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## The Unruly Transition

Trump's Transition Team Failed to Curtail Influence of Lobbyists and Other Special Interests Despite Candidate's Boisterous Promises

## **Acknowledgments**

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The work of a presidential transition team is one of the most important facets of an administration, even though it is not officially part of an actual presidency. Transition teams formulate policy details and perform the all-important function of vetting potential appointees to staff the next administration.

Transition teams have long had quasi-governmental status. Since the Presidential Transition Act of 1963, transition teams of the president-elect have received public funding and office space. Amendments to that act in 2010 and 2015 provided funding for transition teams of presidential nominees for work prior to Election Day, and the laws formalized processes for handoffs between incoming and outgoing administrations.<sup>1</sup>

Despite the government's role in funding transitions, laws to ensure transparency and deter conflicts of interest that cover ordinary government work generally do not apply to transition teams. President-elect Barack Obama sought to bridge some of those gaps in 2008. Days after Obama's election, his transition team announced an ethics pledge that transition team members were required to sign. Among other things, it prohibited transition team members from working on issues upon which they had lobbied or otherwise had a fiduciary interest in the previous year. It also banned team members from lobbying on matters related to their transition work for a year after leaving the transition team.<sup>2</sup>

At Public Citizen, we endeavored to study the 2016 transition through the lens most suited to our mission: adherence to small-d, democratic values. These values, in our view, are largely tied to steps to ensure transparency, ethical conduct, and minimize advantages for special interests. These objectives reinforce one another because an open window into an organization's operations reduces the likelihood of unethical conduct or acts of favoritism occurring. We outlined our recommendations in an April 2016 white paper written by City University of New York Professor Heath Brown, an expert on presidential transitions.<sup>3</sup>

Most observers would probably agree that the outcome of the 2016 election was unexpected on a historic scale. When we released our white paper in April 2016, businessman Donald J. Trump was on the brink of wrapping up the Republican nomination for president, shocking nearly all the pundits. But Trump still remained a prohibitive underdog in the general election.

On Nov. 8, 2016, the nation was stunned to learn that Trump had indeed been elected president. And the next day, the president-elect and his transition team began in earnest the daunting task of preparing to take the reins of the United States government.

Perhaps never before was a presidential transition team so in need of a corpus of safeguards to ensure adherence to ethical standards and prevent the appearance of impropriety. Trump was a billionaire with hundreds of financial entanglements spanning the globe. Moreover, Trump would

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<sup>1</sup> HENRY HOGUE, CONGRESSIONAL RESEARCH SERVICE, PRESIDENTIAL TRANSITION ACT: PROVISIONS AND FUNDING (Oct. 5, 2016), <http://bit.ly/2ogPpSA>.

<sup>2</sup> *Text: Obama Transition Project Ethics Code*, HUFFINGTON POST (Nov. 8, 2008), <http://huff.to/2pdNMbm>.

<sup>3</sup> HEATH BROWN, A RECOMMENDATION FOR PRESIDENTIAL TRANSITION TRANSPARENCY (April 29, 2016), <http://bit.ly/2nLS5Kl>.

soon reveal a penchant for nominating other billionaires – with their own myriad financial complications – to high posts in his government. Adding to the complications, neither the president-elect nor many of his appointees had any government experience.

By themselves, these circumstances would counsel in favor of taking extra measures to insulate against conflicts of interest or appearances thereof. But President-elect Trump had extra reason to insist on high standards of transparency and ethics in his transition: His pledge to “drain the swamp” was at the forefront of his message to voters. Promises to reduce the influence of lobbyists and other special interests were at the heart of that pledge.<sup>4</sup>

With that backdrop, this review compares the policies and actions of the Trump transition team with the recommendations we put forth in April 2016, and makes a couple of other observations about the transition team’s operations.

## Assessment of Trump Transition’s Adherence to Our Recommendations

**April 16, 2016, Recommendation 1:** “With the final party primary slated for June 7, the leading candidates should announce who has been – or will be – doing pre-election transition planning by at least the following week.”

**Discussion:** Trump on May 8, 2016, named New Jersey Gov. Chris Christie to manage his transition team. Moreover, either through news reporting or official releases, the transition team later revealed many of its leaders, subject matter experts and members of “landing teams” that would interact with federal agencies.<sup>5</sup> Later reporting, however, indicated that the names of some individuals involved in developing policy plans were not revealed on lists released by the transition team. Confronted with this allegation, the leader of Trump’s EPA transition effort said that individuals who were part of the “action team,” as opposed to the “landing team,” were not disclosed to the public.<sup>6</sup>

**Assessment:** The Trump transition team met our recommendation ahead of schedule by announcing its appointment of Christie. Trump’s decision to remove Christie shortly after the election (discussed below) likely undercut much of the benefit the team may have realized by the early appointment of a leader. The team’s decision to withhold the identities of certain participants (especially without notice that their names were withheld) undercut the credibility of the team’s disclosure.

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<sup>4</sup> Press Release, Donald Trump, *Donald J. Trump’s Five-Point Plan For Ethics Reform* (Oct. 17, 2016), <http://bit.ly/2nA88dl>.

<sup>5</sup> *Agency Landing Teams*, TRUMP-PENCE TRANSITION (updated Jan. 19, 2017), <http://bit.ly/2o7nhnS>.

<sup>6</sup> Sean Reilly and Amanda Reilly, *Trump Team Kept Some Transition Members Secret*, E&E NEWS (Feb. 24, 2017), <http://bit.ly/2nUVmov>.

**April 16, 2016, Recommendation 2:** “The leading candidates should identify and disclose to the public the ethical principles and policies that they are likely to promote once in office and apply each to the greatest extent possible before the election during the pre-election transition period.”

**Discussion:** Candidate Trump elevated ethical issues with increasing intensity as Election Day neared. “It is time to drain the swamp in Washington, D.C.,” Trump declared on Oct. 17, 2016. “That is why I am proposing a package of ethics reforms to make our government honest once again.”<sup>7</sup>

Trump released a pledge at that juncture. All five components of it had to do with curtailing the influence of lobbyists. Among them, Trump promised: “I am going to re-institute a 5-year ban on all executive branch officials lobbying the government for 5 years after they leave government service.”<sup>8</sup>

Further, Trump promised: “I am going to expand the definition of lobbyist so we close all the loopholes that former government officials use by labeling themselves consultants and advisors when we all know they are lobbyists.”<sup>9</sup>

Trump’s post-election transition team subsequently acted as if it never heard Candidate Trump’s harangue on lobbyists and special interests. Within days of the election, reporters documented that Trump’s transition team was teeming with lobbyists.<sup>10</sup> Moreover, many of these lobbyists were brought on to do work that was directly related to their clients’ interests. For instance, Michael Catanzaro, a lobbyist who represented numerous major energy sector clients, was tasked with managing “energy independence” issues for the transition.<sup>11</sup> That was just one of many such examples.

Less than a week after his victory, Trump claimed it was necessary to stock his transition team with lobbyists because other candidates were not available. “Everybody’s a lobbyist [in Washington],” he told *60 Minutes*. “I mean, the whole place is one big lobbyist.”<sup>12</sup>

A week after the election, Christie was fired as the head of the transition team and Vice President-elect Mike Pence took over. Coinciding with Pence’s arrival, the transition team shared with reporters an ethics code that banned transition team members from working on matters upon which they had lobbied in the previous 12 months.<sup>13</sup> Later in the same day that newspapers

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<sup>7</sup> Press Release, Donald Trump, *Donald J. Trump’s Five-Point Plan For Ethics Reform* (Oct. 17, 2016), <http://bit.ly/2nA88dl>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Eric Lipton, *Trump Campaigned Against Lobbyists, But Now They’re on His Transition Team*, THE NEW YORK TIMES (Nov. 11, 2016), <http://nyti.ms/2ngT55l>.

<sup>11</sup> TAYLOR LINCOLN, PUBLIC CITIZEN, THE PEOPLE SHAPING THE TRUMP ADMINISTRATION (Nov. 16, 2016), <http://bit.ly/2o7an9c>.

<sup>12</sup> *President-Elect Trump Speaks to a Divided Country on 60 Minutes*, CBS News (Nov. 13, 2016), <http://cbsn.ws/2oaKJ3U>.

<sup>13</sup> Rebecca Ballhaus, *Trump Transition Team’s Code of Ethics Takes Aim at Lobbyists*, THE WALL STREET JOURNAL (Nov. 16, 2016), <http://on.wsj.com/2ohD3cT>.

reported on that ethics code, *Politico* reported on the existence of new ethics code that apparently superseded the earlier one.<sup>14</sup>

The second ethics code required team members who were registered lobbyists to pledge that they “have filed the necessary forms to the appropriate government agency to terminate my [lobbying registration.]”<sup>15</sup> In other words, the second ethics code permitted lobbyists to remain if they severed their relationships with their clients. These guidelines reportedly required lobbyists not to return to working for these clients for six months after leaving the transition.<sup>16</sup>

Transition spokesman Jason Miller said the new moves were “making good on President-elect Trump’s promise that we’re not going to have any lobbyists involved with the transition efforts.”<sup>17</sup>

That was hardly so. The requirement that lobbyists merely deregister for a short while would not provide much reassurance to a person concerned with undue influence of special interests. For instance, Rebecca Rosen, a lobbyist for Oklahoma-based drilling company Devon Energy deregistered in mid-November, evidently to remain with the transition.<sup>18</sup> As it happens, the role of Devon Energy’s lobbyists soon showed up in another news story relating to the incoming administration. Oklahoma Attorney General Scott Pruitt had previously submitted documents under his own signature to federal regulators that were drafted by Devon Energy’s chief of lobbying.<sup>19</sup> Pruitt was nominated in early December to lead the EPA.<sup>20</sup>

The Trump transition team reportedly instituted other restrictions concerning lobbyists, such as a ban on lobbyists meeting with team members within its offices. But lobbyists told news reporters that transition team members circumvented those rules by meeting with lobbyists in other locations or by inviting lobbyists to submit documents outlining their policy positions in lieu of in-person meetings.<sup>21</sup>

“They’re encouraging those loopholes,” Paul Miller, president of the National Institute for Lobbying & Ethics, told *Politico*.<sup>22</sup> Trump spokeswoman Hope Hicks, meanwhile, claimed that “the steps we’ve taken to root out lobbyists” were “unprecedented.”<sup>23</sup>

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<sup>14</sup> Isaac Arnsdorf and Kenneth P. Vogel, *Trump Team Announces Tough Lobbying Ban*, POLITICO (Nov. 16, 2016), <http://politi.co/2nLSs7M>.

<sup>15</sup> *Id.*

<sup>16</sup> Maggie Severns and Isaac Arnsdorf, *The Trump Lobbying Purge That Wasn’t*, POLITICO (Jan. 18, 2017), <http://politi.co/2oh0d3c>.

<sup>17</sup> Julie Bykovicz, *Trump’s Lobbyist Ban Complicates Administration Hiring*, ASSOCIATED PRESS (Nov. 16, 2016), <http://apne.ws/2ogNttz>.

<sup>18</sup> Robin Bravender, *Trump’s Energy Team Overhauled*, GREENWIRE (Nov. 21, 2016), <http://bit.ly/2ohbArW>.

<sup>19</sup> Eric Lipton, *Energy Firms in Secretive Alliance With Attorneys General*, THE NEW YORK TIMES (Dec. 6, 2014), <http://nyti.ms/2nvsqTW>.

<sup>20</sup> Coral Davenport and Eric Lipton, *Trump Picks Scott Pruitt, Climate Change Denialist, to Lead E.P.A.*, THE NEW YORK TIMES (Dec. 7, 2016), <http://nyti.ms/2nAjl7>.

<sup>21</sup> Maggie Severns and Isaac Arnsdorf, *The Trump Lobbying Purge That Wasn’t*, POLITICO (Jan. 18, 2017), <http://politi.co/2oh0d3c>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

Neither ethics pledge provided any evidence that the transition team addressed Trump's promise to "close all the loopholes that former government officials use by labeling themselves consultants and advisors when we all know they are lobbyists."<sup>24</sup>

To our knowledge, the Trump transition team never officially released an ethics policy. We submitted e-mails requesting information on this subject to the communications office of the transition team,<sup>25</sup> as did *The Nation*.<sup>26</sup> Neither of us received a response.

Six weeks after Trump was inaugurated, *Politico* reported that the transition team had rejected participating in an ethics-training program similar to one in which the transition teams of President-elects George W. Bush and Barack Obama had participated.<sup>27</sup>

**Assessment:** The Trump transition team did not meet the example set by President-elect Obama's team to publicize an ethics policy to reassure the public that the team was not unduly influenced by special interests.

On the contrary, the Trump team's decision to include numerous lobbyists for special interests directly contradicted the promises of Candidate Trump.

The ethics policy the transition team apparently adopted was extremely porous because it permitted lobbyists to remain merely by temporarily severing their existing client relationships. Reports that the transition team willingly permitted lobbyists to exploit loopholes in its rules further discredited any claims that the transition team meant to rein in lobbyists. The transition team's rejection of ethics training served as a metaphor for its rudderless approach to ethics issues.

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**April 16, 2016, Recommendation 3:** "As soon as pre-election transition planning begins, candidates should disclose who has provided funding and/or the campaign's plan to fund pre-election transition planning."

**Discussion:** Prior to the November election, the federal government allocated \$7 million to pay for the 2016 president-elect to conduct post-election transition work.<sup>28</sup> This amount, as was the case for previous federal allocations, was less than what transition teams had typically spent. Transition teams are permitted to supplement their funding by raising money from private sources, including

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<sup>24</sup> Andrew Restuccia, Isaac Arnsdorf and Nancy Cook, *Insurgent Trump Taps GOP Insiders, Lobbyists for Transition*, POLITICO (Nov. 11, 2016), <http://politi.co/2mPRKH2>.

<sup>25</sup> E-mail from Public Citizen to Trump-Pence Transition team (media@ptt.gov) (Dec. 2, 2016).

<sup>26</sup> George Zornick, *Trump's Transition Team Is Dirty, and It's Dark*, THE NATION (DEC. 5, 2016), <http://bit.ly/2nApdUD>.

<sup>27</sup> Isaac Arnsdorf and Josh Dawsey, *Trump's Team Nixed Ethics Course for White House Staff*, POLITICO (March 2, 2017), <http://politi.co/2ob1ThV>.

<sup>28</sup> Shalini Hicklin-Coorey, *The Costs of Presidential Transition*, PARTNERSHIP FOR PUBLIC SERVICE (Aug. 3, 2016), <http://bit.ly/2oyvQoh>.

corporations, subject to a \$5,000 per-donor cap. Transition teams are required to disclose their contributions from private sources 30 days after the inauguration.<sup>29</sup>

Trump's transition team began raising money before the election, which is customary. But the Trump team's private fundraising made news. In late August, *Politico* reported that the Trump transition team had offered donors giving the \$5,000 maximum a "look inside" the Trump transition at a forthcoming event.<sup>30</sup> Then, a few days prior to the election, Christie and Heritage Foundation founder Ed Feulner invited transition donors who had given the maximum amount to attend an "information session" at a Washington, D.C., law and lobbying firm.<sup>31</sup>

The transition teams did not reveal details about its funders during the transition. The Center for Public Integrity reported after the team filed its post-inauguration disclosure form that it raised about \$6.5 million in private contributions, and spent about \$4.7 million of that.<sup>32</sup>

The Trump transition team received maximum contributions from at least 25 lobbyists, lobbying firms and trade associations with lobbying operations.<sup>33</sup> In contrast, the Obama transition team prohibited contributions from registered lobbyists.<sup>34</sup>

Numerous cabinet appointees contributed to the transition team, mostly prior to their nominations. Linda McMahon, later to be nominated as administrator of the Small Business Association gave a maximum contribution in July 2016. Wilbur Ross made a maximum contribution in late October, a month before being nominated to be secretary of Commerce. Andrew Puzder contributed \$5,000 on Oct. 30, a week before being nominated to be secretary of Labor. The DeVos family gave 10 individual \$5,000 donations about three weeks after Betsy DeVos was nominated to be secretary of Education.<sup>35</sup>

**Assessment:** The Trump transition team did not take steps – either by prompt disclosure of funders or by prohibiting contributions from certain sources – to reassure the public that the transition team was not unduly influenced by special interests. On the contrary, disclosures that eventually occurred as required by law revealed that the Trump transition team accepted contributions from lobbyists and a variety of special interests. These facts coupled with revelations that donors to the transition were given special access could only have reinforced the public's cynicism about the "swamp" that Trump promised to drain.

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<sup>29</sup> Drew Harwell and Lisa Rein, *Who's helping pay for President-elect Trump's transition effort? You are*, THE WASHINGTON POST (Nov. 23, 2016), <http://wapo.st/2nAnq24>.

<sup>30</sup> Anna Palmer and Jake Sherman, *SCOOP: Team Trump Gives Republicans A 'Look Inside' Transition For 5K Donation -- Hackers Targeted Arizona Election System -- Huma Calls It QUILTS -- B'DAY: Warren Buffett*, POLITICO (Aug. 30, 2016), <http://politi.co/2oydx2r>.

<sup>31</sup> Drew Harwell and Lisa Rein, *Who's Helping Pay For President-Elect Trump's Transition Effort? You Are*, THE WASHINGTON POST (Nov. 23, 2016), <http://wapo.st/2nAnq24>.

<sup>32</sup> Carrie Levine and Michael Beckel, *Billionaires and Corporations Helped Fund Donald Trump's Transition*, THE CENTER FOR PUBLIC INTEGRITY (Feb. 23, 2017), <http://bit.ly/2o7GXrJ>.

<sup>33</sup> *Id.*

<sup>34</sup> Helene Cooper and Jeff Zeleny, *Obama's Transition Team Restricts Lobbyists' Role*, THE NEW YORK TIMES (Nov. 11, 2008), <http://nyti.ms/2o7BYaz>.

<sup>35</sup> Tal Kopan, *First on CNN: Trump Transition Donors Linked to His Cabinet*, CNN (Feb. 23, 2017), <https://cnn.it/2oba2mA>.



Had the transition team revealed details of its funders contemporaneously, the public almost certainly would have expressed disapproval at some of what it learned. A better course to cement the public's trust would have been to couple prompt disclosure of contributions with a policy of forswearing contributions from lobbyists and lobbying entities.

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**April 16, 2016, Recommendation 4:** “As soon as pre-election transition planning begins, each candidate should post information on a public website about all meetings held with individuals and organizations outside the campaign or transition team, including date, location, and a list of attendees. This website should be maintained after the election for the winning candidate during the post-election transition phase.”

**Discussion:** This recommendation was patterned after a program by the transition team of President-elect Obama in 2008. Subject to some exceptions, the Obama team listed meetings that it held with people from outside the transition and posted policy recommendations submitted to the transition on the Web.<sup>36</sup> The Trump transition team did not adopt a similar policy.

On Dec. 14, 2016, Republican National Committee communications director (and soon-to-be spokesman for the Trump Administration) Sean Spicer was interviewed by CNN on the transition team's processes. Spicer was asked about allegations that Trump's sons were involved in interviewing prospective appointees to the administration. This was notable because Trump had promised to insulate himself from conflicts of interest by having his sons manage his businesses.

“Conflicts of interest arise when you are sneaky about it, shady about it, when you're not transparent about it,” Spicer responded.<sup>37</sup>

Spicer suggested that the presence of a C-Span television camera in the lobby of Trump Tower provided ample transparency. “We have a camera, for goodness' sake. Every single person who enters Trump Tower, you see them go up, come down, they talk to the press,” Spicer said.<sup>38</sup>

Based on the existence of that camera, Spicer made the dubious claim that the Trump transition team's “level of transparency exceeded any modern president in terms of who's involved.”<sup>39</sup>

But at least some meetings escaped the camera's view. For instance, Jared Kushner, Trump's son-in-law and senior aide, secretly met in December with the chairman of a Russian bank that was under U.S. sanctions.<sup>40</sup> Separately, Kushner and National Security Advisor designee Michael Flynn secretly

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<sup>36</sup> Jonathan Martin, *Transition to Disclose Meetings*, POLITICO (Dec. 6, 2008), <http://politi.co/2o7OPt9>.

<sup>37</sup> *At This Hour With Berman and Michaela (Transcripts)*, CNN (Dec. 14, 2016), <https://cnn.it/2oh2fjl>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Elena Fabrichnaya, Steve Holland and Patricia Zengerle, *Trump Son-In-Law Met Executives of Sanctioned Russian Bank, Will Testify*, REUTERS (March 28, 2017), <http://reut.rs/2oIGLPj>.

met with Russian ambassador Sergey Kislyak in Trump Tower in December 2016.<sup>41</sup> Kislyak was not caught on the C-Span camera, prompting speculation that he entered through a back door.<sup>42</sup> Flynn also had other conversations with the Kislyak that were undisclosed or inaccurately described, as discussed below.

The press did attempt to catalogue the president-elect's meetings. According to analysis conducted by *Politico*, about one-third of people who were known to have met with Trump in the first month after the election were contributors either to his campaign, groups supporting his campaign or Republican interests. These contributors gave an average of more \$800,000 each during the election cycle that had just culminated.<sup>43</sup>

**Assessment:** The Trump transition did not follow our recommendation to disclose details about the transition's interactions with outsiders. As it happened, the Trump transition team was somewhat transparent in its operations because a fair amount of visitors to the president-elect did in fact travel through the lobby of Trump Tower, and a wide array individuals familiar with the transition team's operations were willing to speak to reporters. Based on news reporting, other visitors arrived through other entrances to Trump Tower for secret meetings with senior transition officials. The net effect of this was a dribble of information sufficient to evoke – but not allay – suspicion. The transition team would have been wise to affirmatively disclose the details of its interactions with outsiders.

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**April 16, 2016, Recommendation 5:** Each candidate should develop a plan during the pre-election transition to archive key documents from the pre- and post-transition period for future use and announce when those documents will be made public.

**Discussion:** This recommendation was rooted in part on a policy statement by the Obama transition team in 2008 that documents it transmitted to agencies would be subject to the Freedom of Information Act requests submitted to those agencies. Our recommendation also flowed from our belief that work conducted during the transition can be profoundly influential in shaping events. As such, a failure to preserve documents would leave dark patches in the historical record.

We are unaware of the Trump transition team making any statements regarding plans to preserve documents or to deem documents subject to the Freedom of Information Act.

**Assessment:** An affirmative statement that transition team documents would be subject to FOIA requests would have help cast the incoming Trump administration as viewing itself as having nothing to hide. Meanwhile, if Trump had announced a commitment to preserving transition

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<sup>41</sup> William Saletan, *Jared Knew: Trump's Son-In-Law And Adviser Has Been Concealing a Flynn-Russia Meeting for Months*, SLATE (March 3, 2017), <http://slate.me/2pwrC4E>.

<sup>42</sup> See, e.g., tweet by ABC News chief political analyst Matthew Dowd (March 2, 2017), <http://bit.ly/2pwlQ35>.

<sup>43</sup> Isaac Arnsdorf, *Trump Rewards Big Donors With Jobs and Access*, POLITICO (Dec. 27, 2016), <http://politi.co/2nh0MZ6>.

documents for posterity, he would have appeared statesmanlike by demonstrating that he comprehended the presidency's ongoing role in history.

It is hard to exaggerate the importance of record-keeping for future transition planning. Without a historical record maintained by a publicly-accessible research library, future candidates and presidents-elect will again be compelled to start transition planning nearly from scratch. Given the vulnerabilities faced by the country during the transition of power, this gap in institutional knowledge is potentially harmful to national security. The Trump administration could address this by encouraging former transition officials to participate in thorough exit interviews about what transpired during the 2016-2017 transition.

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## Brief Discussion of Other Shortcomings of the Trump Transition

The Trump transition suffered from numerous shortcomings beyond the categories that we outlined in our white paper. Among these areas, the transition team apparently conducted extremely lax vetting of prospective appointees and, evidently, was highly inefficient in identifying prospective appointees.

### Revelations Concerning Trump Appointees Suggest Lax 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. Many of the questions were specific, such as whether the applicants or their family members had any affiliation with certain institutions that were implicated in the financial crisis from which the nation was reeling at the time. The form included four questions specially relating to adherence to tax and immigration laws regarding domestic help, and required respondents to disclose any investigation of themselves by a law enforcement agency.<sup>44</sup>

Other questions were much more general, such as demands to describe any electronic message or posting the person had ever written that could “suggest a conflict of interest or be a potential source of embarrassment” to the applicant. Applicants were also asked to describe “any association with any person, group or business venture that could be used – even unfairly – to impugn or attack your character or qualifications for government service.”<sup>45</sup>

Some may view these questions as overly intrusive or exhaustive. Still, with a couple of notable exceptions, Obama's appointees sailed through their confirmation hearings unscathed. Obama's government has been widely praised for its relative absence of scandal.

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<sup>44</sup> Questionnaire used by Obama-Biden Transition team for prospective appointees (undated), <http://nyti.ms/2o7K10m>.

<sup>45</sup> *Id.*

Ample evidence suggests that the Trump transition team did not vet candidates as thoroughly as did Obama's. Below are brief descriptions of revelations that emerged concerning five nominees. This is not meant to be a comprehensive list of nominees for which highly questionable information surfaced.

**Michael Flynn**, a former U.S. military intelligence officer, was named to be Trump's national security advisor on Nov. 15, 2016.<sup>46</sup> On Feb. 13, 2017, barely two weeks into the Trump administration, Flynn resigned. This resignation came amid revelations that Flynn had conversations over the 2016 Christmas holiday season with the Russian ambassador to the United States about U.S. sanctions on Russia, and that he had not been forthcoming about the contents of those conversations with Vice President-elect Michael Pence.<sup>47</sup>

Subsequently, it was revealed that Flynn had received \$530,000 from a company tied to the Turkish government for work that did not conclude until Nov. 17, 2016. The existence of this contract was revealed when Flynn in March 2017 retroactively filed reports pursuant to the Foreign Agent Registration Act (FARA). White House spokesman Sean Spicer said after the reports were filed that Trump was not aware of Flynn's work on behalf of the Turkish entity when Flynn was named national security advisor, and that Trump could not have known because Flynn "didn't file until two days ago."<sup>48</sup> But Spicer soon acknowledged that Flynn's lawyers had informed the transition team that Flynn might need to file FARA disclosures.<sup>49</sup>

Adding to the intrigue, in March 2017, former CIA Director James Woolsey told *The Wall Street Journal* that he attended a meeting in September 2016 in which Woolsey said Flynn discussed plans to kidnap a Turkish cleric living in the United States and deliver him to the Turkish government. The Turkish government blames the cleric for fomenting a failed coup attempt in summer 2016. Woolsey briefly served on Trump's transition team. A spokesman for Flynn said in response to that report, "at no time did Gen. Flynn discuss any illegal actions, nonjudicial physical removal or any other such activities."<sup>50</sup>

In late March 2017, Flynn's lawyer issued a statement saying that Flynn would testify before congressional investigators in exchange for receiving immunity from prosecution. "General Flynn

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<sup>46</sup> Bryan Bender, *Trump Names Mike Flynn National Security Adviser*, POLITICO (Nov. 17, 2016), <http://politi.co/2oyp6H3> and Supplemental Statement Pursuant to the Foreign Agent Registration Act of 1938 for six-month period ending Nov. 30, 2016 (Registrant: Flynn Intel Group) (filed March 7, 2017), <http://bit.ly/2obNLEF>.

<sup>47</sup> By Maggie Haberman, Matthew Rosenberg, Matt Apuzzo and Glenn Thrush, *Michael Flynn Resigns as National Security Adviser*, THE NEW YORK TIMES (Feb. 13, 2017), <http://nyti.ms/2nAqTh1>.

<sup>48</sup> Peter Baker and Matthew Rosenberg, *Michael Flynn Was Paid to Represent Turkey's Interests During Trump Campaign*, THE NEW YORK TIMES (March 10, 2017), <http://nyti.ms/2nvvWxt>.

<sup>49</sup> Chad Day, Stephen Braun and Julie Pace, *Trump Transition Knew Flynn Might Register as Foreign Agent*, ASSOCIATED PRESS (March 10, 2017), <http://apne.ws/2oWYIH2>.

<sup>50</sup> Ted Mann and James V. Grimaldi, *Trump Didn't Know of Flynn's Work for Turkey Before Security-Post Nomination*, THE WALL STREET JOURNAL (March 10, 2017), <http://on.wsj.com/2ob3QLp>

certainly has a story to tell, and he very much wants to tell it, should circumstances permit,” read the statement.<sup>51</sup>

**Andrew Puzder**, the CEO of a fast food chain, was nominated to be secretary of Labor. The selection of Puzder seemed strange from the beginning because he had celebrated the ability of robots to replace workers and his firms had paid million of dollars to settle lawsuits for allegedly cheating employees.<sup>52</sup> These would not ordinarily be seen as strong qualifications for a position tasked with protecting the nation’s workforce.

In early February 2017, Puzder acknowledged that he and his wife had employed housekeeper who was not legally in the United States and that he paid back taxes connected to the employee after he was nominated as labor secretary.<sup>53</sup>

Subsequently, it was revealed that Puzder’s former wife had filed legal proceedings against him in the 1980s alleging physical abuse. Then a tape surfaced of his former wife appearing on the television show “Oprah,” in disguise, in 1990 to allege abuse by Puzder. Puzder withdrew his nomination shortly after the tape emerged. (Puzder’s former wife had retracted her allegations against him long ago.)<sup>54</sup>

**Mick Mulvaney**, a Republican congressman from South Carolina, was nominated by Trump to serve as the director of the Office of Management and Budget. Subsequent to his nomination, Mulvaney acknowledged in a statement to the U.S. Senate Budget Committee that he had failed to pay taxes relating to the employment of a babysitter hired to care for triplets to whom Mulvaney’s wife gave birth in 2000. Mulvaney claimed that he learned of his error during the Senate confirmation process, and subsequently paid more than \$15,000 in federal taxes.<sup>55</sup>

**Vincent Viola** (a billionaire nominated to be secretary of the Army) and **Anthony Scaramucci** (a hedge fund manager who had been offered the job of White House liaison to the business community) withdrew their nominations over financial entanglements.<sup>56</sup> For his part, Viola also had recently punched a racehorse auction concessions worker in the face, although Viola said that he reported that incident to the transition team before being nominated.<sup>57</sup>

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<sup>51</sup> Mark Mazzetti and Matthew Rosenberg, *Michael Flynn Offers to Testify Before Congress in Exchange for Immunity*, THE NEW YORK TIMES (March 30, 2017), <http://nyti.ms/2oz97wb>.

<sup>52</sup> Jodi Kantor and Jennifer Medina, *Workers Say Andrew Puzder Is ‘Not the One to Protect’ Them, But He’s Been Chosen To*, THE NEW YORK TIMES (Jan. 15, 2017), <http://nyti.ms/2nvHWPB>.

<sup>53</sup> Jim Puzzanghera, *Labor Nominee Puzder Admits to Employing a Housekeeper Who Was in the U.S. Illegally*, LOS ANGELES TIMES (Feb. 7, 2017), <http://lat.ms/2mPY7dq>.

<sup>54</sup> Marianne Levine and Timothy Noah, *Exclusive: Puzder’s Ex-Wife Told Oprah He Threatened ‘You Will Pay For This’*, POLITICO (Feb. 15, 2017), <http://politi.co/2nvLykD>.

<sup>55</sup> Jennifer Steinhauer, *Trump Budget Nominee Did Not Pay Taxes for Employee*, THE NEW YORK TIMES (Jan. 18, 2017), <http://nyti.ms/2o7Btxi>.

<sup>56</sup> Maggie Haberman, *Anthony Scaramucci Won’t Get Announced White House Role, Official Says*, THE NEW YORK TIMES (Feb. 1, 2017), <http://nyti.ms/2o7Mi2a> and Susanne Craig, *Vincent Viola, Nominee for Army Secretary, Drops Out*, THE NEW YORK TIMES (Feb. 3, 2017), <http://nyti.ms/2nAydZV>.

<sup>57</sup> Michael S. Schmidt, *Trump’s Army Secretary Pick Was Once Accused of Punching Auction Worker*, THE NEW YORK TIMES (Jan. 18, 2017), <http://nyti.ms/2nh8C52>.

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### **Pace of Appointments by Trump Administration Is Slow**

The Trump administration is filling posts at a far slower rate than the previous administration. *The New York Times* reported in mid-March that Trump had submitted only 36 nominations to the U.S. Senate for confirmation. At the same time in 2009, Obama had submitted 70 names.<sup>58</sup> Further, the *Times* reported, Trump was behind in filling “the important second- and third-tier positions that carry out most of the government’s crucial daily functions.”<sup>59</sup> “There’s no question this is the slowest transition in decades,” former State Department official R. Nicholas Burns told *The Times* in March 2016.<sup>60</sup>

## **Conclusion**

Trump’s promise to “drain the swamp” hung in the air the morning after his stunning upset, as if those words crystalized the anti-establishment message he rode to victory. To government reform advocates, the sentiment was welcomed but the messenger seemed unlikely, at best. Trump was the subject of hundreds of lawsuits (some by public agencies), had boasted of his ability to use his money to bend the political system to his will and had steadfastly refused to follow 45 years of precedent by releasing his tax returns during his candidacy. Furthermore, unanswered questions remained over how Trump would separate himself from his own business assets.

The recommendations for the upcoming presidential transition that we put forth in late April 2016, patterned after some of the policies of the 2008 Obama transition, were in accordance with a mainstream consensus on wise practices to facilitate ethical and responsive governance. Implementing practices like these would have represented a modest step for a president-elect to show that he meant it when he said it when he pledged to “drain the swamp.”

The Trump transition team not only failed to adopt most of the recommendations we outlined, but engaged in numerous actions that explicitly catered to special interests, a pattern that has continued since Trump has taken office. These included providing special access to transition team contributors and stocking the transition team with lobbyists. These steps could not help but imbue the metaphorical swamp with a fetid stench.

The candidacy and presidency of Donald J. Trump have repeatedly distinguished themselves as being like none other in history. Chances are, historians will reach similar conclusions about his transition – even if the documentary record proves to be sparse.

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<sup>58</sup> Julie Hirschfeld Davis and Sharon LaFraniere, *Trump Lets Key Offices Gather Dust Amid ‘Slowest Transition in Decades’*, THE NEW YORK TIMES (March 12, 2017), <http://nyti.ms/2nAAHYx>.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*