Rebuilding Public Trust

Six Principles to Guide Reform

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REVOLVING DOOR PROJECT

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Executive Summary

Americans' trust in government is near historic lows, a trend that both preceded and continued after the blatant corruption of the Trump administration. Democratic administrations, too, made limited progress in curtailing the more routine forms of corruption that combine with dramatic scandals to undercut public trust. Published at the start of his administration, President Biden's executive order on ethics was only a modest step up on what has been standard, failing to take the large strides necessary to close the revolving door between private and public sectors, mandate divestitures, or require compliance with stringent transparency measures. Congressional Democrats' reform proposals have also stopped short of addressing mundane corruption, even as many Democrats have been implicated in congressional trading scandals and leaders like Nancy Pelosi have expressed disdain for common-sense measures like banning congressional stock trading. The Supreme Court and federal judiciary have been swamped by ethics scandals, with investigative reporting exposing judges' and justices' failures to disclose lavish trips from wealthy backers and failures to recuse in cases involving their financial interests—yet some mainstream judicial ethics proposals stop short of even holding the judiciary to the same ethics standards as Congress.

This lukewarm approach to ethics reform, in addition to failing to live up to Democrats' promises to the people who put them in office, represents a missed opportunity to capitalize on Americans' anger about the influence of corporate America over government. The next president will have an opportunity to set government ethics back on track with much-needed reforms, or can deepen the ever growing cynicism that gets in the way of the proper functioning of a democracy.

In Revolving Door Project's view, Democrats must use all the tools at their disposal to advance ethics reforms, from White House ethics standards to House Democrats pushing rules to ban stock ownership (a bipartisan cause). Further, as we focus on in this white paper, Democrats must advance ethics proposals strong enough to avoid both egregious scandals and also standard practices that violate public trust. The following policy recommendations are expanded upon in the final section of the paper.

Policy Recommendations for Common Ethics Dilemmas. This final section lists recommendations for policymakers, following from the six principles and eleven case studies outlined in the paper. These recommendations are sorted into five categories, outlined here:

Revolving Into Government

- Federal agencies should make it a policy not to hire officials who are too conflicted to do the job.
- Congress should pass legislation to target the most serious offenders and the biggest threats to public trust, and ethics enforcers like OIGs or any new authorities created should follow suit.

Revolving Out of Government

- Congress should pass legislation to subject all senior officials to longer cooling off periods before taking any influence industry roles.
- Congress and OGE should demand transparency from former officials.
- OGE should improve the definition of lobbying.
- Federal employee salaries and opportunities for promotion should be improved in order to retain committed public servants.

Financial Holdings

- With the Biden administration's support, Congress should pass legislation to ban all political appointees, federal judges, Supreme Court justices, and members of Congress from owning individual stocks.

Enforcement Across All Areas

- Some existing laws give enforcers tools they need to curb unethical actions, but enforcers fail to use them.
- We outline a set of institutional features that a new ethics authority should have, including independence from political control, the ability to bring civil and criminal enforcement actions and issue financial penalties, and the authority to investigate individuals and companies.

Transparency

- Congress should pass legislation to make lobbying disclosure more meaningful.
- Federal agencies should proactively disclose basic information about who's serving and what they're doing.

These recommendations draw upon RDP's extensive work scrutinizing everyday public corruption across party lines, as outlined in six principles that should guide ethics reform efforts:

Principle 1: Practices That Can Be Plausibly Perceived As Corrupt Must Be Outlawed (Even If Harmless In Certain Instances). This section notes that, given that members of the public cannot have comprehensive and timely information about government actions and decisions, they must have substantial trust in government actors. While some federal ethics rules already include prohibition on actions that create even "the appearance" of corruption, these rules are often narrowly applied and have not historically been used to prevent routine breaches of public trust in government.

We use one case study to support the importance of this principle: **Case Study A,** which focuses on unconventional "Special Government Employees" and the extensive use of the SGE designation in ways that clearly does not comport with the intent of the category. The case study explores specific details of the tenures of former Acting Comptroller of the Currency, Keith Noreika, and former Senior White House Adviser, Anita Dunn, and their ability to duck ethics standards that should have been applied to them, in proportion to the level of their influence on federal policy.

Principle 2: A Successful Ethics Program Will Consist Of Bright Line Rules That Are Simple To Administer And Enforce. This second principle flows naturally from the first—given the importance of public perception of an ethic's program's integrity, the program should be simple to understand and enforce. Unclear or confusing ethics rules that might be inconsistently interpreted and implied will not reassure the public that political leaders are acting in the public interest. So, leaders designing ethics reforms should be attentive to the realities of implementation.

In this section, **Case Study B** focuses on congressional stock trading scandals, noting that lawmakers and other officials consistently fail to comply with the requirements of the STOCK Act. We further note that STOCK Act violations are not consistently caught by the congressional ethics system and that consequences for offenders are rare—not to mention that existing consequences, namely fines, are too small to meaningfully deter future wrongdoing. Bright-line alternatives to the STOCK Act—i.e., proposals to ban congressional stock ownership and trading, which would leave very little room for ambiguity in violations and enable better enforcement—are explored.

Principle 3: Ethics Rules Should Be As Comprehensive As Possible In Both Who And What They Cover. While this principle is so intuitive as to seem obvious, it merits

inclusion because of the porous nature of existing US ethic rules. Due to corporate lobbying and lawmaker collusion in limiting ethics rules, lack of consistency between federal government institutions and employment arrangements, and evolving corporate strategies to influence the federal government, ethics rules have become outdated, and were never fully comprehensive to begin with. Ethics reformers should be attentive to these observations and construct a comprehensive and dynamic ethics rule system that can address current realities and adapt to changing circumstances.

This section includes three case studies:

- **Case Study C**, on the fall 2021 scandal involving stock trading by two Federal Reserve Regional Bank president while the Federal Reserve undertook major market interventions;
- **Case Study D,** on the sometimes-extended tenure of acting officials in executive branch appointments, and the loophole that allows them to forgo ethics agreements that would be required for permanent appointees, and looking at Susan Davies and Brian Boynton in particular;
- and **Case Study E,** on shadow lobbying and the need to expand the in-practice definition of who "lobbying" restrictions apply to.

Principle 4: Ethics Rules Should Distinguish Between Corporate Lobbying That Serves Private Interests, and Lobbying by Public Interest Groups. This principle hinges on the difference between corporate lobbyists whose job is to push for policies that will make it easier for corporations to extract profits from consumers, and public interest advocates (like those from unions and civil rights advocacy groups, or the federal lobbyists for state and local governments) who are paid to champion policies intended to improve life for the public. When ethics rules are not sensitive enough to distinguish between these types of individuals and activities, they may confuse career activists and advocates who hope to advance the same causes they have long advocated through their appointment to public sector roles, with corporate-captured individuals who hope to use government to advance their personal interests and those of a small number of wealthy people or corporate executives with whom they are connected. So, Principle 4 recommends targeted contraction of ethics enforcement via carefully written ethics rules that don't exclude public interest "lobbyists" in the name of closing the revolving door that enables corporate influence on government.

We use two case studies to support these points: **Case Study F,** on the Obama-era lobbying ban that ended up barring public interest advocates from government while still allowing corporate lobbyists in, and **Case Study G**, on the misplaced priorities in ethics enforcement in the antitrust work of the FTC, barring experts from testifying

about their expertise in the technology industry on the basis that they had worked on cases involving the same companies while employed at the FTC.

Principle 5: Ethics Offices Must Have The Legal Authority, Independence, And Resources To Find And Investigate Breaches And Hold Powerful Actors Accountable. This section outlines the existing ethics infrastructure within the federal government, consisting of the Office of Government Ethics (OGE), agency-level Designated Agency Ethics Officials, and agency-level Offices of Inspector General (OIG). Because ethics officials do not have enforcement power, they must rely on OIG referrals to start investigations and potentially recommend disciplinary action or criminal prosecution. This system has many vulnerabilities, including the fact that OIGs lack sufficient protection from political interference, and that historically, enforcement action has been very rare. Resource constraints may also be a barrier to effectiveness.

Three case studies underscore these points:

- **Case Study H,** which looks at limitations that have prevented OGE from taking any action to enforce ethics rules even in cases of flagrant rule breaking during the Trump administration and scant ethics enforcement for federal judges that has resulted in multiple SCOTUS scandals.
- **Case Study I** explores the weakness of a structure under which an Inspector General is investigating their own bosses at an agency who have the power to fire them, as in the case of the Federal Reserve's OIG investigating Jerome Powell, Richard Clarida, and Randal Quarles.
- **Case Study J** centers on a designated agency ethics official (DAEO) at the Federal Trade Commission who herself might have had a conflict of interest even as she weighed in on relevant agency matters.

Principle 6: The Ethics System, No Matter How Strong, Must Proactively Invite Public Scrutiny, Not Cower From It. This principle acknowledges that no ethics system will ever be perfect—oversights, compromises, and mistakes are to be expected. So, inviting public scrutiny is a key feature of a successful ethics system. This should include proactively making categories of information available to the public, so that time is not wasted in fighting to access information that should be public to begin with, under the letter of the law.

Case Studies K and L share stories of RDP's struggles to access staff lists of federal agencies and calendars of federal officials, despite diligent follow-up efforts, as examples of the kinds of efforts that should not be necessary once new ethics and transparency reforms are implemented.

Introduction

The Trump administration was, by any empirical measure, among the most corrupt in modern history. What's more, its members did not shy away from this identifier; Trump and his associates seemed to revel in their ability to reap personal profits from public office.

President Biden and congressional Democrats ran on putting a stop to this plunder and "restoring faith in American government." Yet, after nearly four years in office they have made little discernible progress towards that goal. Trump's fantastical displays of corruption are no longer driving news cycles (current ones, that is; trials for allegedly criminal conduct may eventually move forward), but public trust in government continues to hover at historic lows. What is going on?

There are likely many factors that have contributed to this inertia. Congress has not been able to pass any of their promised ethics reforms into law, leaving our governing system just as vulnerable to attack as it was when Trump first took office. Lawmakers and governance remain broken and causality for the system's weaknesses are not broadly understood, sowing doubts about whether many of our elected officials are genuinely interested in serving the public.

Something is missed, however, if we limit our analysis to the last seven years. The unfortunate reality is that public trust in our governing institutions has been declining for several decades. In other words, by the time Trump and his team took office, decades of more mundane insider dealing and corporate influence-seeking had already thoroughly shaken the public's faith that the government was serving its interests.

Whether in Congress or in the White House, Democrats' efforts to tackle this more routine corruption have been limited. Consider President Biden's executive order on ethics, signed on his first day in office. Presidents have exceptionally broad authority to institute new ethics standards for the over 4000 political appointees they are tasked with naming. Nothing, therefore, was stopping Biden from using this executive order to close the revolving door, mandate divestiture, and require compliance with more stringent transparency measures from his appointees. Instead, the administration largely kept to the standard mold, with only minor improvements.

Elsewhere, in Congress, Democrats have advanced reform proposals that, while no doubt an improvement over the status quo, would fail to put an end to the mundane corruption that pervades our government. Provisions in the For The People Act, for example, would expand the definition of lobbying and lengthen the cooling-off period

former officials must observe before seeking to influence the government but would not institute lifetime bans on lobbying for senior officials (as some members of the party, like Senator Elizabeth Warren (D-MA) and Representative Pramila Jayapal (D-WA 7th), have advocated). Similarly, a reform effort in response to a series of congressional stock trading scandals stops short of the most logical step—banning congressional stock ownership—opting, instead, to ban stock trading.

But policy proposals are not the only way lawmakers demonstrate their commitment to ethics in government; the way they conduct themselves also speaks volumes. The Biden administration, for its part, has largely avoided becoming embroiled in the sorts of ethical scandals that daily dominated under Trump. Even the outlandish theories stemming from Hunter Biden's admittedly concerning improprieties (including the conspiracy theories about Joseph Biden's supposed involvement in them) are only questions of events prior to Biden's assumption of the presidency, not while in the Oval Office. More than that, it is arguably among the least captured presidential administrations in recent history. And yet, it has not been even close to devoid of routine violations of public trust, like welcoming in those revolving out of the influence industry or blatantly disregarding basic principles of transparency. Meanwhile, in Congress, many Democrats have been implicated in the congressional trading scandals that have rocked the institution in recent years (not to mention the demise of Senator Robert Menendez D-NJ). By initially expressing disdain for proposals to ban congressional stock trading, then-House Speaker Nancy Pelosi even briefly allowed Republicans to gain the upper hand on the issue.

No matter how you look at it, Democrats are not delivering on Biden's promise to "restore faith in American government." (Nor are Republicans illustrating any particular broad based interest in ethics amidst what might prove to be the Trump interregnum.) But there is more at stake here than the damage from one broken campaign pledge.

A lackluster commitment to ethics reform is likely compounding the damage from Democrats' failures in other areas. When stories of stalled out action run alongside features on lawmakers trading activities or the administration's new hire from oil companies' preferred law firm, for example, many will naturally come to suspect that inaction may actually serve political leaders' personal interests, further undermining Democrats' support.

This failure to live up to their promises is also leading them to miss a powerful political opportunity. Poll after poll shows that Americans of all political stripes are angry about the influence that corporate America exercises over the government. Across the aisle, many Americans believe the government is "corrupt" and "rigged," that elected officials aren't adequately held accountable for unethical actions, and that there is too much

money in politics, to the detriment of the influence of ordinary people. To seize on that truly bipartisan energy, Democrats need to not only take up this mantle but also continually hit their opponents for undermining that goal.

Those attacks, however, are considerably less potent so long as Republicans can hit back with examples of certain Democrats' insider-dealing (even if they are not as serious, or Democrats take responsibility as a party, as with Menendez). The GOP's building up of the Hunter Biden tax evasion inquiry to be tantamount to the Trump investigations show a clear willingness and ability to play up lower-consequence situations to distract from their own corruption failures. Biden, and the Democrats, need to go on the offensive to make it clear that Hunter Biden's tax evasion has relatively low consequences, but Trump and GOP corruption issues impact everyone, and the wellbeing of our democracy.

How can Democrats do better? First, Democratic leaders in Congress and in the executive branch must deploy all of the tools at their disposal to advance ethics reforms. There is no denying that the obstacles to passing sweeping new ethics reforms into law are formidable, but lawmakers and Biden administration officials have many options short of that ultimate goal to improve the situation. For example, the White House could institute new ethics standards for political appointees tomorrow while the House Democrats could push new rules banning stock ownership, a bipartisan cause.

Second, the proposals Democrats advance must be strong enough that they will not only prevent the most egregious scandals, but also the standard practices that routinely violate public trust. Achieving this second mandate will be the focus of this white paper.

Drawing from the Revolving Door Project's extensive work scrutinizing this everyday corruption, we outline six principles that should guide ethics reform efforts. First, we argue that ethics rules should seek not only to prevent demonstrable cases of corruption, but also eliminate any perception that public officials are prioritizing private gain over the public interest. Second, a successful ethics program will consist of bright line rules that are simple to administer and enforce. Third, ethics rules should be as comprehensive as possible when it comes to both who and what they cover. Fourth, ethics rules should distinguish between activities that plausibly threaten public trust, like corporate lobbying and advocacy on behalf of for-profit entities (and those that principally work to advance their interests), and those that don't. Fifth, even the strongest rules are all but meaningless without a well-resourced and independent enforcement apparatus. Sixth and finally, we argue that any ethics program, no matter how strong, must welcome sunlight as an additional disinfectant and embrace maximal transparency.

In the pages below, we will consider each of these principles in more detail and present case studies illustrating their importance. The paper will conclude with a brief survey of policy proposals that would put these principles into action.

Principle 1: Practices That Can Be Plausibly Perceived As Corrupt Must Be Outlawed (Even If Harmless In Certain Instances)

At their core, ethics rules exist to address an unfortunate but inevitable condition of complex systems of democratic governance; members of the public do not always have complete or timely information about the decisions being made on their behalf. The content of deliberations, the relative weight given to various perspectives, and other essential matters are often hidden from public view. In this context, it is difficult, if not impossible, for members of the public to know with any certainty whether personal or outside interest is driving decision-making. For those decisions to retain their legitimacy, therefore, members of the public must trust that the officials involved are acting in the public interest, rather than their personal interest, even when they are shielded from direct public scrutiny.

Under these circumstances, the distinction between proven cases of corruption and perceived instances of it is relatively modest in terms of damage to public trust. With little way of knowing when behavior crosses the line and unable to trust that our beleaguered system of ethics enforcement will catch it when it does, the public is left to draw inferences from the available facts. A successful ethics program, therefore, will not only focus on preventing and sanctioning actual instances of corruption, but on limiting actions and circumstances that lead members of the public to infer that their interests are being subordinated to private ones.

We are not the first to note the important role that perceptions play in building and maintaining trust in public institutions. Indeed, federal ethics rules have long regulated not just actual conflicts of interest but actions that create the "appearance of loss of impartiality in the performance of [federal employees'] official duties." In theory, this standard is expansive enough to capture a wide array of apparent conflicts. In practice, however, it is applied narrowly, leaving many troubling relationships untouched.

Why the discrepancy? It comes down to whose perceptions are considered important. Ethics regulations specify that federal employees must avoid actions or circumstances that "would cause a reasonable person with knowledge of the relevant facts to question

[their] impartiality in the matter." Given the ethics system's goals, this would seem to demand that federal officials conduct themselves in such a way that it is clear to a member of the general public that they are not conflicted. In actual fact, however, federal officials' actions are most often judged against a much more permissive standard: what is perceived as corrupt among Washington insiders.

Take for example, former FTC commissioner Joshua Wright. Wright had to seek an ethics waiver in 2013 to even work at the agency due to potential conflicts of interest. He had previously worked at economic consulting firm Charles River which was "involved in a third of all merger cases that came before the agency." The government granted him a waiver permitting him to serve as an FTC commissioner and "review deals his former consulting firm advised on, as long as he didn't deliberate on matters that he had directly worked on." The fact that Wright needed special permission to work for the FTC because of his numerous conflicts did not ultimately stop him from being confirmed. In fact, he went on to enjoy a career as a key leader in right-wing antitrust policy with plenty of corporate funders before allegations of misconduct with his students at Antonin Scalia Law School made him step down.

An even more glaring example is the surge of stories about conflicts of interest within the Supreme Court. The reports suggest that Justices on the court, namely Clarence Thomas and Samuel Alito, have long failed to properly file disclosures after receiving gifts from individuals with significant stakes in the Supreme Court's activities. They have similarly failed to recuse themselves from cases in which they, their spouses, or their wealthy friends have clear interests. To conserve space, we provide a mere couple of representative examples. Justice Alito joined the majority opinion finding in favor of an investment fund owned by Paul Singer, who had previously taken him on a free luxury fishing vacation. Justice Thomas was the lone dissenter in a case involving the unsealing of his wife's text messages. For more attention to Supreme Court ethics issues with respect to friends of the Justices who receive benefits from the Court, our organization helps run the website Supreme Transparency.

Washington insiders have a clear interest in ensuring that ethics rules are narrowly construed. To do otherwise—by, for example, imposing more stringent prohibitions on revolving out to, or in from, the corporate influence industry—would threaten their reputations and lifetime earning potential. It should, therefore, come as no surprise that, when this status quo is challenged, influence industry insiders are the first to insist that behaviors the public finds troubling are, in fact, harmless.

Their arguments take many common forms. They might insist, for example, that concerns are misplaced because the person whose corporate ties are being called into question has high moral integrity (something they often note, they know from personal

experience) and would never allow private interests to cloud their judgment. Even if we set aside the fact that these predictions are frequently proven wrong, there's little reason to believe that assurances from similarly-situated members of the DC elite have any power to convince the public that a particular individual is not conflicted when available facts suggest otherwise.

More generally, DC insiders oppose stronger ethics standards on the basis that they might unfairly deny a member of their ranks some benefit—a new position, for example, or an opportunity to grow their fortune using their expertise from government service. The very premise underlying this concern—that such figures are entitled to a role in government—deserves to be ridiculed. But even if we allow that stricter ethics rules could periodically shut out candidates whose actions or relationships are, in actual fact, harmless, that is not a convincing enough reason not to implement them. For one thing, as Revolving Door Project's Jeff Hauser and Demand Progress' David Segal explained for *The New Republic*,

> [T]he "victims" of such a move would suffer no worse punishment than simply being consigned to a life most of their countrymen can only dream about: one of considerable influence and, often, tremendous affluence. They are corporate lawyers, lobbyists, business executives, and corporate-funded think-tankers. They will be perfectly fine.

As for the government, presidential administrations can easily look to other settings—like state and local government, academia, public interest advocacy, or plaintiff-side law firms—to find talented members. What's more, if the rare circumstance arises where an exception to a stringent ethics rule is genuinely necessary to advance the public interest, political leaders will likely find it much easier to make that case if such exceptions are not frequently granted. Put simply, this modest potential cost—which DC elites so often decry and grossly over-exaggerate—is a very small price to pay to safeguard trust in government.

That much is obvious to those outside the DC bubble. Polls consistently show that, by wide margins, the public supports ending the many forms of soft corruption Washington insiders viciously defend. For example, Data for Progress polling has found significant support for measures to slow the revolving door. According to a poll conducted by the Campaign Legal Center in 2022, a staggering two-thirds of voters support banning members of Congress from owning stocks in specific companies. A majority of Americans in 2023 said members of Congress have "among the lowest ethical standards of any occupation." Overall, Americans have low levels of trust in all three branches of government. In 2023, Gallup found that trust in the executive branch sits at 41 percent, just one percentage point above the record low in the Watergate era. Its time ethics policy be brought into line with public sentiment.

Case Study A: Unconventional "Special Government Employees"

Since the category was first created in 1962, the federal government has made use of "special government employees" to access particular and specialized expertise from individuals not employed by the federal government. SGEs' role was designed to be "important but limited" advisers, experts, or consultants who, it is implied, are not sole or final decision-makers. Nor are they permanent employees; to be hired under this category, agency officials must not expect that an individual will serve more than 130 days in a 365 day period. Correspondingly, SGEs face more limited ethics requirements than full-time federal employees.

Special government employee status is used extensively with little fanfare—in 2009 there were an estimated 17 thousand SGEs serving the federal government at some time that year. But a handful of recent, high-profile uses—spanning multiple presidential administrations—have stretched the bounds of this limited category in ways that are damaging to public trust in government.

Acting Comptroller of the Currency, Keith Noreika

In the spring of 2017, President Donald Trump appointed lawyer and Trump transition team member Keith Noreika as Acting Comptroller of the Currency. This was, in many senses, unremarkable; at the time, Noreika was one of hundreds of officials temporarily filling Senate-confirmed roles as their permanent replacements were selected and confirmed. And since this was the Trump administration, not even Noreika's astounding conflicts of interest made him stand out from the crowd. Yet, Noreika was distinct in at least one way: he had been hired as a special government employee.

Needless to say, this was far from any application for which the category was designed. Noreika was not serving as an expert, adviser, or consultant, but rather as the director of a major agency with correspondingly significant latitude to independently set policy. What's more, he served well beyond 130 days, a seeming violation of the statute that officials claimed was allowable because it had been expected that he would serve less. In short, SGE status was, in all respects, a poor fit.

But it did serve one important purpose for Noreika: special government employees were not covered by President Trump's ethics pledge. In other words, as an SGE, Noreika could sidestep measures barring political appointees from "working on

matters involving their former clients for two years, … communicating with colleagues about their activities for one year after they've left the government" or "lobbying the agency for five years."

This left Noreika unusual freedom to monetize the inside knowledge he gained in his short stint atop the OCC. And he quickly took advantage of it; just over a month after leaving government, Noreika returned to his old position in the financial institutions practice at the law firm Simpson Thacher & Bartlett.

Senior White House Adviser, Anita Dunn

Veteran political strategist Anita Dunn has long been one of Joe Biden's most trusted advisers and is the single individual most credited with rescuing his campaign to be the Democrats' nominee for president. So it came as little surprise when the White House announced that she would temporarily join the administration as a Senior Adviser to help get it off the ground.

By late April 2021, it became clear that Dunn had been hired as a special government employee. At first glance, this might have seemed unremarkable. Dunn insisted, after all, that her time in the White House would be short. Moreover, at least on paper, her advisory status was more consistent with the statute's intent.

Closer inspection, however, revealed significant cause for concern. First, Dunn has a history of pushing (and arguably, overstepping) ethical boundaries. Dunn and others at her political strategy firm SKDK are quick to emphasize that they do not lobby the federal government. But they are in the business of advising a long and often unsavory list of corporate clients on how best to influence federal policy. In Dunn's case this has included helping Oracle on a campaign opposing new more stringent tax measures, advising energy company Transcanada as it sought approval for the Keystone XL pipeline, guiding messaging for a food coalition aiming to stop new nutrition standards, and working with the education company Kaplan to dilute new rules meant to stop for-profit colleges predatory practices, to take just a small sample. And while Dunn and her defenders insist that she scrupulously separates her public service and private work, her corporate clients say otherwise. In a New York Times article from 2012, SKDK's clients said that they "benefit from the firm's ability to provide information about the Obama administration's views." To make it even more explicit, some said that "information provided by SKDK *that was not publicly available* [emphasis added] had been instrumental in planning strategy." Access to these nonpublic insights seem to have underwritten a major expansion for the firm in the years following Dunn's return from the White House in 2009 (growth that directly

enriched Dunn, a partner in the firm). Dunn's work reportedly raised eyebrows in President Obama's White House, with many remarking that it risked inviting ridicule of the President's promises to change the culture of corruption in Washington.

Second, Dunn's influence was in no sense "limited" as the Special Government Employee role was designed to be. As a member of the President's innermost circle, she had significant power over almost every aspect of U.S. policy. Along with such status should come stringent ethics safeguards, not sweeping exemptions. Yet Dunn undoubtedly benefited from the latter. In addition to sidestepping President Biden's ethics pledge, Dunn also evaded public financial disclosure requirements by taking an anomalously low salary while in the White House. Special government employees are exempted from public financial disclosure unless their salaries exceed a set threshold—132k in 2021. Dunn was paid at an annual rate of 129k per year, just shy of the mark. Every other member of the White House team with her title, in contrast, received a salary of 180k per year. To see this as a coincidence stretches the bounds of plausibility. Instead, it would appear that Dunn forewent a significant sum of money (approximately 4k per month) to avoid disclosing her clients to the public.

In all, Dunn served in one of the most consequential positions in the country for 204 days, all while being bound by ethics standards less stringent than an entry level White House staffer.

But subsequent developments have only provided further evidence that this arrangement was an affront to ethics standards. The public was finally able to view Dunn's financial disclosures in the spring of 2022, after she returned to the White House as a permanent employee. Those disclosures revealed that Dunn was entangled in a thicket of client relationships and financial investments that left her conflicted on virtually every major policy issue. This posed ongoing ethical issues—upon first viewing Dunn's client list, Revolving Door Project's Jeff Hauser asked, "what…is Dunn even allowed to work on?"—but it also casts her stint as a special government employee in an even more damaging light. For example, Dunn and her husband reportedly divested many of their financial holdings to avoid conflicts of interest. But if those holdings have the potential to conflict with White House policy work, why was Dunn not made to divest sooner? The answer, it would seem, has nothing to do with the substance of her role, but with the change in her employment category.

Principle 2: A Successful Ethics Program Will Consist Of Bright Line Rules That Are Simple To Administer And Enforce

The second principle flows naturally from the first. If we accept that the public's perception of an ethics program's integrity is central to its success, then it follows that that program's core features—the rules themselves as well as the mechanisms for their administration and enforcement—should be credible. Simplicity is key to achieving this goal, and in turn the broader goal of safeguarding democratic legitimacy.

Conversely, ethics rules that are unclear or confusing will do very little to reassure the public that political leaders are not prioritizing private profit over the public interest behind closed doors.

But clarity also serves a straightforward, practical function: it reduces the likelihood of mistaken noncompliance, which can undermine trust in government almost as quickly as more intentional evasions. This should come as no surprise; from the public's perspective, it is often impossible to distinguish between honest mistakes and willful noncompliance passed off as an unintentional error. Ethics rules, therefore, should be designed to credibly prevent both.

In addition to being easier to understand and follow, simple, bright line rules are also easier to administer and enforce. Ultimately, for an ethics system to reliably safeguard public trust in government, it should be credible to any observer that the relevant ethics authority can reliably catch violations and pursue enforcement actions in a timely manner. Complex rules and reporting systems often undermine this goal. Systems that, for example, rely on extensive reporting in place of banning concerning behaviors, may create large volumes of paperwork that ethics staff lack the capacity to adequately monitor. This leaves significant space for undetected ethics violations. And in cases where ethics officials do identify violations, ambiguous rules can make enforcement actions lengthy and resource-intensive and, ultimately, increase the likelihood that they fail.

Leaders who are serious about restoring trust in government should be attentive to the realities of implementation as they develop new ethical frameworks. Strong rules that cannot be effectively administered or credibly enforced are unlikely to achieve the desired result.

Case Study B: Congressional Stock Trading Scandals

Congressional stock trading scandals are nothing new. Stories of lawmakers using nonpublic information gleaned from their official duties for personal enrichment have dotted the news and steadily undermined trust in the country's legislative branch for years. The pandemic, however, saw a veritable onslaught of trading scandals that drove dwindling trust to new lows. Alongside public anger at individual officials' violations was a clear sense of disbelief at how impotent the existing ethics system was at preventing and punishing noncompliance. A close look at the structural features that contributed to these failures underscores the value of simple, bright line rules.

Despite regularly having access to nonpublic, market-moving information about practically every sector of the U.S. economy, members of Congress are not barred from owning or trading stocks. Instead, the STOCK Act, a reform measure passed in 2012, establishes a mechanism for ethics officials and members of the public to monitor congressional trading activity (and, in theory, respond when lawmakers illegally use the aforementioned nonpublic information to influence their investment decisions). On paper, it works as follows: in addition to filing annual public financial disclosure reports detailing their financial holdings, lawmakers must file periodic transaction reports (PTRs) every time they (or their spouse or dependent child) make a trade worth more than $1000. PTRs must be filed within 30 days of when a lawmaker is notified of a trade (in the case that they did not execute it) and no more than 45 days after the trade took place.

In practice, however, lawmakers (not to mention other covered officials, like senior staffers) consistently fail to comply with these requirements. A Business Insider investigation published in September of 2022 found that at least 72 members of Congress had recently violated the STOCK Act. Some of those violations were, undoubtedly, honest mistakes. Certain lawmakers may genuinely have forgotten to file the necessary forms within the allotted time frame (a poor excuse, but not necessarily malicious). Others may not have been aware of covered trades because a spouse or dependent child did not notify them when they occurred. Yet, from the perspective of public trust, it hardly matters whether they were mistakes or willful evasions. Each demonstrates that the system is not working as intended, nor up to the task of reliably preventing conflicts of interest.

When violations do occur, the congressional ethics system overwhelmingly fails to catch them. It seems that congressional ethics authorities lack the capacity to

carefully review the disclosures they receive and to cross-check materials against other disclosures and news reporting. Indeed, it has consistently been journalists and other watchdogs who have caught cases of non-disclosure—by, for example, highlighting discrepancies between annual disclosure reports and transaction reports—or drawn attention to worrisome trades.

It is also rare for those who run afoul of congressional ethics law to face consequences. As Business Insider explored, no system exists for recording and publicly reporting if violators of the STOCK Act have paid (overwhelmingly paltry) statutory fines, but it appears that enforcement is exceptionally uneven. Successful prosecutions for insider trading are even more rare. In fact, as the Campaign Legal Center has noted, "no member of Congress has ever been prosecuted under the STOCK Act, despite persistent credible allegations." Consider one of the first in the long line of pandemic-era trading scandals to grip the public. In February 2020, Senator Richard Burr sold off large swaths of his stock portfolio shortly after a confidential meeting on the projected impacts of the emerging pandemic. He also called his brother-in-law who undertook major sales shortly thereafter. Yet, even with so cut-and-dried a case, Burr has not been charged with insider trading. A Securities and Exchange Commission (SEC) investigation into the trades is seemingly ongoing. The Department of Justice, for its part, closed its investigation in January 2021 despite having "probable cause to believe that Burr had committed insider trading and securities fraud."

Contrast this approach with the one taken by many ethics reform proposals that are currently under consideration in Congress—including the Anti-Corruption and Public Integrity Act, put forward by Senator Warren and Representative Jayapal. There, lawmakers have put forward a simpler solution to congressional conflicts of interest: banning individual congressional stock trading or, even better, individual congressional stock ownership, leaving far less room for mistakes and reducing the likelihood that ethics authorities missed violations. (Holding and trading widely held investment funds would remain legal.) Moreover, violations would be far more obvious. Rather than having to prove whether or not trades were made using inside information, enforcers would face the far easier task of demonstrating that a lawmaker or other covered official had, for example, made a trade, or owned a stock.

Principle 3: Ethics Rules Should Be As Comprehensive As Possible In Both Who And What They Cover

Of the six principles that we lay out in this paper, this third one is arguably the most intuitive. If ethics standards are meant to safeguard public trust, then they must logically aim to encompass all those who are vested with that trust and all activities that threaten it. Ethics systems that are incomplete will quickly become subjects of ridicule, not bulwarks for public trust.

Although this is a matter of basic common sense, it bears inclusion here for one simple reason: the federal ethics system consistently fails to live up to this bedrock principle. Within just the short span of Biden's presidency, we have seen multiple cases wherein extraordinarily high-powered officials are not bound by important ethics and transparency standards, with frequently damaging consequences. Meanwhile, egregious gaps in the activities that ethics law recognizes as deserving of heightened scrutiny and more stringent safeguards have contributed to a slow but steady erosion of faith in the system.

Before we dive into some specific examples, it's worth asking how US ethics law came to be so porous. While concerted efforts, by corporations and lawmakers, to limit the scope of ethics standards are undoubtedly a part of the answer, they are not the whole story. At least two other, far less malicious factors have contributed to this state of affairs. First, the federal government is made up of components that were created at different times, featuring different institutional structures and employment arrangements. As a result, encompassing all positions of public trust is not just a simple matter of stating that a rule covers "all political appointees," or even "all employees of the federal government." Second, ethics rules have failed to keep up with changing circumstances; as powerful corporations have innovated new methods to influence the federal government, ethics rules have remained unchanged. Ethics reformers should be attentive to both of these factors. Constructing a comprehensive ethics system will require great care. Ensuring that it remains comprehensive over time will demand dynamism in its institutional design and administration.

Case Study C: Federal Reserve Regional Bank Presidents

It's not just congressional trading that has sparked scandal throughout the pandemic era. In the fall of 2021, the public learned that two Federal Reserve Regional Bank presidents had been actively trading as the Federal Reserve undertook major market interventions to prevent a pandemic-induced crash. Boston Regional Bank President Eric Rosengren, who was a non-voting attendee at Federal Open Market Committee (FOMC) meetings throughout 2020, "purchased stock in several Real Estate Investment Trusts, including in Annaly Capital Management, a firm which primarily buys and sells mortgage-backed securities." The Fed aggressively bought mortgage-backed securities as a part of its market intervention in 2020. Meanwhile, Dallas Regional Bank President Robert Kaplan, a voting member of the FOMC that year, "traded stocks in sectors including air travel (Boeing, TransDigm, and Delta Airlines) and fossil fuel (Chevron, Occidental Petroleum and Valero Energy) which greatly benefited from the Fed's bond-purchasing and corporate lending activities." Rosengren and Kaplan respectively retired early and resigned within weeks of these trades coming to light. An investigation by the Federal Reserve's Office of Inspector General (OIG), into whether their trading activities violated the law, is ongoing. However, the OIG purportedly cleared top officials, including Jerome Powell and Richard Clarida of the Federal Reserve Board of Governors in DC, of any wrongdoing in July 2022.

As we await the results of that investigation and any consequences that might follow from it, it's worth asking why it took so long (over a year) for the public to learn of these trades and for the officials in question to leave their positions. The answer is simple but unsatisfying. Federal Reserve Regional bank presidents are not covered by the STOCK Act and, therefore, not required to file periodic transaction reports that detail their trades shortly after they occur. Instead, the public may only learn of trading activity by consulting their annual financial disclosures, which are released at a significant delay.

There's no good reason for this. Although the Federal Reserve system's peculiar structure means that neither Rosengren nor Kaplan was a government official, there is no question that each occupied a position of public trust. Through their leadership of the regional reserve banks and their rotating membership on the FOMC, both officials exercised significant power over public policy.

It's very possible that Reserve Bank leaders' exclusion from the STOCK Act was a simple oversight. From the perspective of public trust, however, it hardly matters. The damage to trust in the Federal Reserve system is done.

The Fed eventually introduced new ethics measures in 2024, four years after the trading scandal happened. But even that step failed to address the damage in a forthright way: the Fed's new "Policy for Addressing Covered Reserve Bank Employee Material Violations of the Investment and Trading Policy and Financial Disclosure Rules" was only revealed after an inquiry from Senator Elizabeth Warren's office. And as Senator Warren and Senator Rick Scott wrote to Chair Powell, the new rules are "a dismal failure" that "lacks the safeguards to prevent another trading scandal, provides no accountability for ethics violations, and is ridden with conflicts of interest." While the Fed made an effort to improve their ethics rules and enforcement, clearly the agency has more to address when crafting new ethics measures.

Case Study D: Mystery Officials and Missing Ethics Agreements

With over 1000 positions across the executive branch requiring presidential nomination and Senate confirmation, acting officials are a regular and necessary part of the presidential transition process. Their tenure and importance, however, has grown markedly over the past two decades as the Senate confirmation process has slowed. Many have worried about how this trend undermines the Senate's advice and consent role and the President's ability to implement their priorities. Fewer, however, have considered the implications for public trust.

When the President plucks acting officials out of the corporate influence industry, those implications are deeply concerning. Acting officials are not required to submit to the same transparency surrounding their ethics commitments as those who will

eventually fill their positions on a permanent basis. Their public financial disclosure reports are not published on the Office of Government Ethics website, necessitating individualized requests to their agencies (with extremely variable response times—compare, e.g., the Federal Trade Commission's 2021 average of 3.8 days to respond to a simple request, with the US Department of Housing and Urban Development's 136.5-day average for the same task). Further, acting officials are not required to complete or publish ethics agreements detailing the steps they will take to avoid conflicts of interest.

This discrepancy *may* have been defensible when acting officials served for very short periods of time; it is difficult to have much of an impact in the space of a few weeks. Today, however, acting officials can expect to serve for many months, if not years. In that time, they are empowered to carry out virtually (and in many cases, literally) all of the office's responsibilities. They are just as much in a position of public trust, and thus just as much in a position to abuse it, as their eventual successors.

Susan Davies

Susan Davies, a former partner at the right-wing law firm Kirkland & Ellis and Deputy White House Counsel in the Obama administration, joined the Department of Justice Office of Legal Policy in May of 2021 as a Deputy Assistant Attorney General. Her hiring was not publicly reported in any way nor acknowledged on the Office's website for several months and then only after multiple inquiries from the Revolving Door Project. From September 3 to October 28, 2021, Davies served as the Office of Legal Policy's Acting head per Revolving Door Project's inquiries of DOJ.

It goes without saying that knowing who is filling a position is a necessary first step for public scrutiny, one that was needlessly delayed in this case. Even after the public learned of Davies' hiring and subsequent elevation to acting head of OLP, it lacked the requisite information to assess her impartiality. Davies' personal financial disclosure form appears first to have been released in December of 2021 to Reuters, almost two months after she had finished her tenure as Acting Assistant Attorney General and over seven months after she joined the DOJ. It revealed a troubling list of recent former clients, including Coinbase, Oracle, Abbott Laboratories, Teva Pharmaceuticals, Sanofi SA, United Airlines and JUUL. And since Davies is not required to complete or publish an ethics agreement, the public to this day has no information about how she is managing this laundry list of potential conflicts.

Brian Boynton

Brian Boynton was appointed Acting Assistant Attorney General for the Civil Division on January 20, 2021. He came to the department from the law firm WilmerHale.

In April of that year, Biden nominated Javier Guzman to the permanent position atop the Civil Division but, three months later, Guzman withdrew his nomination. To date, President Biden has not nominated anyone else to fill the role, leaving Boynton to lead the Division ever since. (Due to tenure limits contained within the Federal Vacancies Reform Act of 1998, Boynton's title changed from Acting Assistant Attorney General to Principal Deputy Assistant Attorney General. His powers and responsibilities are functionally the same.)

Boynton has been leading the division since the early days of Biden's presidency (and could conceivably continue to do so for its entirety). Yet, he is still subject to the lesser transparency standards that apply to acting officials. To access his personal financial disclosure documents, you must file a request with the Department of Justice (rather than downloading them instantly from the Office of Government Ethics' website). Those disclosures show that, prior to joining the Biden administration, he worked with a dizzying list of clients, including "predatory for-profit colleges like the University of Phoenix, pharmaceutical and medical device manufacturers like Eli Lilly and COVID vaccine maker Moderna, Big Tech companies like Google, major defense contractor Northrop Grumman, union-busters like Walmart, insurance giants like Cigna and State Farm, numerous hedge funds (including Renaissance Technologies, where billionaire conservative donor Robert Mercer plied his trade), [and] Big Ag interest groups." Given the breadth of his responsibilities, it is difficult to see how Boynton is able to carry out his responsibilities in an impartial manner. And since he is not required to file or publish an ethics agreement, the public has no insight into how he even planned to manage this thicket of potential conflicts nor any means to assess if that plan is credible.

Case Study E: Shadow Lobbying

Lobbyist is a legally significant designation. Those who have registered to lobby the federal government are subject to more stringent ethical standards from multiple sources if seeking to hold government roles. Recent presidential ethics pledges, for example, have required those who recently lobbied and are seeking to join the government to recuse themselves from matters related to their prior work for longer than other executive branch officials. Appointees and lawmakers leaving government are also subjected to cooling off periods of varying lengths during which time they cannot register to lobby. Taken together, these measures represent a clear recognition that those who were previously paid to influence the government and those who plan to shortly after leaving government should be subject to higher standards.

Unfortunately, the present definition of "lobbying" fails to capture much of the universe of activity aimed at achieving that influence. An individual is required to register as a lobbyist if they spend more than 20 percent of their time communicating with covered government officials (this is a wide universe) on behalf of a client (2 U.S.C. §1602). There are, however, many other ways to help clients influence the government than making direct contacts. Former officials can direct lobbying strategy, for example, giving subordinates valuable insider insights into agencies and offices, without ever communicating directly. Alternatively, a former official could direct a corporation's litigation strategy, drawing on knowledge about the opposing government agency from time within it, without running afoul of the lobbying rules. Or, a former appointee could help a client devise a public relations strategy that they know is likely to move particular well-placed individuals in their former government workplace to action.

It's hardly a secret that the current definition of lobbying (and, by extension, the elevated standards that attach to it) are woefully incomplete. After all, why else would corporations so eagerly snap up former government officials who will be barred from lobbying for one to two years after their date of hire?

Principle 4: Ethics Rules Should Distinguish Between Corporate Lobbying That Serves Private Interests, and Lobbying by Public Interest Groups

Throughout this paper, we have consistently encouraged reformers to cast their net widely when determining who and what a strong ethics program would cover. Given the current state of public trust in government and its continuing deterioration, we contend that it is better to over- rather than under-shoot (unlikely as this may be). Still, our proposed agenda is not one exclusively of expansion. In certain narrow areas, the federal ethics system is in need of targeted contraction.

Specifically, the ethics regime as currently constructed does a poor job of distinguishing between influence activities undertaken on behalf of for-profit entities, and other forms of advocacy. Why does this matter? Straightforwardly, few perceive the two as posing an equivalent threat to public trust in government. Whereas the vast majority of those who move from public interest advocacy organizations to the federal government continue to work towards substantially the same goals from their new positions, the transition from the corporate influence industry to government (or vice versa) very often entails switching sides between ostensibly furthering public interest by implementing regulation, enforcement actions, etc. and helping corporations avoid those same government actions.

Yet, the ethics system treats these two categories as identical. From the outside, this might seem, at best, a waste of resources that could be better spent tackling corporate influence. At worst, it can give the impression that ethics officials are actively undermining the public interest by enforcing rules that illogically exclude those who have continuously worked on behalf of the public interest.

We will not pretend that it is always easy to draw these lines, but it is absolutely clear that standards need to be updated to better align with public priorities. However, testing whether for-profit entities guide the work of the lobbyist, and creating a compensation-based safe harbor policy, should make this possible. For example, lawmakers could set a maximum compensation level below which someone working at a "nonprofit" entity will be presumed to be genuinely working in line with their personal values. In 2017, Tom Donohue's compensation was "more than $6.6 million" as U.S. Chamber of Commerce CEO and president. He should not receive a "nonprofit" exemption. By contrast, someone working for a nonprofit think tank—like, say the

Economic Policy Institute (EPI)—would make substantially less money, and could credibly be seen as entering government to advance similar goals to those they held in their work for EPI.

Case Study F: Lobbyist Bans and Public Interest Advocates

President Barack Obama came into the White House in 2009 promising to close the revolving door and clean up Washington. Central to this plan was his Executive Order on Ethics and its first-of-its-kind lobbyist ban. Officials who had lobbied within the past two years were barred from seeking or accepting employment at any agency they had lobbied within that time period. The measure was widely praised when it was introduced, but within just a few years, it became clear that it was failing to deliver the promised results.

The reasons for its foundering were numerous—for example, as detailed above, registered lobbyists are just one small fraction of the DC influence industry. But it wasn't just who the ban failed to target; it was also who it seemed to (illogically) include. Thanks to the lobbying disclosure law's failure to make any distinction based on the type of client an individual is lobbying for, public interest lobbyists were shut out of the Obama administration just like corporate lobbyists. In other words, people who had steadfastly been working to advance policies that the Obama administration supported, were out of luck. What's worse, thanks to the aforementioned gaps in lobbying disclosure laws, many of those who had devoted themselves to undermining those same policies on behalf of corporate clients from positions that did not meet the lobbying threshold could saunter into the administration unimpeded. It also didn't help that the Obama White House at times seemed more generous in granting ethics waivers to corporate lobbyists than public interest ones.

In many respects, this flaw in the Obama administration's ethics program has been given more attention than it warrants. Ultimately, the problem was a relatively small one, especially when compared with the administration's abject failure to deliver on its promise to close the revolving door to and from the corporate influence industry. Indeed, the Biden administration has made a major stride forward on this front by adopting a very simple fix: although his administration also bans those who were recently registered to lobby, it announced from the outset that it would consider

granting a waiver when the lobbying was carried out on behalf of a non-profit organization.

But the whole episode does raise one lingering question: is it really the case that ethics law should make no distinction between public interest lobbyists and those who are selling their connections and inside knowledge to the highest corporate bidder? It certainly doesn't comport with common understandings of what makes lobbying troublesome. In the popular imagination, lobbyists adopt the cause of whichever client is willing to pay them the most, with no regard for the impact of their preferred policy agenda, and no qualms about changing their position if monetary incentives change. Even if you squint, that doesn't describe public interest advocates engaged in lobbying, whose resumes most often show a years-long or lifelong commitment to their cause (usually from positions with much more modest pay than corporate lobbyists-for-hire).

From the perspective of public trust, ethics resources would be far better spent meaningfully curbing the influence of those who work to undermine the public interest on behalf of corporations, whether they're registered lobbyists or not.

Case Study G: Misplaced Priorities In Ethics Enforcement In Antitrust

It's no secret that the revolving door in antitrust enforcement is pervasive. Many organizations have documented how high-ranking anti-monopoly officials from administrations on both sides of the aisle have moved with ease from the offices of corporate monopolists to the halls of government and back again. In a report released this summer, Revolving Door Project presented new evidence that this pattern has been pervasive not just at the leadership level, but throughout staff ranks as well.

Surveying this evidence, it would be easy to conclude that the antitrust agencies' ethics officials are asleep at the wheel. And that may well be part of the story. But they haven't been quite so somnolent when it comes to one apparent threat to public trust: officials with a demonstrated history of fighting corporate concentration.

In a paper entitled Illusory Conflicts, a former senior policy advisor and a staff technologist at the Federal Trade Commission (FTC) wrote about the roadblocks that FTC ethics officials put in the way of enforcement efforts, drawing from personal experience and interviews with other former technologists. Specifically, technologists were repeatedly barred from providing expertise to state antitrust enforcement agencies because they were working on, or had previously worked on cases involving the same companies while at the FTC. It apparently made no difference that both investigations were working towards the same ends, despite the fact that the relevant provision of the FTC's ethics regulations seeks to prevent "switching sides." Somewhat ironically, corporate consolidation increased the extent of the limitation technologists faced: "any given company is often tied by the FTC to any 'proceeding or investigation' involving other companies it merged with."

In some cases, FTC ethics officials have gone even further and barred technologists from working on cases involving companies they had publicly criticized prior to joining the agency. The ethics officials took these steps following direct requests (pg. 811) from the companies facing investigation.

It's no surprise that companies would attempt to pick their regulators in this way. Indeed, Facebook and Amazon both very publicly tried the same play last year in an effort to sideline FTC chair Lina Khan. Fortunately, those requests, which were roundly condemned as desperate and baseless, were dismissed. It seems, however, that monopolists may enjoy a much more favorable audience for these bad faith antics when they are not the subject of so much public attention.

Principle 5: Ethics Offices Must Have The Legal Authority, Independence, And Resources To Find And Investigate Breaches And Hold Powerful Actors Accountable

In the sections above, we have focused on the rules: what interests they should exist to serve, how they should be written, and who and what they should cover. Even perfect rules will be meaningless, however, if they are not accompanied by robust ethics enforcement. Unfortunately, our current system of ethics enforcement is, by its very design, unable to fulfill this essential role. Without a fundamental overhaul to this apparatus, any comprehensive ethics reform effort—no matter how well-conceived—will fall far short of its potential, if not fail outright.

So what does federal ethics enforcement look like? The public face of federal ethics is the aptly-named Office of Government Ethics (OGE). When you're looking for ethics documents, or trying to understand who might file where, you are likely to start with OGE. OGE also issues ethics guidance, advises agency-level ethics programs, and manages the financial disclosure process for the highest-level political appointees.

The day-to-day work of ethics administration across the breadth of the federal government falls to agency level ethics officials. Designated Agency Ethics Officials (DAEO) counsel agency officials on ethics matters, administer the financial disclosure program, and help to resolve conflicts of interest. DAEOs are overwhelmingly career employees but they are most often situated in the office of the General Counsel, who is generally a political appointee. Although DAEOs work with OGE, it is important to note that they are not employees of the office and that they have significant discretion when it comes to interpreting and applying ethics standards to the facts of an employee's situation. This structure means that ethical compliance may look different from one agency to the next.

Notice that enforcement is absent from OGE and agency ethics officials' list of responsibilities. Indeed, OGE's website notes that the agency does not have "investigative or prosecutorial authority." Its mission is, rather, "one of prevention." In other words, ethics officials are generally not searching for violations. And when they *do* happen to find them anyways, they lack the authority to independently take action.

Instead, ethics officials must refer the matter to the relevant federal agency's Office of Inspector General (OIG) for further investigation. If, in turn, the Inspector General

determines that a violation has occurred, it may recommend disciplinary action or, in cases of criminal violations, refer the case to the Department of Justice. There are many reasons to think that Offices of Inspector General are not the best candidates to investigate ethics matters. First, many OIGs are already overburdened, rendering it unlikely that they are able to efficiently evaluate ethics cases, which may not be their highest priority. Second, as we saw during the Trump administration in particular, OIGs lack sufficient protection from political interference, leaving open the possibility that inquiries that threaten powerful individuals are quashed. And even if OIGs are able to investigate in a timely manner, enforcement *action* still depends on other parties—agency officials who are willing to implement the IG's recommendation for discipline or a Justice Department with the time, resources, and inclination to undertake a criminal investigation.

Given this structure, it is entirely unsurprising that enforcement action, whether disciplinary, civil, or criminal is very infrequent (pg. 11). In 2021, OGE reported just 706 total enforcement actions taken by agencies, or 1 enforcement action for every 3,038 people in a federal government made up of approximately 2.1 million full-time employees (pg. 4). And, as Adam Raviv highlighted in a paper for the University of Michigan Journal of Law Reform, it is even rarer in cases not related to an individual official's financial gain. While ethics statute 18 U.S.C. § 208, governing financial conflicts of interest for government officials, "is designed not just to punish officials who use their office for private gain, but also to avoid the decay of trust in government that can result if officials are even allowed to be in a position to potentially realize such gain," as a practical matter, the DOJ does not appear to pursue cases where there is no evidence that the official benefited financially.

Resource constraints may also be a barrier to effectiveness. At the beginning of the Trump administration, for example, the ethics system was overwhelmed under the weight of unusually complex financial disclosures. Increased capacity alone cannot fix all of the issues with our current infrastructure on federal ethics, but its current state does explain the apparent sluggishness, as well as a clear indication of what Trumpian co-optation of federal ethics standards and processes may look like. While that is, perhaps, an extreme case, it should prompt ethics reformers to take a careful look at whether the resources we devote to federal ethics are sufficient to the task of safeguarding public trust.

Case Study H: Ethics Rules, Or Suggestions?

OGE's Struggle To Get Trump Appointees To Follow Ethics Rules

The federal ethics system struggles to meet its mandate in the best of circumstances, but it was not equipped to even come close when dealing with an administration like Donald Trump's. Faced with the wealthiest Cabinet in history, plenty of conflicts among lower-level appointees, and a general attitude of disdain for ethics requirements throughout the administration, the Office of Government Ethics' lack of enforcement power emerged as a fatal flaw. But OGE and other corners of the ethics system ran up against limitations to their ability to enforce violations of the most ethics requirements on federal employees, like producing financial disclosures and signing ethics agreements.

Before Trump had even been inaugurated, stories were dotting the news detailing mistakes and omissions from financial disclosure forms. Treasury Secretary Steven Mnuchin, for example, "forgot" to disclose $100 million worth of assets.

Nor did the problems stop after the initial disclosure forms were filed. The next round of disclosure—annual reports filed in 2018—revealed discrepancies and violations. Education Secretary Betsy DeVos' report apparently underwent a dozen revisions over a period of eight months before ethics officials would certify it.

Meanwhile, OGE ultimately refused to certify Mnuchin and Ross' 2017 annual reports. Mnuchin, it turns out, had completed a required divestment of his stake in a film production company by selling it to his fiancée (whom he married in the summer of 2017). OGE determined that this was a violation of Mnuchin's ethics agreement. The office required him to revise that ethics agreement, but otherwise Mnuchin faced no further consequences. As for Ross' disclosure, it revealed that the Secretary had falsely reported divesting stock he held in BankUnited, leaving him in violation of his ethics agreement. He faced no sanction for the violation.

SCOTUS Scandals Highlight Lack Of Ethics Accountability In The Judiciary

Recently, the Supreme Court has come under fire for its lax attitude to ethics requirements. The Court has faced ethics scandals around undisclosed gifts to Supreme Court Justices from prominent wealthy political donors. The Supreme Court adopted a new ethics code in November of 2023—since the rest of the judiciary's code of conduct inexplicably does not apply to the Supreme Court—but the Court's new code lacks a mechanism or arbiter to enforce, apply, or interpret the rules laid out. At best, this code is a loose set of guidelines that justices are encouraged to follow. More realistically, it is an appearance of accountability with no clear potential to improve the current ethics system on the Court.

However, the Supreme Court and the rest of the judiciary are covered by some existing ethics laws—it's just not that they are being required to comply with them. Clarence Thomas's disclosure failures appear to violate the Ethics in Government Act, which authorizes a civil penalty of up to $50,000 against anyone who "knowingly and willfully falsifies or fails to file or to report any required information" on their financial disclosure. The law has never been enforced against Thomas, but there is also no record of any federal judge ever having been fined under it—despite many federal judges having failed to disclose various gifts and trips.

The judiciary has often been tasked to police itself, with predictable results. A 2024 NPR investigation into judges' widespread failure to file required disclosure forms after receiving free luxury travel through privately-funded seminars found that the director of the Administrative Office of the U.S. Courts—an administrative agency tasked with checking judges' financial disclosures for accuracy—himself failed to properly disclose multiple trips.

These are undoubtedly flashy examples, but they illustrate a much broader point: without effective enforcement mechanisms, strong enough to corral even the wealthiest appointees, the federal ethics system cannot give ethics rules force.

Case Study I: The Fed's Inspector General Investigates His Bosses

Although the Federal Reserve's trading scandal last fall started in the periphery, with two regional bank presidents, it did not take long for it to reach the system's heart. It soon became clear that the Federal Reserve's top brass—Chair Jerome Powell, Vice Chair Richard Clarida, and Vice Chair for Supervision Randal Quarles—had all made major stock transactions in 2020, even as the Fed undertook major market interventions (and the official guidance from Federal Reserve ethics officials was to hold off on trades). In the months that followed, the public learned that Clarida had omitted a key trade, which painted an even stronger picture that he was acting on inside information, from his financial disclosure. Through Freedom of Information Act requests, Revolving Door Project also found evidence that Jerome Powell had been dishonest about approval he had received from the Office of Government Ethics to continue to hold Municipal Bonds as the Fed intervened in that market (another earlier source of suspicion). Whereas Powell claimed to have cleared the holdings with the Office of Government Ethics, OGE informed Revolving Door Project that it did not have any documents that were responsive to its request for records reflecting communications between Powell and OGE. Given that lawyers tend to take good notes – and that Powell was a lawyer staffed by lawyers seeking legally relevant guidance that could be protective of Powell – absence of evidence can reasonably be deemed evidence of absence.

Such a serious ethics scandal clearly merited a thorough and independent investigation. But that's not what the public got.

Investigating this morass of ethical impropriety fell to the Federal Reserve's Inspector General. This approach lacked credibility from the start because the IG lacks independence from those he was tasked with investigating. The Federal Reserve Board of Governors hired the Inspector General and has the power to fire him by a majority vote. In the case of the Powell investigation, the two most powerful of the six governors on the Board at the time had been publicly implicated in the scandal. This setup "is analogous to having given then-Secretary of State Mike Pompeo the power to fire the State Department's Inspector General for investigating him, rather than making Trump himself own the termination." Given the inherent weakness of this structure, it was no surprise when the Inspector General cleared Powell and Clarida of

any wrongdoing this summer, with little to no explanation or justification in their short -page report.

Case Study J: An Ethics Officer Gone Rogue?

Since her confirmation as chair of the Federal Trade Commission, Lina Khan has faced repeated attacks from Republicans for what they claim is a lapse in ethics. The crux of their arguments is that Khan, as a student, non-profit researcher, and later public servant, has been consistent in her criticisms of the Big Tech giants and how they utilize monopoly power to extract wealth from consumers, rig contracts to keep workers unfairly undercompensated, and drive their competitors out of business. Republicans argue that Khan's consistency means that she is biased against these corporations.

Meta, the parent company of Facebook, even attempted to get Khan recused from the FTC's investigation into the company for this supposed bias. But the events that followed revealed an ethics officer's conflicts of interests rather than any held by Khan.

In June 2023, *Bloomberg* reported on a memo written by Lorielle Pankey, an FTC designated agency ethics officer. At the behest of Christine Wilson, then an FTC commissioner repeatedly criticized Khan's leadership, Pankey wrote the memo recommending that Khan "remove herself from the case to avoid the appearance of bias," but left it up to Khan to decide, concluding it wasn't an ethics violation if she took part. Republicans immediately pounced, claiming that Khan had ignored a recommendation by an ethics officer even as that officer noted that Khan was free to take part in the case.

Not only were the attacks on Khan disingenuous in substance—they were deeply ironic, as the Revolving Door Project found that Pankey herself owned somewhere between $15,001 and $50,000 in Meta stocks when she made the recommendation (and to our knowledge, still owns them as of publishing.) Pankey's financial stake represented a clear conflict of interest as she weighed in on this particular agency matter. The Revolving Door Project asked the FTC Inspector General to investigate whether Pankey's actions violated ethics rules, but we did not hear back.

Our curiosity piqued, we sought records on Pankey's employment with the FTC. In 2019, Pankey was promoted from a general schedule employee to a senior level employee, a jump not many federal workers make. She was elevated to the influential position of Associate General Counsel For Ethics by Trump-era FTC General Counsel Alden Abbott. Abbott himself was selected by Joseph Simons, Trump's FTC Chair. Even before joining, Abbott was deeply engaged in the Trump administration's antitrust policy, predicting the agency under Trump would be "more permissive" toward corporations than during the Obama administration. He holds significant connections to the right-wing antitrust institutions at George Mason University, having worked at both the Mercatus Center and as a professor in the Antonin Scalia Law School. He co-authored a book chapter with the now-infamous Joshua Wright and even glorified him in a 2300-word essay anointing Wright a "provocateur." That Pankey was promoted under Abbott's tutelage and went on to willingly draft a memo crafted to damage Lina Khan's reputation while holding stock in the very companies the FTC investigates does not bode well for the lasting effects of the ethics officers promoted under the Trump administration at large.

Principle 6: The Ethics System, No Matter How Strong, Must Proactively Invite Public Scrutiny, Not Cower From It

No system—not even, we are modest enough to admit, one designed to adhere to all of the principles we have presented above—will be perfect. There will be oversights, compromises, and mistakes. Its structures may not adapt as fast as we would like to changing circumstances. Those intent on bending or breaking the rules will always find new loopholes to dodge the letter of the law. Given these realities, public scrutiny that can highlight gaps and build pressure to hold the government accountable will always be necessary to building and maintaining a system deserving of the public's trust. An ethics system that is serious about that task will invite scrutiny, not cower from it.

That is, needless to say, not the system that we have today. Those seeking to access even the most basic information about the federal government are often forced to jump through hoops or wait months, if not years for access. In many cases, they are rebuffed altogether. It's time for an overhaul. The federal government needs to stop shrinking from transparency and start thinking about how it can affirmatively advance it. This includes, for example, providing sufficient resources to Freedom of Information Act offices quickly the first time they ask, so they may fulfill requests in a timely manner. More fundamentally, it means searching out opportunities to proactively and categorically disclose information wherever possible.

Case Study K: Staff Lists

Over the course of both the Trump and Biden administrations, Revolving Door Project has sent dozens, if not hundreds, of Freedom of Information Act requests asking one basic question: who exactly is filling a particular government role? We have waited months, at times engaged in extensive back and forths, and sometimes have struck out altogether in our efforts to get answers.

When we started hearing rumors that Susan Davies had joined the Justice Department in the spring of 2021, we turned to the DOJ's website for more information. We found nothing. Only after several months and multiple press inquiries (persisting past some pointed evasions) were we able to confirm that she was working in the Department and learn of her specific role.

In another case, after seeing a report that former hedge fund manager Mark Gallogly had joined John Kerry's climate team, we went searching to find out more about his position and responsibilities on the State Department's website. Once again, nothing. Subsequent reporting, months after the initial story, confirmed that he was working in the Department but he seems never to have appeared as an employee on any government website.

These were two relatively high-profile figures, but the problem of unclear staffing extends much further. Many agencies make it practically, if not entirely, impossible to learn who is working there beyond the senior most political appointees (Secretary, Assistant, and Deputy Secretary levels). For example, staff members in those senior

appointees' offices—who often wield tremendous power—are rarely listed.

There's no reason for this information to be withheld. It is a needless waste of time and resources to make government offices field these requests. What's more, it turns what should be a simple thing—knowing who is wielding power on the public's behalf—into a source of suspicion and distrust. Fortunately, there's an easy way to sidestep the morass: publish comprehensive staff lists naming political appointees.

Case Study L: Fighting Over Calendars

The Biden administration has consistently made clear through its appointments and substantive policies that it is serious about tackling corporate monopolies. The administration has successfully put forth legislation in this vein: the IRA and the CHIPS Act, which aim to "reverse the offshoring of manufacturing fueled by the neoliberal free-trade agreements of [Biden's] predecessors." That consistency made it all the more notable when one senior official made comments that were seemingly at odds with the administration's approach. In December 2021, Secretary of Commerce Gina Raimondo broke with both the FTC and DOJ to condemn proposed EU regulations designed to rein in tech monopolies. Her reasoning—that the EU regulations would unfairly disadvantage American companies—echoed Big Tech's own talking points opposing the new measures.

In the wake of these comments, several groups sent Freedom of Information Act (FOIA) requests for Secretary Raimondo's calendars. Recognizing that the FOIA process is a slow one, and thus ill-equipped to quiet suspicions of undue influence in a timely manner, Revolving Door Project also appealed directly to Secretary Raimondo, requesting that she voluntarily release her calendar records. Our request was ignored. A month later we wrote to her again, this time in coalition with fourteen other groups, to renew our appeal. Still no response.

Finally, in June 2022—six months after the comments that precipitated our requests—the Commerce Department responded to our FOIA request. Since there

were several others who had requested the same documents, the department had posted the responsive records to its website. But they had only published calendars for March 2021, saying that the rest would be posted on a "rolling basis…as they become available." The department did not provide a more detailed timeline, despite our requests. Since then, the office has made an effort to post Raimondo's calendars more consistently. But as of October 2024, the Commerce Department's FOIA Library links Raimondo's calendars through September 2023—progress, but still leaving more than a year of calendars unpublished.

As The American Prospect reported, the records that have been released reveal that Secretary Raimondo has met with corporate leaders at an average rate of *more than one meeting per day,* with 230 meetings in her first seven months on the job. By comparison, she met with members of Congress and representatives of public interest advocacy groups far less often. This imbalance is something advocates should be able to point out and criticize to put real-time pressure on Raimondo—but when we are seeing her calendars on a one year and three-month delay, critiques are far less impactful. By releasing the Secretary's calendars slowly, Commerce makes it harder for advocates to act on key information.

This is just one example. Each year, the government wastes countless hours fighting requests for senior officials' calendar records, delaying transparency and undermining accountability. But there is another option. At a handful of agencies, the most senior officials release their calendars proactively and on a regular basis. At the Securities and Exchange Commission, for example, the chair's calendars are published routinely; at present, records for Chair Gary Gensler are available through April 2024. The Federal Reserve Board of Governors also has a policy of regularly publishing its chair's calendars; records for Chair Jerome Powell are available through August 2024.

It is no secret that senior officials' calendars are going to be the subject of public records requests and public scrutiny. Rather than fighting this reality, the federal government should accept it and make calendar records for the most senior officials available in a timely manner.

Policy Recommendations for Common Ethics Dilemmas

This section collects and supplements the recommendations that follow from the principles and case studies outlined in detail above.

It is our hope that this paper helps to lay a foundation for a new approach to ethics that takes seriously the essential task of building and maintaining public trust in government. We recognize that this is just a starting point. There will still be a great deal of work to come (and many debates to be had) to hammer out the details. Applying these principles to every possible facet of ethics law will be an enormous task, one that goes well beyond the scope of this paper. However, to provide a jumping off point and some concrete recommendations, we close with a series of policies (some that we have proposed and some drawn from others' work) that put our six guiding principles into action. These are divided loosely based on the type of problem that they address. They are not meant to be comprehensive or exhaustive.

Recommendations To Prevent Revolving Into Government

The evidence is clear: the public supports limiting corporate America's ability to buy influence through the revolving door. So how do we make it happen?

Make it a policy not to hire officials who are too conflicted to do the job: It should be obvious that stacks of recusal agreements do little to quell public concern when officials come into office with a wide array of conflicts of interests. Recognizing that fact, we have previously proposed that ethics officials be tasked with assessing whether potential hires are too conflicted to do their job effectively, and recommending against hiring if the answer is yes.

Target the most serious offenders and the biggest threats to public trust: Sen. Elizabeth Warren and Rep. Pramila Jayapal's Anti-Corruption and Public Integrity Act proposes several changes to the definition of lobbying and the restrictions to which lobbyists are subjected, all of which recognize that certain types of influence-peddling are more damaging than others. These include:

- "Prohibit[ing] current corporate lobbyists from taking government jobs for 6 years after lobbying";
- "Strengthen[ing] and expand the federal definition of a 'lobbyist' to include all individuals paid to influence government";
- "Creat[ing] a new 'corporate lobbyist' definition to identify individuals paid to influence government on behalf of for-profit entities and their front-groups" (pp. 1-2).

Recommendations to Prevent Revolving Out of Government

When senior officials leave government to work for entities they once regulated, the integrity of their individual work in public service, and of the agency's work as a whole, is naturally called into question. Did these officials enforce the law as rigorously as they could have, knowing that they might land at a regulated entity after leaving? And now that they're out of the public sector, will their new employer benefit from the inside knowledge and contacts they gleaned while working for the government?

Subject all senior officials to longer cooling off periods before taking *any* influence industry roles: Our system's current, narrow definition of lobbying also limits restrictions on revolving out of government. While many of the most senior government officials are not allowed to take lobbying jobs for one to two years after leaving government, they are free to take any of a wide range of other influence industry roles. Many of those roles are shadow lobbying: lobbying in every sense apart from official registration. To address this gaping loophole, Sen. Elizabeth Warren and Rep. Pramila Jayapal's Anti-Corruption and Public Integrity Act proposes "ban[ing] the largest companies from hiring or paying senior government officials for 4 years after service" (pg. 1).

Demand transparency from former officials: Although some officials make no attempt to hide their post-government work for companies they once regulated, others are more coy. In some cases, officials may list just one employer when, in fact, they are being paid by a host of other companies for consulting or advisory work. To shed more light on post-government employment trajectories, the Anti-Corruption and Public Integrity Act proposes "requir[ing] income disclosures from senior officials for 4 years after service" (pg. 1).

Improve the definition of lobbying: Some measures designed to combat revolving into government are also necessary to slowing the revolving door out of government. This includes better tailoring the definition of lobbying, so that stricter standards tied to lobbying status capture all of those with whom we're concerned. Two relevant policies from the Anti-Corruption and Public Integrity Act are, again;

- "Strengthen[ing] and expand the federal definition of a 'lobbyist' to include all individuals paid to influence government";
- "Creat[ing] a new 'corporate lobbyist' definition to identify individuals paid to influence government on behalf of for-profit entities and their front-groups" (pg. 2).

Retain committed public servants with higher salaries and more opportunities: The government will never be able to directly compete with the sky-high salaries corporations and lobbying firms can offer to those with federal expertise. But they can, at the least, give more incentive to committed employees to stay by improving their work conditions. This means providing funding to increase compensation for federal employees and committing to promoting political appointees from the rank and file, so ambitious and effective employees can have a path toward high-ranking posts. And a return to the job security of civil service should be available should a promoted official end up out of line politically with the administration.

Recommendations For Individual Financial Holdings

Ban all political appointees, federal judges, Supreme Court justices, and members of Congress from owning individual stocks: Whether it's in Congress, the judiciary, or the executive branch, allowing political leaders to own stocks and other financial holdings that pose a conflict of interest is a risk to public trust that is not worth the (individual) reward. Nor is it a great injustice to require political leaders to hold their wealth in diversified investment vehicles or government securities. The solution is simple: ban all political appointees, federal judges, Supreme Court justices, and members of Congress from owning individual stocks. Widely held investment funds would remain fine.

Recommendations For Enforcement Across All Areas

Using existing tools: Some existing laws provide the tools needed to enforce ethical conduct, but are simply going unused. For example, the Ethics in Government Act (EIGA) allows the attorney general to pursue a civil penalty of up to $50,000 against anyone who "knowingly and willfully falsifies or fails to file or to report any required information" in their financial disclosure. Yet, there is no record of any judges – a number of whom have left information off of their required disclosures – being fined under it. Laws that provide administrations and ethics officials the opportunity to hold federal employees accountable for unethical conduct should be enforced regularly.

Yet, there are instances where the ethics enforcers seem to willfully ignore the spirit of ethics laws for their own convenience, as with the Senate Ethics Committee's determination that senators don't have to disclose investments in private equity funds, exploiting an exception that's intended for assets in publicly traded or widely diversified mutual funds. That brings us to our larger recommendation for enforcement.

A new ethics system: The current ethics apparatus is not designed to deliver regular or meaningful enforcement. Successful ethics reform, therefore, will require overhauling that system. Several groups have proposed creating a new ethics authority that makes enforcement a priority. We endorse that call. Below we emphasize several proposed institutional features that we deem essential. These are drawn from the Roosevelt Institute's "Unstacking the Deck" report, which we encourage you to read for additional details. A new ethics authority should have:

- "independence from political control, a statutorily-determined budget, and the power to write regulations that prohibit malfeasance by corporations and government officials";
- "the ability to bring civil and criminal enforcement actions in federal court, along with issuing civil money penalties";
- "the authority to inspect and investigate individuals and companies seeking to influence federal officials" (pg. 22).

Additionally, in his article for the University of Michigan Journal of Law Reform, Adam Raviv proposes allowing the IRS to share tax return information with the Office of

Government Ethics (or a new ethics authority) to aid investigations of ethics violations (pg. 392)—we endorse this suggestion, too.

Recommendations For Transparency

The universe of worthy, proposed transparency reforms is vast. We will name just a handful here, stemming from some of the specific obstacles to information we as advocates have faced.

Make lobbying disclosure more meaningful: We endorse the proposal in the Anti-Corruption and Public Integrity Act to "radically expand disclosure of lobbyist activities and influence campaigns by requiring all lobbyists to disclose any specific bills, policies, and government actions they attempt to influence; any meetings with public officials; and any documents they provide to those officials" (pg. 2).

Proactively disclose basic information about who's serving and what they're doing:

- Require agencies to publish and regularly update staff lists naming all political appointees.
- Disclose detailed calendars for the most senior appointees on a regular basis.

Conclusion

While the Biden Administration has clearly made strides to improve ethics standards throughout the government, these efforts are still small in comparison to decades of American's low trust of government institutions. The case studies in this paper are some of the most egregious examples of the kind of dealings that have led to this deep distrust. Our recommendations provide a guide to how the executive branch can effectively and thoroughly proceed with the huge task of rebuilding trust in government institutions.