



Strengthening Government Accountability and Transparency RECOMMENDATIONS TO THE NEXT PRESIDENT

November 3, 2016

The next President will likely assume office with a unique set of governing challenges. First, confidence in government is at one of its lowest levels in history, although the most intense disapproval and lack of trust is reserved for Congress. Second, it is unlikely that Congressional gridlock will change much, meaning that the Administration will need to rely on executive powers to advance many of the President's policies and priorities. And third, the next President will have trouble claiming a mandate for action since he or she will take office at a time when a large percentage of Americans do not trust the person.

We believe that accountability and transparency reforms can help address some of these challenges. For more than 35 years, the Project On Government Oversight (POGO) has championed good government reforms as a nonpartisan, independent watchdog. Implementing the following recommendations will help the country achieve a more effective, accountable, open, and ethical government—one that is truly responsive to the needs of its citizens.

Usher in a new era of accountability in government. The federal government is a large and complex organization that is vulnerable to mismanagement or undue influence. The new President must establish proper checks and balances to ensure that effective and ethical operations are the norm and to identify and correct any problems:

- 1) *Set and enforce a new high standard of ethics.* President Obama's Ethics Executive Order played a key role in reducing corruption in government. That Order should be extended. In addition, the focus on restricting lobbyists from political appointments should be expanded and refocused to limit those with financial conflicts of interest from working as political appointees. The Order should also establish tough restrictions on those leaving government to prevent quid pro quo employment deals and stop former Administration appointees from misusing their government contacts. In practice, waivers should be used sparingly and should be constructed to protect the integrity and independence of executive branch authority.
- 2) *Improve whistleblower protections.* Employees at the Federal Bureau of Investigations and the Department of Defense, as well as Intelligence Community contractors across multiple agencies, have some of the weakest whistleblower protections. Despite the success of whistleblowers in deterring taxpayer waste and contractor abuse we have seen their protections stripped away. For instance, new authority granted to agencies to designate jobs as "sensitive" could be used to entirely negate existing due process for whistleblowers.
 - Ensure responsible implementation of the Insider Threat program, an effort to identify employees who could pose security risks, and guarantee that it is not being used to target whistleblowers. Whistleblowing should not be categorized as an inside threat, as espionage and sabotage is. Additionally stop the abusive practice of prosecuting whistleblowers under the Espionage Act.
 - Work to expand whistleblower protections to cover any disclosure made by a federal employee or contractor to a supervisor, Member of Congress, or an Inspector General. And

immediately extend all the protections of Presidential Policy Directive 19 to Intelligence Community contractors.

- Stay proceedings to remove workers found ineligible to occupy jobs designated “sensitive” until the Government Accountability Office (GAO) can review the internal agency appeal processes and the impact of limiting employees’ rights to appeal to the Merit Systems Protection Board. Also restore due process rights for employees who were removed from their positions due to a change in “sensitive” status.
- 3) *Establish a new position in the White House that focuses exclusively on transparency and accountability.* The person hired for this position must be part of the President’s inner circle and have adequate staff support—the clout this person has derives from the understanding that he or she speaks for the President. The person should report to the President and senior staff on what is being done to strengthen accountability and transparency, and about what is working and not working when it comes to strengthening government accountability.
 - 4) *Fill Inspector General vacancies.* Inspectors General (IGs) serve as independent watchdogs within federal agencies, conducting audits and investigations that identify waste, fraud, and misconduct. They are essential to a well-functioning federal government. Unfortunately, it has become too common that IG positions are left vacant for months or even years, robbing their offices of leadership. Promptly work to appoint and maintain strong independent IGs across the federal government and ensure that their offices have sufficient resources to conduct their investigations.

Use transparency to rebuild confidence in government. People tend not to trust what is hidden. The new President should build a government that is open and honest with the public:

- 1) *Put an end to secret law.* An increasing number of binding governmental rules have not been disclosed to the public or even to other branches of government. They come in the form of opinions, memos, and letters, many of which deal with interrogation, detention, surveillance, and other national security issues. Secret law is also used to address a wide range of non-security issues including establishing what government grantees are permitted to do with federal funds, and governing how international agreements are negotiated and ratified. In a democracy, the public should always know what the laws are.
- 2) *Use proactive disclosure to shed a light on government activities and decisions.* Despite being more than 20 years into the internet age, we still rely too much on the passive request-and-respond process of FOIA. Proactive disclosure is faster, gets the information out to everyone, and demonstrates that government welcomes oversight.
 - Establish a standard of disclosed records for all agencies, starting with the calendars of senior agency staff, visitor logs, communications with Congress, and directories (including contact information) for government employees. Some agencies already post these types of documents, so there is no major technical or policy barrier, but such disclosure is inconsistent across the federal government.
 - Create a collaborative process for agencies to move beyond the disclosure floor and identify other categories of records the public would find most useful based on stakeholder input, and schedule them to be processed for proactive disclosure.

- Expand sub-recipient reporting to follow federal money all the way to final users. Also disclose more data about tax-expenditures (which now accounts for more than \$1 trillion annually). Little engenders bipartisan agreement more than the desire to know how the federal government is spending our money.
 - Address the perception that the government is stacked in favor of powerful special interests by requiring disclosure of political contributions by federal contractors and publicly held companies. Additionally, the Federal Communications Commission should disclose in a searchable format information about who is funding political ads and for how much.
- 3) *Improve regulatory transparency.* There are growing concerns about federal rulemaking—that there is a lack of accountability for those overseeing the process, that the public doesn’t get all of the information, and that enforcement of the resulting regulations has become lax:
- Improve disclosure during the regulatory review process. The rulemaking process should require disclosure of all documents and communication between agencies and the Office of Information and Regulatory Affairs related to a proposed or final rule, as well as documents received from outside parties. All substantive changes made to rules should be identified, and agencies should indicate which entities requested the changes.
 - Establish clear standards across all agencies for management of rulemaking records, including the location and format of data about the regulations’ positive and negative effects. The data on the positive effects of regulations (benefits) should be prominently displayed. Currently it is relatively easy to obtain data about the negative impact of regulations (costs), but much harder to obtain benefit data.
 - Increase disclosure about enforcement of regulations. There is a perception that large companies get special treatment when it comes to enforcement, including reduced penalties, deduction of negotiated penalties from taxes, and deferred prosecutions. Agencies should be required to make information about their regulatory compliance and enforcement activities accessible, downloadable, and searchable online.
- 4) *Strengthen the Freedom of Information Act (FOIA).* FOIA has been the foundation of transparency for the federal government for 50 years now, but it has numerous weaknesses—it’s slow, costly, contentious, and confusing. As agencies work to implement the newly passed FOIA Improvement Act, the President should seize the moment and place an emphasis on making FOIA work more effectively, starting with reducing (and eventually eliminating) backlogs of requests, and improving response rates. Additionally, the President should voluntarily expand the scope of FOIA to cover emails of his or her Administration related to government work sent through private servers. These improvements will likely require investments in staff, technology, and training.