

Project On Government Oversight

Exposing Corruption Exploring Solutions www.POGO.org

January 26, 2010

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Via Facsimile: (202) 456-2461

Dear Mr. President:

The Project On Government Oversight (POGO) is an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more effective, accountable, open, and ethical federal government.

In October 2008, we sent your transition team a list of recommended good government reforms to make the government more effective, accountable, open, and ethical. We applaud the progress you've made in the first year of your Administration through the Open Government Directive and the ethics pledge and revolving door ban for your appointees. Your memorandums on government contracting, the acquisition system, and service contractors establish a roadmap for needed reforms that you should direct your agency heads to implement this year. We were also pleased to see your Administration's adoption of our recommendations to increase revenue and cut costs by redefining the military's 21st-century priorities in order to reduce wasteful defense spending and ending the Department of the Interior's Royalty-In-Kind (RIK) program. However, we are concerned that the long-term success of these policies will be limited without having tools in place to make the government more accountable.

Oversight is essential to ensure accountability, which is why POGO urges you to focus on repairing the gaping holes in the federal government's oversight mechanisms this coming year. Specifically, we urge you to implement effective whistleblower protections, strong and independent auditing, unconflicted regulation, public accountability, and fixing the broken federal contracting system. We understand that oversight also requires congressional support, so we are also urging Congress to improve their oversight as well.

Whistleblower Protections – Frequently the first people to discover corruption and misconduct are federal employees. By seeking to fix the problems they uncover, these employees play a vital role in making sure the government is accountable and effective. Unfortunately, whistleblowers are almost always

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reprimanded, fired, and/or harassed instead of fêted, even if they have not “gone public” and even after their allegations are proven to be true. The federal Whistleblower Protection Act fails to protect federal workers and government contractors who expose waste, fraud, and abuse from retaliation by their supervisors. Until federal employees can expose wrongdoing without fear of retaliation, they will lack the incentives to report wrongdoing. We urge you to continue your aggressive efforts to ensure that Congress passes the Whistleblower Protection Enhancement Act of 2009.

Independent Auditing – Auditors are on the front lines of rooting out wasteful spending in federal agencies. Experience has shown that increased funding for auditors ultimately results in greater savings for taxpayers, making it essential for these offices to have the funding, independence, staffing, and other resources they need to do their job. Unfortunately, investigations into the General Services Administration (GSA), the Department of the Interior, and the Defense Contract Audit Agency (DCAA) have found that auditors lack the independence they need to effectively do their jobs. As a result, auditors’ findings have been ignored or altered, and in some cases have resulted in retaliation or demotion. We urge you to consider establishing an independent federal contract audit agency. In the meantime, we hope that you will instruct agency heads to allow auditors to operate independently, and warn them that officials and contractors who interfere with auditors’ independence will be held accountable.

Unconflicted Regulation – One of the important jobs of the government is to enforce regulations. As such, it is essential that regulatory agencies function without conflicts of interest. The revolving door between the government and private industry creates government-wide problems that are particularly devastating to regulatory agencies’ missions.

POGO is concerned by your decision to nominate William D. Magwood to the post of Commissioner on the Nuclear Regulatory Commission (NRC). POGO is not pro or con While POGO does not take a position on nuclear power or nuclear weapons, we believe it is essential to secure these facilities from terrorist attacks and to ensure the safety of both the facility employees and the residents who live in nearby communities. Until now Mr. Magwood’s job has been to promote nuclear power. We fear that Mr. Magwood does not have the independence from the nuclear energy industry to effectively regulate the uses of nuclear materials and facilities in the United States, enforce standards necessary to protect health and safety and minimize danger to life or property, and hold licensees accountable for damage to property caused by nuclear accidents. We urge you to rescind this nomination.

Another example where regulatory effectiveness is compromised is the Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA), which have both failed in their missions to protect investors from securities fraud. Financial self-regulatory organizations (SROs) such as FINRA, despite the power vested in them by the government’s regulatory regime, missed virtually all of the major securities scandals over the past few decades, including the recent fraud committed by Bernie Madoff and Allen Stanford. Meanwhile, the SEC’s systemic problems have also come under increased scrutiny thanks to an extensive investigation by the SEC Office of Inspector General (OIG) into the agency’s failure to detect and prevent the Madoff fraud. We urge you to reevaluate the government’s reliance on FINRA and other SROs as frontline overseers of financial products, especially since taxpayers are

footing the bill for the SEC's oversight of SROs, which entails approving SRO rules, monitoring their activities, hearing internal appeals, and overseeing board activities. You should also instruct the SEC to fully implement the hundreds of outstanding recommendations made by the OIG over the past two years, which would help address many of the long-standing systemic problems that have hindered the agency's effectiveness as a regulator.

Public Accountability – The press and the public may play the most important oversight role in holding the government and contractors accountable. But some of the most important databases being created to track information about past instances of misconduct by federal government contractors and to track the revolving door between the Pentagon and industry cannot be accessed by the public. Additionally, despite your commitment to increasing transparency in the government's approach to stabilizing the financial system, the Treasury Department has neglected to collect or disclose any information on how banks have used their Troubled Asset Relief Program (TARP) funds, and the Federal Reserve is refusing to disclose the names of banks that have received emergency bailout loans. The public would also benefit from knowing the Department of Health and Human Service's future plans for H1N1 flu vaccine production – not only its emergency plans for dealing with the current vaccine shortage, but especially the agency's longer-range plans if the pandemic persists beyond the next few months, and the government's contracts for vaccine production. We urge you to make all of this information easily accessible to the public.

All of these examples show that open government initiatives must go beyond the information that agencies volunteer to make public, but must also include consultation with outside stakeholders to determine the data the public needs to hold the government accountable.

Fixing the Broken Federal Contracting System – There have been numerous problems that are the result of so-called procurement or acquisition "reforms," including non-"arm's length" negotiations, inadequate competition, lack of accountability and transparency, and risky contracting vehicles that are prone to waste, fraud, and abuse. Among the needed reforms include requiring contractors to provide cost or pricing data to the government and reversing the acquisition mentality that places speed and convenience over accountability and oversight. We will be sending your Administration a more detailed white paper on this issue in the coming weeks. We urge you to direct your agency heads to implement the needed reforms this year.

These good government mechanisms are key ingredients in ensuring the success of your top policy priorities of health care reform, economic recovery, and national security. Taking swift action on these recommendations will send a message to taxpayers who are concerned about wasteful government spending and abuses that there are robust mechanisms in place protect them.

Your Administration has set many laudable goals to increase ethics and openness in the federal government, but reaching these goals can only be accomplished if you also make effective oversight—oversight that will hold your own Administration accountable—a priority. The needed changes in the government require more than executive orders and initiatives to be fully effective, but require a culture change in how agencies function. This culture change cannot happen without strengthening the watchdogs in the government. We urge you to make effective

whistleblower protections, independent auditing, unconflicted regulation, public accountability, and fixing the broken federal contracting system priorities for comprehensive government oversight.

We look forward to working with you on accomplishing these goals.

Sincerely,

Danielle Brian
Executive Director
Project On Government Oversight

Attachments: “Recommendations for Transition Teams”

Easy Money: Top Five Recommendations for Increasing Revenue and Cutting Costs