken action against executive branch officials.

The Department of Justice's Public Integrity Section has largely pursued corruption cases at the state and local level, where misconduct may be clearer. Inspectors general have overwhelmingly focused on proper stewardship of public funds. Their criminal referrals have generally focused on fraud by contractors and third parties, not government officials.

²⁸ Rena Steinzor, Michael Pakota, and James Goodwin, "Behind Closed Doors at the White House," Center for Progressive Reform, November 2011, http://www.progressivereform.org/articles/OIRA_Meetings_1111.pdf.



The Office of Government Ethics cannot investigate or initiate criminal or civil enforcement. The independent counsel statute has lapsed, and special counsels appointed by the presidential administration lack the same level of independence. See appendix for further details about today's decentralized enforcement regime.

4. SCARCITY OF INDEPENDENT WATCHDOGS

Independent watchdogs, including the media and nonprofit advocacy groups, play an important role in holding government accountable to the public. In the United States, many of these organizations lack dedicated sources of funding to insulate them from commercial interests.

The media is undergoing enormous strains as it adjusts to a new digital world, and even public media is largely dependent on private donors to maintain its operations.

Advocacy groups are also susceptible to having their agendas shaped by private foundations and corporate donors, making them less likely to pursue policy changes that are not aligned with the interests of their donors.



Options to Unstack the Deck

In a recent survey, Americans ranked “corruption of government officials” as their top fear.²⁹ Americans realize that government needs to solve the problems of the day, but if special interests can veto almost any decision due to conflicts of interest and corruption, our institutions will continue to deteriorate.

Critics of additional restrictions on government service or barriers to corporate participation in policymaking will argue that reforms will deter certain talented individuals from serving their country. Whether or not this is true, the benefits of meaningful action derived from restoring greater trust in government and society’s institutions would far outweigh this concern.

Below, we outline a series of ideas and policy options to pursue a new agenda on combating corruption in our government by eliminating conflicts of interest, reducing capture, ensuring tough enforcement, and revitalizing our independent watchdogs.

These approaches are not meant to be exhaustive or definitive; they are intended to build on existing contributions and jumpstart discussion. There will indeed be many other valuable ways to increase government accountability and reduce corruption.

A. CREATE A NEW AGENCY TO POLICE CORRUPTION AND PROMOTE GOVERNMENT TRANSPARENCY.

Congress has typically established new mechanisms to guard the public’s interest in response to scandals, like Watergate. Over the years, there has been a patchwork of mini-agencies, all with severe limitations.

The Office of Government Ethics has limited rulemaking authorities and no enforcement power. A corrupt president or agency head can let an inspector general office sit vacant

²⁹ Chapman University, “America’s Top Fears 2017: Chapman University Survey of American Fears.”

or be populated with a friendly ally. Inspectors general also have a divided mission that is sometimes duplicative of the Government Accountability Office. And of course, enforcement authority over the executive branch is still subject to political interference.

Establish a new Public Integrity Protection Agency (PIPA). We propose a new agency that consolidates these overlapping mandates into a single agency with real powers to enforce and police corruption. A new independent agency would help to sharpen oversight over senior government officials and potential corruption within agencies by limiting the executive's power to interfere. The PIPA would have independence from political control, a statutorily-determined budget, and the power to write regulations that prohibit malfeasance by corporations and government officials.

- Like the comptroller general of the Government Accountability Office, the selection of the director of the PIPA should be insulated from ordinary political forces and protected from partisanship. For example, the director could be selected by the president for an extended term (perhaps 7 to 10 years) from among a list of candidates prepared by the United States Supreme Court or the United States Court of Appeals for the DC Circuit. Confirmation of the director could be subject to a supermajority of the Senate. The director would be subject to removal proceedings similar to that of a federal judge.
- The PIPA would have the ability to bring civil and criminal enforcement actions in federal court, along with issuing civil money penalties. It would also report to agencies to provide support for employee removal or disciplinary action.
- The PIPA would have the authority to inspect and investigate individuals and companies seeking to influence federal officials.
- The Department of Justice, the Securities and Exchange Commission, and other relevant agencies would retain enforcement jurisdiction.
- The PIPA would be required to make recommendations for legislative changes that improve government accountability and transparency.

Restructure the Office of Government Ethics and remove presidential control over inspectors general. The new Public Integrity Protection Agency would subsume the activities of the Office of Government Ethics. Currently, presidents can leave key posts for inspectors general unfilled. The new agency would also be charged with overseeing the inspectors general, removing the president's ability to select the watchdogs overseeing his or her government.

- The director of the PIPA would select inspectors general assigned to various agencies, eliminating the ability for the president or agency head to install a lackluster enforcer.
- The PIPA would assume responsibilities for disclosures of executive branch financial holdings, lobbying, and influencing activities.



End political control of agency ethics officials. Across federal agencies, designated agency ethics officials³⁰ too often report to appointees that serve at the pleasure of the president. These ethics officials should not be subjected to political pressure, nor should their promotions be based on how permissive they are.

- The corps of agency ethics officials should be absorbed by the PIPA and report to an agency’s inspector general.
- Ethics determinations and opinions offered to agency officials could be appealed to the PIPA for further review.

B. RAISE ETHICAL STANDARDS TO ENSURE PUBLIC SERVICE IS NOT PURSUED FOR PRIVATE GAIN.

Government officials, especially in the executive branch, are restricted from participating in decisions that impact their *present* financial interests. But little has been done to ensure that their decisions aren’t skewed to advance their *future* employment and financial interests.

Establish new fiduciary duties. Like the relationships between attorney and client, doctor and patient, and even corporation and shareholder, we need a clearer set of duties that government officials owe citizens. These could include duties of care and impartiality. To combat capture, we must go beyond the existing statutes forbidding participation in matters where an individual has a direct financial interest to include broader duties. Government officials would face credible threat of punishment for breaches by the new Public Integrity Protection Agency.

- Establish new fiduciary duties that government officials owe citizens, including a duty of impartiality and a duty of care.
- Authorize the PIPA to provide guidance to officeholders.
- Allow members of the public to file complaints where there might be infractions, with anonymized public reporting on how complaints were resolved.
- Authorize the PIPA and its inspectors general to enforce these standards and issue penalties.

³⁰ The designated agency ethics official (DAEO) is the officer or employee who is designated by the head of an agency to administer certain provisions of the Ethics in Government Act of 1978.



Close loopholes that exempt the president from conflict-of-interest laws. Ethics and accountability must start at the top. Currently, the president and vice president are exempt from many laws that guard against using public office for private gain.

- To avoid any conflicts of interest, the president and vice president should be heavily restricted in the types of investment holdings they may retain while in office, including cash, residential real estate not held for investment purposes, and diversified mutual funds.³¹
- Forbid the hiring or other employment arrangements³² of close family members, including parents, spouses, children, grandchildren, and sons- and daughters-in law unless a waiver is granted from Congress.
- The Internal Revenue Service will release all tax information from candidates for president and vice president for multiple years prior to the election to high office.

Ban stock trading by senior executive branch officials and members of Congress and their staff. While the Stop Trading on Congressional Knowledge (STOCK) Act sought to curb trading in stocks and bonds where government officials have inside information, there have been examples that raise questions about whether existing restrictions are adequate. For example, former Congressman Tom Price, who later became secretary of Health and Human Services, engaged in trading activity in health care industry stocks prior to introducing amendments that would affect those stocks' value.

Despite allegations of wrongdoing against Price and other prominent members of Congress, no senator, representative, or top federal employee has ever been prosecuted under the STOCK Act. There are both practical and political challenges to enforcement: It is often difficult to prove the elements of a STOCK Act claim, and politically-controlled ethics watchdogs are unlikely to enforce the rules against their allies—as Price's case suggests.

Rather than tweak this flawed mechanism, we should eliminate the temptation to enrich oneself by trading on inside information altogether. The Federal Thrift Retirement Investment Board already manages over \$500 billion in assets for current and former government officials in retirement funds. These funds are structured to avoid excessive exposure to any individual industry or company.

Consideration of potential policy initiatives can create opportunities to profit, but it can be extremely difficult to prove insider trading. Even blind trusts that operate independently can be influenced by their client, creating a host of potential conflicts.

³¹ The Office of Government Ethics currently maintains guidelines for “permitted property” for executive branch officials divesting certain assets and reinvesting the proceeds.

³² These other employment arrangements might include the provision of office space, government-issued equipment, and security clearances to access sensitive information.



- Ban all securities trading—except for diversified mutual funds—for members of Congress and their staff, as well as senior executive branch officials.
- As a substitute, allow certain government officials to invest funds in non-retirement assets managed by the Federal Thrift Retirement Investment Board.³³

C. SLOW DOWN THE REVOLVING DOOR.

Addressing the flow of inbound and outbound government officials is critical to ensure that all official actions are in accordance with the public interest.

Currently, incoming senior officials only have minimal restrictions when it comes to their former private sector life, mostly limited to participating in matters where their former employer is a party. This should be expanded to engaging in official actions, such as adjudications, procurement, and regulations that impact their employer and its competitors.

For outbound officials, there is already precedent for revolving door restrictions in some arenas. The Intelligence Reform and Terrorism Prevention Act of 2004 prohibits senior bank examiners from accepting any compensation from a bank that it recently examined. Violators can be subject to a five-year industrywide employment ban and a \$250,000 fine.

Government employees serving in procurement roles are also subject to further restrictions. Officials playing a role in any procurement over \$10 million are banned from any compensation as an employee, officer, consultant, or director of a government contractor for a year.³⁴

Restrict certain individuals from activities that would benefit their prior employer; ban certain individuals from occupying senior government positions altogether. Individuals actively involved in lobbying or influencing public policy or regulations on behalf of for-profit regulated entities should be forbidden from assuming a government office unless there is clear consent from the legislative branch.

- Expand required recusals to include any agency action that would benefit former employers and clients, as well as their competitors.
- Restrict employees of trade associations organized under Section 501(c)(7) of the Internal Revenue Code from accepting employment at a regulatory agency that the organization has advocated before.
- Restrict employees providing services on government contracts earning more than a member of Congress from accepting a government position at the agency awarding the contract for three years.

³³ The Federal Thrift Retirement Investment Board currently manages over \$500 billion in assets for 5 million participants. The investment options consist of widely diversified funds that would not create any conflicts of interest.

³⁴ 41 U.S.C. §2104(a), 41 U.S.C. §2104(b), 48 C.F.R. §§3.104-3(d), 3.104-6.



- Restrict employees of other federal licensees and contractors from entering any non-competitive position or any position compensated higher than the GS-14 level if their employer was subject to an order or remedial action by the agency overseeing their activities in the past 10 years.
- Allow the PIPA to issue waivers with demonstrated evidence that an individual employee was not meaningfully involved in advocacy before federal entities.

Tighten post-employment restrictions for employees departing public service.

Departing senior officials should not be able to claim they are “consulting” or use other justifications to avoid required cooling off periods when they are truly engaged in lobbying strategy and influence peddling. All employment that capitalizes on inside knowledge and relationships should be curtailed.

- Require senior executive branch officials to make public disclosures of their sources of income for five years after their service.
- Ban certain highly-regulated entities³⁵ and large government contractors, particularly those operating under consent decrees, from directly or indirectly employing senior executive branch officials for five years after their service, including lobbying, consulting, and lawyering, with criminal penalties for both firms and employees that violate these bans.
- If they ever accept employment with certain highly-regulated entities or large government contractors, federal employees would surrender any future benefits under the Federal Employees Retirement System and the Civil Service Retirement System.
- The PIPA should be tasked with developing regulations defining the categories of employment and the methods for disclosures.

Crack down on “burrowing” by political appointees into career positions. There has been bipartisan scrutiny of political appointees entering positions with civil service protections. A recent report from the Government Accountability Office revealed that 76 Obama administration officials successfully converted from a political appointment to a career appointment.³⁶ A 2005 congressional investigation identified 144 conversions by Bush administration officials.³⁷

- Forbid political appointees from entering a career position for two years unless the agency receives consent from the majority and minority leaders of both the House and Senate.

³⁵ For example, this could be defined by a revenue threshold related to activities licensed by federal agencies, such as very large insured depository institutions.

³⁶ U.S. Government Accountability Office, *Personnel Practices: Actions Needed to Improve Documentation of OPM Decisions on Conversion Requests*, GAO-17-674 (Washington, DC, 2017), <https://www.gao.gov/assets/690/686796.pdf>.

³⁷ Christopher Lee, “Political Appointees ‘Burrowing In,’” *The Washington Post*, October 5, 2017, <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/04/AR2007100402282.html>.



Forbid corporate bonuses for government service. Most Americans do not receive the bulk of their income in the form of massive stock grants that vest over time. We shouldn't be bending over backwards to ensure that the wealthiest sacrifice as little as possible—or in some cases, get huge windfalls—when entering government.

- Repeal the Internal Revenue Code's exemption for the deductibility of accelerated bonuses for the purpose of government service.
- Allow certain bona fide alternatives to pay out earned compensation for employee departures.³⁸
- Ban extraordinary payments from firms to employees once a firm learns that the employee is under consideration or a candidate for a federal government office.

Enact a lifetime ban on lobbying for senior executive branch officials and members of Congress. According to a recent study,³⁹ 29 percent of former House Republicans and 26 percent of House Democrats became lobbyists after leaving office. These former elected officials, these lobbyists command high fees that are out of reach for ordinary citizens, further stacking the deck in favor of special interests.

- Ban executive branch officials earning a salary greater than the Executive Schedule Level II (roughly the equivalent of a member of Congress) from lobbying or attempting to influence Congress or federal agencies on behalf of a client offering compensation.
- Similarly, ban former members of Congress from lobbying or attempting to influence Congress or federal agencies on behalf of a client offering compensation.

D. EMPOWER THE PUBLIC TO MORE EASILY INFLUENCE GOVERNMENT AGENCY ACTION.

When special interests seek action by agencies, they hire lawyers and lobbyists—an option rarely available to citizens and small businesses. Citizens need a clearer way to push an agency to act or to stop actions that are not in the public's interest.

Level the playing field for citizens to seek action from an agency. Formal requests for action should be sought through a transparent petition process.

³⁸ For example, an employee's service credit on an ordinary vesting schedule might be considered bona fide.

³⁹ Jeffrey Lazarus, Amy McKay, and Lindsey Herbel, "Who Walks Through the Revolving Door? Examining the Lobbying Activity of Former Members of Congress," *Interest Groups and Advocacy* 5, no. 1 (January 2016): 82 <http://www.palgrave-journals.com/iga/journal/vaop/ncurrent/full/iga201516a.html>.



Current law provides for each agency to give citizens “the right to petition for the issuance, amendment, or repeal of a rule.” But few agencies have developed clear procedures for acting upon citizen petitions that seek action by an agency.⁴⁰

- Amend the Administrative Procedure Act to require that agencies develop standard procedures for citizens to seek formal action by an agency.
- Unless determined to be frivolous or designed with the purpose to delay formal action for the benefit of a special interest, agencies should open a public docket on citizen petitions to solicit further comment.
- For petitions submitted by a large number of citizens, perhaps by at least 10,000 bona fide petitioners, require agencies to hold a public hearing allowing citizens to directly engage agency leadership.

Permit public interest groups to challenge agency actions that are unduly influenced by regulated entities. Regulated companies and lobbying groups often have clear standing to challenge agency actions—including rulemaking—in federal court, since they can claim they might experience economic harm. However, individual citizens and their advocates struggle to show that they have legal standing to challenge actions.⁴¹

Agency actions that produce widely-disbursed benefits and come at the expense of bad actors face an uphill battle to become a reality. Given the outsized influence of special interests, we need to level the playing field to ensure a fair fight—and fairer outcomes.

- Provide public interest organizations, with demonstrated expertise in a given sector, the ability to challenge agency actions under the Administrative Procedure Act.

E. CREATE NEW MECHANISMS FOR THE PUBLIC TO DETECT AND DETER CONFLICTS OF INTEREST.

By reducing both the burdens for citizens and public interest advocates to identify potential unethical conduct and the ease by which special interests can cloak their advocacy in a shroud of secrecy, we can help restore the public’s confidence that conflicts of interests can be quickly addressed. New methods for citizens to “audit” the work of our government can also bring about broader gains of transparency.⁴²

⁴⁰ “Petitions for Rule Making,” ACUS, last modified December 9, 2014, <https://www.acus.gov/recommendation/petitions-rulemaking-0>.

⁴¹ For further discussion, see: Kevin A. Coyle, “Standing of Third Parties to Challenge Administrative Agency Actions,” *California Law Review* 76, no. 5 (October 1988): 1061, <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1888&context=californialawreview>.

⁴² K. Sabeel Rahman, “From Civic Tech to Civic Capacity: The Case of Citizen Audits,” *PS: Political Science & Politics* 50, no. 3 (2017): 751–57, <https://doi.org/10.1017/S1049096517000543>.



Establish a public funding mechanism for public interest advocacy groups and nonprofit news organizations. To level the playing field between corporations and citizens, we need to rejuvenate organizations that are vigorously advocating on behalf of the public, rather than for the priorities of high-dollar funders. Like in other OECD countries, we need to build an infrastructure that supports advocacy before federal agencies.

With oversight over Washington agencies dwindling and more news driven by an increasingly competitive advertiser-driven market, major sectors of government are unscrutinized by professional journalists. Investments in journalism for the public interest to ensure news coverage at every government agency is critical for democracy.

- Establish a system where public interest advocacy groups and nonprofit news organizations can solicit small dollar donations and receive matching funds.
- Ban organizations participating in this system from accepting corporate and high-dollar donations.

Proactively alert the public about conflicts of interest. Today, agency ethics officials frequently offer advice on how employees can avoid conflicts of interest, but these opinions are generally withheld from the public. For example, if a regulator is married to a lobbyist who represents certain regulated entities, agency ethics officials advise the regulator on recusals. But there are few requirements on how any recusals are implemented.

- Conflicts of interest for senior government officials should be made public, including all ethics advice received from agency ethics officials that the officeholder is relying upon, as well as any recusals and waivers.
- The PIPA and inspectors general should regularly report to Congress and the public about the nature of any conflicts of interest, including the steps taken to ensure that the officeholder is abiding by the terms of any agreement.

Reclassify funds “donated” by for-profit corporations used to direct research and advocacy as lobbying expenditures. The use of think tanks and other nonprofit organizations to further the economic interests of its benefactors through policy research should be impermissible for nonprofit organizations established to have charitable or public purposes. Taxpayers should not be subsidizing activities that further the goals of private interests.

- Ban nonprofit organizations organized under Section 501(c)(3) of the Internal Revenue code from allowing donors to amend, or otherwise unduly influence, the results or output of research and publications.



- For nonprofit organizations engaged in lobbying or influencing public policy, require disclosure of all funding sources greater than 2 percent of proceeds dedicated to these activities.
- Funds donated by corporations to support research and public policy advocacy should be treated as lobbying expenditures. The PIPA and the IRS could be authorized to develop a set of conditions for tax-exempt gifts that include the prohibition of the donor or its agents from using outputs of the organizations receiving the gift to promote its interests.

Require a Truth-in-Research disclosure for third-party research used to advance a policy agenda. Think tanks and other researchers often present their findings with the veneer of independence, when they might be specifically directed by a financial interest. Research and empirical evidence should be used to determine the best decisions for the public interest, but they should be free of bias from economic interests.

- Require think tanks and other nonprofit organizations (including 501(c)(3), 501(c)(4), 527, etc.) to detail sources of funds and disclose whether any existing or prospective donor reviews the outputs prior to publication.
- The disclosure would be required for any submission or testimony for a rulemaking proceeding or congressional hearing.

Shine a light on congressional influence on agency spending decisions. In 2011, Congress banned earmarks, where individual projects would be funded through the appropriations process. Since the end of earmarking took place, special interests now work with lawmakers to engage in “lettermarks” or “phonemark,” whereby members of Congress pressure agencies to make certain grants or spending decisions outside of ordinary competitive processes.

The Obama administration circulated a draft executive order requiring agency disclosure of any of these communications. The American League of Lobbyists resisted this action,⁴³ and the draft order was never published. Shining a light on congressional pressuring of agencies will help to deter unseemly steering of funds to favored interests.

- Agencies should disclose all oral and written communications made by members of Congress and their staff with the attempt to influence any agency spending or grantmaking decision.

⁴³ Kevin Bogardus, “Obama Administration Draft Memo Could Shed Light on ‘Lettermarking,’” *The Hill*, November 9, 2011, <http://thehill.com/business-a-lobbying/192497-obama-administration-draft-memo-could-shed-light-on-lettermarking>.



Require more proactive disclosure, rather than waiting for FOIA requests. The Freedom of Information Act (FOIA) has long been lauded as a tool for transparency. Analyses of FOIA requests suggest that most of these requests are used for commercial purposes. For example, hedge funds and other investors routinely seek nonpublic information from the Food and Drug Administration to gain insight on drug approvals.⁴⁴

Instead of funneling public information to private sources, government agencies must provide more information on a proactive basis about the activities of its leadership and other information commonly sought by the public.

- All responses by agencies to FOIA requests should presumptively be made available to the entire public, not just the requestor, within a reasonable time period after fulfilling the request.
- Any topics that are routinely subject to FOIA requests should be made proactively available on an established frequency.
- Agencies shall proactively disclose any written communications to and from members of Congress.
- On a routine basis, agencies should make certain information available, such as travel expense documentation and executive calendars, to deter the misuse of funds and the fair allocation of stakeholder consultation.
- Require the White House to disclose its visitor logs and the calendars of all senior officials.

Disclose more information about the activities of large government contractors.

There is an estimated 7.5 million employees of for-profit government contractors—more than triple the size of the actual federal civilian workforce.⁴⁵ Billions of dollars in contracts are awarded each year, and agencies have become more and more reliant on private entities.

There is significant risk that profit-maximizing government contractors may seek to unduly influence government officials. There is also a risk that contractors may complete work in ways that create greater dependency on them by federal agencies. For example, contractors might develop complex systems but provide little training to agencies on how to appropriately operate and maintain the system.

⁴⁴ Brody Mullins and Christopher Weaver, “Open-Government Laws Fuel Hedge-Fund Profits,” *The Wall Street Journal*, September 23, 2013, <https://www.wsj.com/articles/opengovernment-laws-fuel-hedgefund-profits-1379905298?mg=reno64-wsj&tesla=y>.

⁴⁵ George F. Will, “Big Government Sneakily Gets Bigger,” *The Washington Post*, February 24, 2017, https://www.washingtonpost.com/opinions/big-government-sneakily-gets-bigger/2017/02/24/70cb52d2-fa07-11e6-be05-1a3817ac21a5_story.html?utm_term=.e0fe1625cee2.



Firms that are heavily dependent on taxpayer funding should be subject to more significant scrutiny of their activities. This will help to safeguard against contractor work designed to create further dependence by the government on a particular contractor.

- For companies earning more than \$250 million in a one-year period or 20 percent of their total revenues from federal government sources, require public disclosure of their audited financial statements, as well as a listing of the salaries of employees providing services on government contracts.
- Amend the Freedom of Information Act to allow the public to obtain correspondence and documents from large contractors related to their provision of services to the federal government.
- Require large government contractors to disclose their political spending.



Conclusion

The fundamental principles of our democracy and economy are deeply undermined by corruption in our government.

While we have long held that our government is one governed by its people and not by unaccountable powers, many Americans feel disempowered and believe that Washington is only responsive to those who already have money and power. Curbing corruption and institutionalizing practices that better align our government agencies with that of the public interest can help reverse the decades-long decay of Washington. We must not only reverse the disempowerment and decay; we must also make sure that all Americans have a voice, regardless of their existing wealth or power.

The dynamism of our economy is also in jeopardy. The country's legacy of entrepreneurship and vigorous competition created prosperity across America. But when government influence-peddling is seen as the cost of entry, this disadvantages smaller enterprises and future entrepreneurs, furthering economic concentration and undermining investment in the real economy.

Confronting the role of money in elections is important, but it is equally important to combat corruption within our government agencies. A new, dedicated agency to ensure public integrity, along with other critical reforms, can safeguard our democracy and economy from further corrosion.



Appendix: How We Police Corruption Today

Our approach to policing corruption and combating capture has not kept up with the myriad of ways that special interests have used in recent years. While our current system was established with good intentions, it is in desperate need of a more robust framework that includes tougher laws guarding against conflicts of interest and more vigorous watchdogs and enforcement.

Throughout American history, higher standards of ethics and transparency have been put into place largely as reactions to recent scandals. For example, controversies about officials personally profiting from defective goods and services ordered during the Civil War led to the enactment of a criminal statute.⁴⁶ Prior to the 1960s, most of the laws established to police corruption were criminal statutes, forbidding certain types of conduct by officials—though they generally did not closely regulate domestic actors seeking to influence government action.

The Kennedy administration made a noteworthy change, launching an initiative to establish codes of conduct for executive branch officials that addressed not only actual conflicts of interest, but also perceived conflicts of interest that reduced trust in government. This started the path of codifying requirements outside of the criminal codes to ensure high standards.

But just a decade later, the Watergate scandal and the resignation of President Richard Nixon ushered in a new set of reforms. While much historical analysis has focused on the reforms to the campaign finance system in the 1970s, certain reforms enacted after Watergate continue to serve as the foundation for how we guard against corruption and self-dealing today.

REFORMS OF THE POST-WATERGATE ERA

Office of Government Ethics

The Ethics in Government Act of 1978 established the Office of Government Ethics (OGE), an independent agency that, among other duties, interprets the criminal and civil statutes regarding conflicts of interests. The OGE oversees the government's efforts to proactively avoid conflicts of interest, acting in an advisory—not investigative—capacity.

It offers guidance to incoming and sitting appointees about how to comply with federal laws regarding conflicts of interest, but has virtually no enforcement powers. It cannot launch investigations or bring charges in federal court.

⁴⁶ U.S. Office of Government Ethics, "Managing Conflicts of Interest at the U.S. Federal Level," (Washington, DC, 2001), [https://www.oge.gov/web/oge.nsf/0/31B21EC811CE29BD85257EA6006557B9/\\$FILE/9a8259865d7246de868c85df32c6a1c63.pdf](https://www.oge.gov/web/oge.nsf/0/31B21EC811CE29BD85257EA6006557B9/$FILE/9a8259865d7246de868c85df32c6a1c63.pdf)



Special Prosecutors

While there has long been an authority to appoint special prosecutors to investigate wrongdoing within the federal government, after Watergate, Congress recognized the need for prosecutors who operated independently from the presidential administration to investigate misconduct by high-ranking executive officers.

The Office of the Independent Counsel, also established through the Ethics in Government Act of 1978, was charged with investigating potential crimes of high-ranking government officials. Independent counsels were appointed by the United States Court of Appeals for the District of Columbia, upon request by either the attorney general or Congress. Their work was separate from the Department of Justice, and they had broad access to resources to conduct investigations and prosecutions. The most well-known independent counsel was Kenneth Starr, who investigated numerous matters during the Clinton administration. The statute authorizing independent counsels lapsed in 1999 and was not renewed.

In the absence of the Office of the Independent Counsel, the attorney general may also appoint a special counsel to investigate specific matters, such as Robert Mueller’s investigation of Russian influence into the 2016 election. The biggest distinction between the now-defunct Office of the Independent Counsel and the current special counsel is the relative independence from the attorney general.

In particular, the attorney general—potentially under the direction of the president—is able to remove a special counsel for good cause (including violation of department policies), without explicit accountability to Congress or judicial review. In addition, because the authority to appoint special counsels was created through regulation rather than legislation, the president technically has the power to rescind the special counsel authority altogether.

Department of Justice Public Integrity Section (PIN)

Established in 1976 and codified in 1978, the PIN enforces all criminal statutes related to public corruption at all levels of government. The PIN works with the Federal Bureau of Investigation and the United States Attorneys, but ultimately reports to the attorney general.

According to our analysis of the PIN’s public reports, federal officials composed the bulk of the individuals that the government charged with a federal crime. But over time, there has been a shift in enforcement toward state and local officials.⁴⁷

⁴⁷ U.S. Department of Justice, *Report to Congress on the Activities and Operations of the Public Integrity Section for 2016*, (Washington DC, 2016) <https://www.justice.gov/criminal/file/1015521/download>.



Inspectors General

The Inspector General Act of 1978 created a cadre of independent investigative bodies housed within individual executive agencies, employing both special agents and auditors. The Inspector General Act of 1978 prescribes that inspectors general (IGs) must be appointed on the basis of their qualifications and not based on political affiliation.

Inspectors general conduct criminal investigations for referral to the DOJ, largely related to waste, fraud, and abuse in government programs and contracts—though their mandate is generally wide-ranging. In other words, they largely target the misuse of government resources by outside parties, not government employees.

In addition to supporting criminal charges, IG investigations are used as the basis for disciplinary actions against employees engaged in improper conduct. Inspectors general also conduct financial and program performance audits. For example, the inspector general for the Department of the Interior uncovered a scandal at the Minerals Management Service, which steered major contracts to oil and gas companies in exchange for gifts.

There has been little evidence to suggest that inspectors general have tended toward pursuing a partisan agenda. Instead, in their role as auditors, much of IG criticism of government agencies has been tied to the mismanagement of public programs and funds. In our review of inspector general work plans released to the public, ensuring ethics and preventing conflicts of interest has generally not been a major area of inquiry.

ADDITIONAL PROVISIONS

Anti-Bribery and Conflicts of Interest Laws

Executive branch employees are subject to a number of laws banning them from accepting any bribes or gratuities for official action. Federal law has long recognized that there are other forms of influence peddling, and Congress enacted criminal statutes to codify certain bans.⁴⁸

These laws fall into four broad categories: prohibiting bribery, limiting outside compensation, restricting employment of former government officials, and requiring financial disclosures. For example, federal employees are banned from representing any

⁴⁸ The U.S. Office of Government Ethics maintains a listing of certain criminal and civil statutes at <https://www.oge.gov/Web/oge.nsf/Statutes>.

third party before a government agency. Federal employees are also banned from serving as an attorney for anyone other than the United States before a federal court.⁴⁹

More broadly, executive branch employees face criminal penalties if they personally and substantially participate in any matter where they have a financial interest.⁵⁰ Federal employees are also required to avoid actions that would question their impartiality.⁵¹ However, the president and vice president are exempt from many of these laws, due to a belief that this would interfere with their constitutional duties.⁵²

Other noteworthy requirements include bans on engaging in any financial transaction based on nonpublic information obtained through government service, cooling off periods when a past employer makes an “extraordinary” payment to the employee after learning that the employee may obtain a government position, and notification requirements when soliciting post-government employment. Executive branch employees are also subject to financial disclosure requirements.

These requirements demonstrate that Congress has been primarily focused on making sure that sitting federal employees were not abusing their position for immediate personal gain, rather than also considering more subtle forms of influence.

Freedom of Information Act

Federal law currently permits members of the public and commercial interests from seeking government records. While the primary intent of the law did not relate to oversight of executive branch officials for conflicts of interest, the ability for members of the media and the public to seek correspondence and schedules from key officials can certainly aid in this goal. Notably, documents and correspondence among White House officials that do not include any executive agencies are exempt.

Since its enactment a half-century ago, the law has been amended or implemented in ways that have both expanded and limited its reach. For example, frequently-requested records must now be available electronically on the agency’s website.⁵³ However, there has also been significant criticism about the overuse of the law’s exemptions to withhold documents.⁵⁴

⁵⁰ 18 USC § 208

⁵¹ 5 CFR 2635, Subpart E

⁵² “Conflicts of Interest and the Presidency,” Federation of American Scientists, accessed March 23, 2018, <http://www.fas.org/sqp/crs/misc/conflicts.pdf>.

⁵³ U.S. Government Publishing Office, “Electronic Freedom of Information Act Amendments of 1996,” accessed March 23, 2018, <https://www.gpo.gov/fdsys/pkg/PLAW-104publ231/pdf/PLAW-104publ231.pdf>.

⁵⁴ Colloquy on S. 337, the FOIA Improvement Act, accessed March 23, 2018, <http://sunshineingovernment.org/wordpress/wp-content/uploads/2015/07/031516-Colloquy-Signed.pdf>.



Congress intended for the Freedom of Information Act to level the playing field for all citizens to understand the actions of their government. However, it may not be much of a democratizing force in practice. According to a recent analysis, commercial interests and law firms are the most frequent requestors of information under the law. Journalists submit just 7.6 percent of requests,⁵⁵ raising questions about whether the law is adequately advancing the public interest.

Government Contractor Oversight

Over the last half-century, U.S. population growth has far outpaced the growth in the federal employee workforce. While civilian employment has been fairly stable, government contracting has surged. There is an estimated 7.5 million employees of for-profit government contractors—more than triple the size of the actual federal civilian workforce,⁵⁶ with many describing this shift as the rise of a “shadow government.”

Congress has recognized the concerns about corrupt procurement. For example, procurement officials are banned from working for certain large contractors. However, there is no centralized unit or agency dedicated to policing procurement officials who award these contracts or the contractors themselves. Rather, we rely on inspectors general and Congress to provide oversight over this growing part of the executive branch.

OTHER INSTITUTIONS

There are several other elements that serve a role in our current anti-corruption infrastructure to police against executive branch misconduct that are worth noting.

Congressional Investigations and the Government Accountability Office

Congress has long played a critical role in oversight of the executive branch. Congressional committees can issue subpoenas and hold investigational hearings. While they generally cannot initiate criminal or civil enforcement proceedings against executive branch officials or private actors, their ability to shed light on improper conduct is important. Of course, partisan politics—especially that of the majority party—can often drive the scope of congressional investigations, rather than the spirit of good government, particularly when the president’s opposing party controls Congress.

⁵⁵ Cory Schouten, “Who Files the Most FOIA Requests? It’s Not Who You Think,” *Columbia Journalism Review*, March 17, 2017, <https://www.cjr.org/analysis/foia-report-media-journalists-business-mapper.php>.

⁵⁶ Will, “Big Government.”



However, the Government Accountability Office (GAO) is worthy of greater discussion. Formerly known as the Government Accounting Office, the GAO conducts both financial audits and performance audits. Importantly, the GAO tends to focus heavily on waste in government programs. Although the GAO does not enforce ethical rules or laws, its investigations can serve as the basis for legislative action, congressional oversight, or requests for further investigation by inspectors general and the Department of Justice. This independent oversight can serve as an important line of defense against government misconduct.

Importantly, the GAO is not seen as a partisan actor. This is likely due to the selection process of the comptroller general (the office's head), as well as its highly professionalized staff. A bipartisan commission is established to nominate candidates for the consideration of the president; he or she then nominates a comptroller general for a 15-year term, subject to confirmation by the Senate.

These investigative functions provide a useful foundation to build upon when establishing a new apparatus to confront corruption.

Nongovernmental Independent Watchdogs

Beyond all of the government bodies charged with ensuring public integrity, independent organizations outside of the government also play a highly influential role.

Among the most noteworthy actors in this sector are the broadcast and print media. Scholars have analyzed how a free media can effectively reduce the level of corruption in a society.^{57,58} For example, media scrutiny of potential misconduct not only creates the conditions and pressure for law enforcement or legislators to take action, but it might also deter misconduct in the first place.

Unlike other developed nations, the United States has little public funding for media organizations. Even public radio stations receive a small fraction of their operating budgets from taxpayers, and most nonprofit media outlets are largely funded by private donors.

Independent watchdogs are not only important for guarding against actual misconduct, but can prevent decision-making that is not in the public interest. While concentrated economic interests that stand to make major gains if they advance their policy agenda, individual citizens will rarely have adequate incentive to closely engage on obscure regulatory matters. Here, nonprofit advocacy groups play a particularly unique role.

⁵⁷ Lindita Camaj "The Media's Role in Fighting Corruption," *The International Journal of Press/Politics* 18, no. 1 (November 2012): 21-42, <http://journals.sagepub.com/doi/abs/10.1177/1940161212462741>.

⁵⁸ Eric Avis, Claudio Ferraz, and Frederico Finan, "Do Government Audits Reduce Corruption?" (working paper, NBER, 2017), https://eml.berkeley.edu/~ffinan/Finan_PoliticalSelection.pdf.



Sometimes referred to as “civil society organizations,” these advocacy groups engage in activities to hold government accountable and to advance interests of the public at-large or those of individual constituencies (e.g., the elderly, racial minorities, etc.). In the United States, they are generally fully-funded by private donations.

In some Organisation for Economic Co-operation and Development (OECD) member countries, including Germany, civil society organizations receive public funding to ensure broad participation in decisions at executive agencies. Organizations receiving this funding are sometimes prohibited from raising funds from regulated companies in a particular industry.

As independent watchdogs, the media and advocacy groups clearly play a role in helping to deter undue influence by special interests, as well as to amplify the voice of the public more broadly.





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