

# Six Steps to a Healthy Transition

Candidates' Pledges on Ethics and Transparency  
Will Set the Course of the White House  
for the Next Four Years

strong ethics

name a czar

closely vet

limit donors

transparency

be creative

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## Introduction

Preparations for a new presidential administration, known as the transition, are subject to intense attention in the days after an election in which a new president is chosen. But transition work is conducted long before Election Day and involves presidents who are seeking re-election, as well as those seeking to win the White House for the first time.

The importance of transition teams' work is indisputable. They identify the thousands of people who will staff the new government, they flesh out details of their candidate's policy proposals, and they manage the handoff of all government functions, including national security matters and threats to public safety. Although transition teams are not technically part of the administration, they are largely responsible for setting its course.

In recognition of transition teams' importance, Congress has passed a series of laws in recent election cycles that have increased resources for transition teams, moved up the dates at which resources are provided, and prescribed measures for the sharing of sensitive information.

Most of these updates to the law, however, have focused on facilitating a clean handoff, not on the governance rules that apply to transition teams. While transition teams operate under quasi-governmental auspices, transition team members are not categorized as federal government employees. As a result, transition team members have not historically been covered by most of the ethics and transparency laws that apply to government employees.

The first two presidents-elect of the 21st century voluntarily laid out ethics requirements for their transition team members. President-elect George W. Bush created an ethics policy that [reportedly](#) prohibited team members for six months from using non-public information for personal gain or from lobbying. President-elect Barack Obama [adopted](#) most of Bush's ethics requirements and went further, placing restrictions on the role lobbyists could play on the transition team and adopting various transparency measures.

This momentum ended with the election of Donald Trump. The Trump transition team reportedly issued two [ethics policies](#) that were not formally made public or even signed by all team members. Team members routinely [evaded](#) these ethics policies by exploiting loopholes in them or simply violating them outright. Vetting of nominees' conflicts of interest was incomplete. Vetting of the president-elect's conflicts of interest by the U.S. Office of Government Ethics of the executive branch was, according to a government [report](#), non-existent.

Partly in response to concerns over the conduct of Trump's transition team, Congress recently passed a bill that would address transition team ethics. [The Presidential Transition Enhancement Act of 2019](#) subjects transition team members to some conflict-of-interest laws that apply to federal employees. Further, for the first time, transition teams will be required to develop ethics policies that address such questions as the role of federal lobbyists and how candidates will address their personal conflicts of interest if elected.

Notably, this law applies to incumbents as well as challengers. Incumbents must prepare for a potential handoff prior to the election and also conduct a transition between their terms if they win re-election.

While the new law requires transition teams to create ethics policies, it mostly defers questions on how to craft these policies to the candidates, although the new law imposes some minimum standards. In short, the Presidential Transition Enhancement Act:

- Requires eligible presidential candidates to develop and release transition team ethics plans by Oct. 1;
- Requires transition team members to sign a pledge that they will comply with the ethics code; and
- Establishes a minimum set of ethics requirements, including: prohibiting team members from working on matters that pose a substantial conflict of interest; requiring disclosure of the transition team's policy toward inclusion of lobbyists; requiring disclosure of how presidential candidates' conflicts of interest will be addressed if they are elected; and requiring disclosure of how transition teams' ethics policies will be enforced and who will supervise such enforcement.

The manner in which candidates craft their ethics policies will reveal how highly they prioritize ethics considerations. Because transition team policies will be enacted before Election Day, they give candidates an opportunity to fulfill campaign promises in real time as they release them.

Public Citizen has long advocated reforms that would limit the influence of special interests in the government, prevent public officials from having conflicts of interest and enhance transparency into the functioning of the government.

Here are some recommendations for the candidates as they set up their transition teams.

## **1. Name a Transition Team Leader and Ethics Czar**

We recommend that candidates name a transition team chair within a week of becoming their party's presumptive nominee. Immediately upon naming a transition team chair, the campaign should disclose the ethics terms that apply to the chair.

By June 1, assuming the two major parties have established their presumptive presidential nominees by then, candidates should announce detailed governance policies that will apply to their full transition teams. When they release their governance policies, the transition team should name a person in charge of ensuring compliance with its policies.

## **2. Establish a Rigorous Ethics Policy**

This year will mark the first election in which presidential candidates are required to develop ethics policies for their transition teams.

The ethics policies must “address the role” of domestic and foreign registered lobbyists, stipulate that individuals are prohibited from working on matters that pose a direct conflict of interest, and disclose how presidential candidates will address their own conflicts of interest if they are elected.

These instructions leave a lot to the discretion of candidates. We recommend that candidates outline policies that will provide reassurance to the public that neither they nor their transition team’s members will have conflicts of interest.

### **Use Disclosure to Deter Lobbyists and Non-Lobbyists From Self-Dealing**

President Obama required all transition team members to sign an [ethics code](#) that prohibited them from working on particular matters that they had lobbied upon in the previous 12 months, and to abstain from lobbying on matters relevant to their transition work for 12 months after leaving the transition team.

The Trump transition team, according to news reports, created two ethics policies. One policy required any lobbyists on the team to pledge that they had filed forms to terminate their relationships with their clients. Though this policy was not publicly released, it reportedly included requiring team members to [pledge](#) not to lobby for five years after leaving the team. But these policies [were](#) routinely [violated](#).

The simplest solution to dilemmas over how to constrain lobbyists’ activities on transition teams is to ban them from transition teams altogether. While such a policy offers the symbolic satisfaction of banning members from an unpopular industry, it might not offer the desired real-world protections. For example, such a policy would permit a CEO of a company to join the transition team (provided that the CEO had not registered as a lobbyist), even though CEOs’ potential self-interest would be at least as great as that of any lobbyist who worked for them.

Under the new transition team law, all transition team members will be required to sign a pledge indicating that they will not work on “particular matters involving specific parties” relating to their employer, clients, or parties in which they hold investments. According to the applicable federal regulation, “particular matters involving specific parties” refers to topics that could affect contracts, litigation or other matters that narrowly pertain to the entity with which the transition team member has an interest.

This language prohibits the most blatant self-dealing, but it does not cover work on general matters, such as policy proposals that would affect the transition team member’s industry as a whole.

We recommend using public disclosure and a cooling off period to deter transition team members from acting in inappropriate ways that might not rise to the level of blatant self-dealing that the new law already prohibits.

- All transition team members should be required to disclose their financial interests – as well as the financial interests of immediate family members – by identifying their employers and clients of the past two years and their financial holdings. These financial holdings should be disclosed in detail, including itemized descriptions of stock, land and other investments within days of a person joining the transition team. This information should be promptly posted on the transition team’s web site.
- When team members depart the transition team, they should be prohibited for one year from communicating with the executive branch on particular matters relating to their area of transition work.

### Candidate Conflicts of Interest

President Trump has trampled norms that have existed throughout U.S. history by retaining assets that blatantly conflict with his service as president and using the powers of his office to drive revenue to those assets.

Candidates should pledge that within 30 days of taking office that they will divest all business interests that have a potential to present a conflict of interest. Their assets may be rolled over into investments that generally do not pose a risk of conflict of interests, such as U.S. Treasury bonds or diversified mutual funds. The divestiture shall be subject to oversight and certification by the Office of Government Ethics. The OGE may grant reasonable extensions to this deadline, if necessary, but must give written public notice of the extension.

We recognize that adhering to such policies could be less than financially optimal for a president-elect, as short-term sales might not garner the best prices. This, however, is a small price to pay for the honor of being the president.

## 3. Transparency

President-elect Obama’s transition team broke new ground by disclosing the details of meetings that team members held with outsiders and posting policy documents submitted to the team on the web. Obama’s team also stipulated that its documents would be subject to the Freedom of Information Act.

President-elect Trump’s team did not adopt those practices. The Trump transition’s greatest nod to transparency was allowing some people to walk in front of television cameras in the lobby of Trump Tower on their way to meet the president-elect.

One meeting between a transition team member and the Russian ambassador to the United States led to that team member being [convicted](#) of a felony. Trump’s team also engaged in selective disclosure of the identities of team members, apparently revealing the members of their agency “landing teams” but not their [“action teams.”](#)

### Recommendations

Transition teams should promptly name all people who are brought on to do work for them, whether they are paid or unpaid, as well as those individuals' employers and clients of the past two years. This information should be readily accessible to the public on the Internet in a searchable, sortable and downloadable database that would be maintained in perpetuity.

Transition teams also should follow the Obama team's policy of revealing details of their meetings. The president-elect's team should disclose on a public web site information about all meetings held with individuals outside the transition team, including date, location and a list of attendees (including transition team members) and their affiliations. In addition to disclosing these meetings, the transition team's online portal should also make available all documents and e-mails submitted to the team by outside individuals and organizations.

Transition teams also should stipulate that transition team documents will be preserved pursuant to the Presidential Records Act and describe the processes for archiving them.

## **4. Fundraising for Transition Team**

Transition teams receive some money from the federal government (\$7 million was [allocated](#) to Trump's team in 2016) but this money is less than they have traditionally spent. They are allowed to raise money from private sources, subject to a [\\$5,000 per donor cap](#), and must disclose those contributions within 30 days of the inauguration.

The concept of transition teams raising money from private-sector sources is a relic whose time has long since passed. Transition teams' work is essentially a government function and should not rely on donations from people who might have a stake in their decisions.

The wrongheadedness of this policy was underscored in August 2016 when it was disclosed that the Trump transition team had sweetened the pot by offering those giving the \$5,000 maximum a ["look inside"](#) the Trump transition at upcoming events, including an "information session" for law and lobbying firms.

### Recommendations

As long as fundraising remains necessary, candidates and presidents-elect should take steps to minimize potentially corrupting influences. Contributions should be accepted only from individuals. Contributions from federal lobbyists, foreign agents and foreign principals should be banned.

Each contribution should be disclosed within two days on an easily accessible publicly available web site at a level of detail equivalent to Federal Election Communication disclosure of campaign contributions.

Congress, meanwhile, should begin making a practice of appropriating sufficient public funds to transition teams to end the need for teams to solicit them from donors.

## 5. Personnel vetting

Prospective appointees to the Obama administration were required to answer an exhaustive [63-question](#) form aimed at revealing any ethical or personal issues that could cast the administration in a negative light. The Trump administration was far less thorough in its vetting. The Trump transition either refused or only partially took advantage of [offers](#) of the Office of Government Ethics to examine prospective nominees' financial affairs for possible conflicts of interest.

The outcomes reflect the wisdom of the two approaches. President Obama is widely viewed as presiding over an administration that was as close to scandal-free as any in modern history. President Trump's administration has been riddled with conflict of interest scandals and has seen numerous nominations withdrawn over embarrassing revelations.

### Recommendations

Candidates should outline the steps they will take in vetting potential appointees to ensure that those appointees do not have histories of unethical or illegal behavior or disqualifying conflicts of interest.

## 6. Surprise Us

President-elect Obama instilled features into his transition team that underscored his commitment to transparency and good governance. President-elect Trump rode into office on a promise to “drain the swamp” but instead made a mockery of that promise.

The next president will face the task of restoring the public's faith in government. Management of the transition team, even prior to the election, will serve as a dress rehearsal for that task.

Policies or innovations prospective presidents can offer to reassure the public that they and their administration will work for us – and not for themselves, special interests or other countries – would be welcomed.

## Conclusion

The terms candidates set out for their transition teams will carry significance beyond their literal meaning. The degree of prioritization candidates place on ethics and governance issues will set a tone for their administration should they win election. In that respect, issuance of sound governance policies could act as a self-fulfilling prophecy.