

March 22, 2016

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

Dear Mr. President:

When you assumed office as the 44th President of the United States, you pledged that your administration would set a new, higher standard for transparency, accountability, and ethics. You committed the executive branch to adhering to a presumption of openness; you created higher, enforceable ethics standards; and you put into place an initiative that required executive branch agencies to create and implement plans for a more open government. The American people welcomed these commitments and laudatory goals as a breath of fresh air.

After celebrating Sunshine Week this year, we reflect on what you have accomplished during your presidency—and where your administration has fallen short. We begin by noting the strong revolving door principles enshrined in Executive Order 13490, the Ethics Commitments order, have resulted in an Administration free from conflict of interest scandals. We acknowledge the useful transparency endeavors that some agencies have pursued. But, for the most part, the broad changes you envisioned are either incomplete or neglected. In some instances, most notably the FOIA reform bill and the DATA Act but in other areas as well, your administration surreptitiously fought to undermine reform. Some of the biggest obstacles to your legacy, as we see them, are as follows:

- Many agencies have made little to no improvement in processing Freedom of Information Act requests—long delays and excessive withholding remain the norm. Your first principle—“in the face of doubt, openness prevails”—has yet to be meaningfully implemented in agency practice or in response to FOIA litigation. Your Department of Justice fought against enshrining that principle into law, as did other agencies. Journalists and others have written extensively that FOIA, the backbone of transparency, is not working well.
- Since your days as a Senator, you have advocated for spending transparency. Yet your success with Recovery.gov has not been repeated in USAspending.gov, the official window into federal spending that you helped create as a Senator. Under your watch, not only has the website not improved but it has actually lost functions. In addition, your administration, most notably OMB, worked to undermine the federal spending transparency legislation, now enacted into law, that was a natural outgrowth of this early effort. We remain far from the goal you set of helping taxpayers know how the government is spending its money and demonstrating that the money is being used wisely.
- Your ethics agenda has stalled. We were encouraged by your creation of the position of “Ethics Czar” in the White House, who helped guide implementation of your policies. However, when you appointed the “Ethics Czar” to another position in your administration, it seems that ethics policies did not remain a priority for your

administration and that the implementation of your policies ended. In fact, ethics issues have not even been identified as a priority under any of your Open Government Partnership's U.S. National Action Plans.

No one can deny that many factors contributed to the difficulty of turning these openness and accountability goals into reality. But what troubles us is that it appears your White House team lacks the will and interest to undertake the challenge of this transformative work, and in some instances actively undermined forward progress. Indeed, in some areas that appear well within the administration's control, there has even been backsliding—for instance, novel uses of the state secrets privilege and the unprecedented number of Espionage Act prosecutions for disclosures to the media.

There is a very real danger that instead of leaving the legacy of transparency that you intended, you risk leaving with a very different legacy: one of betrayed promises. Circumstances may force us to rate your administration as one that failed to fulfill its goals.

In this last year of your presidency, you have the opportunity to revive your legacy for open and transparent government. We believe the following changes can be accomplished in your last months in office. If implemented as a whole, this agenda will make a significant contribution to reversing the current narrative about your administration.

We have selected the below recommendations because they can be achieved in a short amount of time and because they will have lasting impact beyond your administration. We will stand with you in pursuing this agenda and applaud the accomplishment when completed.

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**Make Openness Real, Meaningful, and Proactive:** You gave us hope that your administration would be different, that transparency would not be something you paid lip service to but would be the bedrock principle on which you governed. We acknowledge your efforts to follow through on this promise, but much remains to be done. We strongly urge you to move forward on two fronts:

- Advocate for the presumption of openness under the Freedom of Information Act to be put in law. Many agencies have not followed your policy of a presumption of openness under FOIA. The best way to lock in that presumption, and give it the teeth it needs, is to strongly support bipartisan, bicameral FOIA legislation now pending in Congress. Your support is crucial, not only because it was a core principle to your effort to make government more open and accountable, but also because some of your own agencies are opposing these legislative reforms. Your administration's covert opposition to the prior FOIA bill is a stain on your record that you have an opportunity to erase.
- Establish a lasting example of what you meant when you said that "agencies should take affirmative steps to make information public. They should not wait for specific [FOIA] requests from the public." Your administration began by making White House visitor logs publicly accessible through a searchable website, which became a powerful ethics and accountability tool. Now it is time to extend that approach to senior staff in your executive agencies. Government business is the people's

business; we should know when agency officials meet with advocates from outside government and what the subject matter of the meeting was.

**Release the Senate's Torture Report:** You have acknowledged that the United States engaged in torture and that it is wrong. But many in government still defend its use by the CIA. If we are to ensure that torture is fully repudiated and never used again, the public must have a full, unsparing account of what occurred. To accomplish this, it is essential to:

- End the shameful legal fight to prevent public access through FOIA to the full report of the Senate Select Committee on Intelligence;
- Acknowledge that the report is in agencies' possession and control and that it constitutes a federal record;
- Initiate and complete a prompt declassification review of the 5,000-plus pages of unreleased material; and
- Release all declassified portions of the report.

**Shine a Light on Our Rigged Campaign Finance System:** Unregulated, undisclosed, unlimited money corrupts our system of government. Congress is at an impasse as the wealthy interests have battled citizen interests to a standstill. The Supreme Court has made matters worse, endangering the very pillars of democracy over the last four decades. While the administration cannot solve every problem, it has the authority to bring more sunshine to the subject. Issue an Executive Order requiring federal contractors to disclose all their political spending. Forcefully oppose future appropriations riders that are hindering the IRS from undertaking a rulemaking to define political activity by nonprofits and to disclose "dark money," and the SEC from requiring publicly held companies to disclose their political contributions. Then move quickly to have these agencies take action.

**Better Protect Future Whistleblowers:** Whistleblowers sound the alarms that let the policymakers and the public know when our government has gone dangerously off course. They alert us to waste, fraud, abuse, and wrongdoing. Despite the passage of the Whistleblower Protection Enhancement Act, all too often the messengers are criminally investigated and prosecuted for the bad news they bring forward. We urge you to issue a presidential memorandum prohibiting managers from pursuing or threatening prosecution of whistleblowers who use protected channels. This presidential memorandum should:

- In the national security context, eschew criminal prosecution, including for disclosures to the media, where the person making the disclosure has a reasonable belief that the information reflects government fraud, waste, or abuse; and
- Extend this presidential memorandum to government contractors, including those within the Intelligence Community.

**Slow Down the Revolving Door:** Your 2009 Executive Order on Ethics raised the bar on government conduct. There is growing evidence that these policies have had a positive impact and avoided scandals and abuses that have plagued previous administrations. We urge you to endorse and advocate for revolving door legislative reforms that will codify and expand these ethics policies for future administrations. Doing so will help ensure that our public servants truly serve the public, and not their future or past private sector employers.

We urge you to fulfill these few critical but achievable promises of open and accountable government, demonstrating that you still can deliver change we can believe in.

If you have any questions or need additional information, please contact Shanna Devine at [ShannaD@whistleblower.org](mailto:ShannaD@whistleblower.org) or 202.457.0034 ext. 132 and Elizabeth Hempowicz at [ehempowicz@pogo.org](mailto:ehempowicz@pogo.org) or 202.347.1122.

Sincerely,

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\*For identification purposes only