

The Honorable Hillary Clinton
Hillary for America

Donald Trump
Donald J. Trump for America

October 19, 2016

Dear Secretary Clinton and Mr. Trump:

Ethics in government is a dominant issue in your campaigns for president. Members of both parties agree it is of paramount importance that the public believe their leaders make decisions solely to advance the public interest.

A key aspect of ethical governance is hiring the right staff and making sure your expectations for their behavior is clear. In 2008, then-Senator Obama required his transition team to agree to a code of ethical conduct as a condition of service. His approach to ethics in the transition is a good starting point, which we believe you should emulate and build upon.¹

Accordingly, we urge you to adopt the 2008 transition's code of ethical conduct as your own, and apply it to your staff (including volunteers), with the three following additions:

First, persons should be prohibited from participating in shaping policy and personnel decisions for the incoming administration that substantially affect their own financial interests or those of family members or business partners, or undermine the public's faith that these decisions are made on any basis but merit. These conflicts of interest include outside financial compensation or significant closely held assets, such as securities or stock options. Accordingly, item 1 of the Code of Ethical Conduct should be updated as follows:

1. I will disqualify myself from involvement in any particular [Clinton/Trump] Transition Project matter which to my knowledge may directly conflict with my financial interest or a financial interest of an immediate family member, partner, client, or other individual or organization with which I have had a business relationship within the past 12 months. Should there be no such direct conflict, but the potential for the appearance of a conflict, I will address this issue for resolution to the Project Executive Director, who will make a publicly-available determination based upon maintaining the public's faith in the political process.

¹ The 2008 transition Ethical Code of Conduct has been reproduced in the Appendix.

Second, persons who are paid to use direct advocacy to influence members of Congress or the executive branch on an issue should be prohibited from involvement in transition matters on which they have done so.² However, the Obama administration's ban on federally registered lobbyists led even some supporters of that measure to conclude that it excluded some worthy individuals from service while allowing others to serve who were not deserving. Accordingly, we recommend the prohibition extend to all persons who received more than *de minimis* compensation for lobbying even when they do not meet the 20% threshold to register under the Lobbying Disclosure Act; and those who supervise or direct individuals who lobby. While this demarcation is an imperfect fit, for the purposes of the transition it creates a clear line and ameliorates many of the problems with the prior code. Accordingly, item 2 of the Code of Ethical Conduct should be updated as follows:

2. I will disqualify myself from involvement in any particular transition matter if I have engaged in regulated lobbying activities within the previous 12 months with respect to such matter, as defined by the Lobbying Disclosure Act, so long as it is more than *de minimis*, even if I do not meet the 20% threshold required to register under the Act. Furthermore, I will disqualify myself if I supervised or directed individuals to lobby on a matter in that timeframe. I will address any concerns about the requirement for disqualification to the Project Executive Director, who will make a publicly-available determination based upon maintaining the public's faith in the political process.

Finally, the transition should identify a senior person on the transition as the point person for ethics. This person's primary duty is ensuring an ethical transition, including enforcement of this code and addressing conflicts of interest and other ethical matters, such as these five principles for transparency and accountability.³ He or she should lay the groundwork for the incoming administration's senior official for Good Government, modeled in part after the Obama Administration's Ethics Czar.

² We note news reports of Secretary Clinton's determination to bar federally registered lobbyists from the transition. See <http://www.politico.com/tipsheets/playbook/2016/10/clinton-bars-lobbyists-from-transition-trump-calls-the-nyt-to-discuss-new-campaign-strategy-two-new-trump-ads-clinton-has-75-percent-chance-of-winning-birthweek-trey-anastasio-216621>. We also note Mr. Trump's "Five Point Plan for Ethics Reform," which includes a 5-year post federal employment ban on lobbying. See <https://www.donaldjtrump.com/press-releases/donald-j.-trumps-five-point-plan-for-ethics-reform>.

³ See, e.g., "Principles for transparency and accountability in the U.S. presidential transition," available at <https://goo.gl/i53nrP>.

We welcome the opportunity to discuss this with you further.

Sincerely yours,

Campaign for Accountability
Campaign Legal Center
Center for Biological Diversity
Citizens for Responsibility and Ethics in Washington
Demand Progress
Democracy 21
Electronic Privacy Information Center
Franciscan Action Network
Issue One
Norman Ornstein
Peter Flaherty, president, National Legal and Policy Center
Project on Government Oversight
Sunlight Foundation
Take Back Our Republic
Richard Painter, University of Minnesota Law School*
Wisconsin Democracy Campaign

* for identification purposes only

Appendix

Obama Transition Project ⁴ Code of Ethical Conduct

As a condition of being permitted to serve as a member of the Obama Transition Project, I agree to abide by the following requirements:

1. I will disqualify myself from involvement in any particular Obama Transition Project matter which to my knowledge may directly conflict with a financial interest of an immediate family member, partner, client, or other individual or organization with which I have had a business relationship within the past 12 months. Should there be no such direct conflict, but the potential for the appearance of a conflict, I will address this issue for resolution to the Project Executive Director.
2. I will disqualify myself from involvement in any particular transition matter if I have engaged in regulated lobbying activities with respect to such matter, as defined by the Lobbying Disclosure Act, within the previous 12 months.
3. I will not solicit or accept any money or things of value in exchange for a promise to support or use influence on behalf of any person who is a candidate for any appointive office or place in the United States Government.
4. I understand that in my Obama Transition Project-related activities, unless given specific authorization, I am not permitted to make any representations on behalf of Senator Obama or the Democratic nominee for Vice President, their designees, or any official of the Obama Transition Project, and in all my service to the Transition, I will identify myself only as acting on behalf of the Transition Project on transition-related matters.
5. I understand that authorization is required from the Obama Transition Project's Executive Director or the Executive Director's designee before seeking, on behalf of the Obama Transition Project, access to any non-public information.

⁴ Source: http://www.huffingtonpost.com/2008/10/08/text-obama-transition-pro_n_133162.html

6. I will hold in confidence any non-public information provided to me in the course of my duties with the Obama Transition Project and ensure that such information is used exclusively for purposes of the Obama Transition Project.

7. I will not use or permit to be used any non-public information, in any manner, for any private gain for myself or any other party, at any time during or after the operation of the Obama Transition Fund.

8. During my service with the Obama Transition Project, I will not communicate with or appear before, with the intent to influence, any federal agency with respect to which I have substantial responsibility during the activities of the Obama Transition Project, on behalf of any other person or entity (except federal, state, or local government entities). I will promptly cause my firm or organization to establish reasonable procedures to assure that I will not participate in any undertaking with respect to which I am affected by this provision.

9. In the event that Senator Obama is elected president, for 12 months following the conclusion of my service with the Obama Transition Project, I will not on behalf of any person or entity (except federal, state, or local government entities) communicate with or appear before, for compensation and with the intent to influence, any federal agency on a particular regulatory or policy matter for which I had substantial responsibility during my service to the Transition Project.

10. I will conserve and protect any federal property entrusted to me, and shall not use federal property, including motor vehicles or other forms of transportation, stationery, printing, equipment and supplies, other than for purposes directly related to the activities of the Obama Transition Project.

11. Neither I nor any member of my immediate family will accept a gift from:

a. Anyone who is seeking a job with the federal government;

b. A federal employee in any agency or department within the scope of my Obama Transition Project responsibilities;

c. Any person or organization that conducts activities regulated by or has a matter pending before an agency or department within the scope of my Obama Transition Project responsibilities; or

d. Any person or organization under circumstances where it may reasonably appear that the gift is being given in order to influence my decisions, advice, recommendations or actions as an Obama Transition Project member

12. If I am currently a federally registered lobbyist:

a. I understand that I may not contribute to or collect contributions for the Obama Transition Project.

b. I understand that I may not incur any expenses on behalf of the Obama Transition Project, whether they are paid by me personally or by my employer.

c. I understand that I will not be permitted to serve in a titled role for the Obama Transition Project, including but not limited to serving as a chair of a working group or holding an honorific title, or having lead or substantial responsibility for any final recommendations.

13. I will not represent, aid or advise a foreign government or foreign political party for the duration of service to the Transition Project.

I understand that my commitment to abide by these requirements may be made public and that this document will be made available to any department or agency to which I may be assigned. I will seek guidance from the Counsel to the Obama Transition Project, or designated agency ethics officials, as appropriate, if necessary to ensure compliance with these standards of conduct. I furthermore acknowledge that failure to comply with the above provisions may result in my dismissal.

Signature: _____

Printed Name: _____

Date: _____

If you have questions about this Code of Conduct, you can e-mail [—] at [—] or [—] at [—].

Completed forms can be faxed to [—] or e-mailed to [—] at [—].