



**INTERNATIONAL CORPORATE
ACCOUNTABILITY ROUNDTABLE**

**COUNTERING CORPORATE CAPTURE OF FEDERAL AGENCIES:
RECOMMENDATIONS FOR THE NEXT ADMINISTRATION**

INTRODUCTION

In 2020, ICAR's efforts to combat corporate capture focused primarily on identifying and combatting corporate capture of U.S. federal agencies. As part of this work, ICAR developed a set of concrete actions that an incoming administration should take to rein in undue corporate influence over federal agencies using existing executive branch authority. The recommendations (which were developed based on in-depth research and analysis as well as expert consultations) focus on addressing gaps in existing ethics rules for executive branch personnel, shining a light on corporate influence, and elevating the issue within the administration.

ICAR's recommendations were integrated into the [Declaration for American Democracy \(DFAD\)](#) coalition's broader list of recommended actions a president could take to strengthen democracy from day one, laid out in the November 2020 report [Day One is for Democracy: A Blueprint for the Next Administration](#).

A brief summary of ICAR's core demands is provided below. The full text of our recommendations begins on the following page.

1) Combat the traditional revolving door by:

- ◆ Extending the length of post-employment cooling-off periods and expand their coverage.
- ◆ Ensuring that post-employment cooling-off periods prohibit "behind the scenes" lobbying activities and not just lobbying contacts.
- ◆ Requiring exiting officials to enter into binding revolving door exit plans.

2) Combat the reverse revolving door by:

- ◆ Preventing and manage conflicts of interest through recusal requirements linked to certain financial interests, including those of an appointee's former employers and clients.
- ◆ Preventing individuals with significant conflicts of interest from being appointed to senior level positions in the first place.

3) Ban incentive payments ("golden parachutes") for government service

4) Prohibit appointees from accepting gifts from lobbyists or lobbyist organizations

5) Mandate public disclosure of key ethics-related documents & agency visitor logs

6) Establish a public, annual cabinet level meeting on ethics and ethics reform

7) Establish a 'peoples' lobbyist office' or 'regulatory capture cop'

RECOMMENDATIONS FOR “DAY ONE”

Existing and traditional ethics standards do not go far enough in protecting against undue corporate influence over federal agencies or ensuring the public interest guides decision-making. We believe that the following proposal addresses previous gaps in ethics policies, and we urge the next administration to take these steps on day one.

COMBAT THE TRADITIONAL REVOLVING DOOR

The traditional revolving door – government employees taking jobs in the private sector related to their government work – is a key mechanism through which corporate interests influence government decision-making. When government officials accept lucrative private sector positions in industry or as lobbyists, their insider knowledge and connections can be harnessed to advance the interests of corporate clients and unfairly benefit their new employer in federal procurement processes, regulatory policy development, and enforcement. Even before an official leaves public service, the explicit or implicit promise of a high-paying private sector job can influence them and create a pro-industry bias in their official decision-making.

The current approach to addressing the traditional revolving door is focused on imposing post-employment cooling off periods, but these rules are often too narrow and do not last long enough to protect the public interest. One of the biggest limitations is that current cooling off periods only prohibit making either lobbying contacts or certain “representational” contacts. This only reaches the tip of the iceberg, leaving former federal officials free to engage in a wide-range of behind-the-scenes lobbying work and strategic consulting. Additionally, under the current rules executive branch officials are free to lobby (including lobbying contacts) any other branch of government immediately upon leaving public service.

Concrete Recommendations:

- ◆ *The next President should prohibit all appointees from lobbying their former executive branch departments or agencies for a period of 5 years after leaving government service; and from lobbying certain executive branch officials for the remainder of the Administration.*
- ◆ *The next President should prohibit very senior appointees from lobbying any part of the executive branch or congress for a period of at least 2 years after leaving government service.*
- ◆ *For all cooling off periods, the term lobbying should be defined to include lobbying activities and strategic consulting, not just lobbying contacts.*
- ◆ *The next President should also require officials leaving government service to enter into binding revolving door exit plans laying out the steps the official will take to ensure compliance with applicable post-employment restrictions. Former officials should also be required to submit exit plan compliance reports periodically after leaving government service. These exit plans and compliance reports should be filed with the Office of Government Ethics and made available to the public.*

COMBAT THE REVERSE REVOLVING DOOR

When corporate executives and business lobbyists are appointed to key posts in federal agencies, which is known as the reverse revolving door, it can establish a pro-business bias in enforcement and policy formulation. When left unchecked, this can result in the prioritization of corporate profits over the public interest in agency decision making, and ultimately threatens the public's trust in government. Given the serious threat it poses to our democracy, addressing the reverse revolving door should be a high priority for a new administration, especially as there is currently very little regulation in place to address the issue.

Drawing on lessons learned during past administrations, reverse revolving door provisions should focus on preventing and managing conflicts of interest through recusal requirements linked to certain financial interests, including those of an appointee's former employers and clients. They should not be tied to status as a registered lobbyist, which is a very narrow and easily evaded category.

Concrete Recommendations:

- ◆ *The next President should expand existing conflicts of interest requirements by prohibiting all appointees, for a period of two years after appointment, from participating personally and substantially in any particular matter in which the appointee's former employer or client has a financial interest. This should at a minimum cover former employers or clients within the two years prior to appointment, and the recusal requirement should not be limited to the narrow sub-category of "particular matters involving specific parties," but rather should cover all "particular matters."*
- ◆ *The next President should also prevent individuals with significant conflicts of interest from being appointed to senior level positions in the executive branch in the first place. To do this, the Office of Government Ethics should be given the authority to conduct a screening process and deem proposed appointees for senior level positions ineligible if their employment backgrounds and/or current private sector activities would give rise to conflicts of interest requiring recusal so frequently as to significantly impair their ability to perform their official duties.*

PROHIBIT THE ACCEPTANCE OF INCENTIVE PAYMENTS

The corporate practice of providing incentive payments, which are special financial rewards given to company executives who secure government positions, has become common practice among Wall Street banks in recent years. By using incentive payments, companies can encourage their executives to leave the company to go work in a government agency, thereby fueling the reverse revolving door. These bonuses, which can be equal to or substantially more than an official's government salary, can also encourage or solidify the former company employee-now government official's loyalty and impact the official's judgment when it comes to work on matters that could affect that previous employer. While changes to the law may be required to fully address this issue, transparency and recusal requirements can be effective stopgaps.

Concrete Recommendations:

- ◆ *The next President should prohibit all appointees from accepting, at any time, compensation from a former employer or client that is specifically awarded for entering government service. This should be accompanied by a transparency element, requiring appointees to publicly state in their Certification of Ethics Agreement Compliance form whether they have, or have not, accepted a banned payment.*
- ◆ *The next President should also prohibit appointees from participating personally and substantially in any particular matter affecting the financial interests of a former or current employer or client from which the appointee accepted compensation specifically awarded for entering government service. This recusal requirement should not be limited to the narrow sub-category of “particular matters involving specific parties,” but rather should cover all “particular matters.”*

BAN GIFTS FROM LOBBYISTS

Corporate interests may seek to influence federal officials through gifts, such as meals and tickets to events. Current law does regulate the gifts that executive branch employees may and may not accept, but there are many exceptions that, in practice, dramatically reduce the scope of the regulation.

Concrete Recommendations:

- ◆ *The next President should prohibit appointees from accepting gifts from any lobbyists or lobbying organizations (regardless of which government bodies they lobby) for the duration of the appointee’s service.*
- ◆ *This prohibition should largely replicate previous lobbyist gift bans but should go further by addressing the issue of travel paid for by lobbyists and lobbying organizations, which is a highly valued gift.*

PUBLISH ETHICS DOCUMENTS & AGENCY VISITOR LOGS

Gaps and weaknesses in transparency must be addressed to ensure that the public has access to information needed to identify undue influence and corporate capture, and to hold government bodies and officials accountable. Currently, for example, OGE compiles waivers granted to political appointees under the ethics Executive Order, but waivers granted to other executive branch employees from the ethics statutes are largely kept out of public view by the Designated Ethics Agency Officer (DAEO) of each division or agency in the executive branch. All DAEOs issuing ethics waivers should be required to put the waivers in writing and promptly file them with OGE for public inspection. Other ethics-related documents that should be publicly available include ethics agreements; certification of ethics agreement compliance forms; recusal statements; extensions granted to ethics-related deadlines; and records of agencies’ approval of the acceptance of gifts from outside sources.

The public also needs to know which non-governmental persons and entities agency officials and staff consult with on policy and other official matters. Past publication of White House visitor logs has shown that these records, and the information they contain, can be very valuable to the public in revealing potential influences that may shape government officials' decisions and actions on critical issues. Drawing on this experience, a similar requirement should be applied to executive branch agencies.

Concrete Recommendations:

- ◆ *The next President should mandate greater public disclosure of key ethics-related information and records. These documents should be compiled in a central clearinghouse managed by the Office of Government Ethics (OGE) and made publicly available in an on-line searchable, sortable, and downloadable format.*
- ◆ *The next President should require agencies to log and publicly report, on a regular basis, information related to meetings and engagement between agency officials and non-governmental persons and entities. These public logs should provide at least: 1) the names and affiliations of all meeting attendees, 2) the name of any entity they represent, 3) the date and time of the meeting, and 3) a brief and accurate description of what was discussed.*

ESTABLISH A CABINET LEVEL MEETING

To complement substantive improvements regarding executive branch ethics, a public cabinet level meeting on ethics should be established. A public meeting of this sort would act as an issue forcing event within agencies and would facilitate lesson sharing and cross-pollination of ideas across different agencies on practical implementation of ethics requirements. It would also foster greater transparency and create a key opportunity for civil society and the broader public to put pressure on agencies or appointees that are falling short on ethics. All of these elements combined would help to trigger a "race to the top" on ethics within the executive branch.

Concrete Recommendations:

- ◆ *The next President should establish a public, annual cabinet level meeting on ethics and ethics reform. During this meeting, high-level officials should be required to report on their agencies' implementation of ethics requirements over the past year, as well as the actions the agency is committed to taking over the coming year.*

ESTABLISH A PEOPLE'S LOBBYIST OFFICE

There is currently no government body focused on tracking or countering the capture of or undue influence over public bodies and government officials by industry and other special interests. To fill this gap, a new public body should be established, which could have multiple functions and serve various roles, all aimed at protecting against regulatory capture and addressing the prioritization of corporate interests above the public good that can result. For example, it could house information about agency meetings

with nongovernmental people and entities and could be tasked with creating and managing a government-wide public database of senior officials who go through the revolving door. It could also act as a watchdog, responsible for monitoring and identifying instances of capture and/or providing neutral analysis on the impacts of agency decisions on the public as compared with corporate interests. While additional thought and analysis would need to be conducted to determine the contours of this office's role, it is clear that a strong protector of the public interest is needed to counter corporate influence and ensure our democracy is responsive to everyday people.

Concrete Recommendations:

- ◆ *The next President should establish an independent, central body within the executive branch that functions as a “regulatory capture cop” or a “people’s lobbyist office.”*