STATE OF THE SWAMP
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Acknowledgements

The Common Cause Education Fund is the research and public education affiliate of Common Cause, founded in 1970 by John Gardner. Common Cause is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process.

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INTRODUCTION

In a July 24, 1933 radio address, President Franklin Delano Roosevelt spoke to a nation reeling from the Great Depression about the astonishing flurry of legislation passed during a special session of Congress at the beginning of his term. He dubbed this critical period the Hundred Days. In the decades since, Roosevelt’s achievements have become the yardstick against which all new presidencies are measured. Every White House is judged for its triumphs—and failures—during its first hundred days.

As they mark Day 100 of the Trump administration, the president and his advisors are feeling the pressure of history. Despite staff turnover, internal squabbling, and the failure of such signature presidential initiatives as the Middle East travel ban and repeal of the Affordable Care Act, the White House is eager to present a robust record at this key milestone.

This report examines a critical part of that record: the ethics of President Trump, his family, and his administration. The president’s promises to “drain the swamp” of Washington were a staple of his campaign and he repeatedly criticized the ethics of his opponents. Declaring “I alone can fix it” on the night he was nominated, he later announced a five-point plan for ethics reform, including:

- A five-year ban on former executive branch officials lobbying the federal government;
- A similar lobbying ban for former members of Congress and congressional staffers;
- An expanded definition of lobbyist, to eliminate loopholes that allowed some former lawmakers and congressional employees to engage in lobbying by calling themselves “consultants;”
- A lifetime ban on senior executive branch officials lobbying for foreign governments; and
- Campaign finance reform that would prevent foreign lobbyists from raising money in American elections.

Based on those campaign themes, it’s no surprise that the president’s team is focusing on “accountability” in promoting his record at the hundred-day mark. But the question is “accountable to whom?”

In business, Donald Trump’s accountability was to his bottom line. Presidents are judged by a different standard however; they answer to a large, diverse population that justifiably expects them to put the public interest ahead of private profit.

Judged by that standard, this president comes up woefully short and his “drain the swamp” talk, which appropriated a phrase long favored by good government watchdogs, is breathtakingly ironic.

Donald Trump has presided over the most corrupt first hundred days in the history of the American presidency.
Rather than advancing the public interest in fixing the rigged system he assailed as a candidate, Trump and his team have set about serving private interests. Under the guise of promoting job growth, they are moving to privatize core government functions like public education and systematically dismantling regulations that, however imperfect, were put in place to protect public health and safety, and serve as the people’s checks and balances on private power. They have casually discarded decades of sound ethical practices, weakened enforcement of existing rules, and opened unprecedented opportunities for government officials to enrich themselves at public expense. Rather than advancing the intent of government of, by, and for the people, the Trump administration is turning the regulatory structures over to the very industries the agencies were intended to oversee.

The conclusion is inescapable: Donald Trump has presided over the most corrupt first hundred days in the history of the American presidency. The good news is that “we the people” still have the power to use other checks and balances on his authority.

**Executive Summary**

President Trump’s business holdings expose him to unprecedented conflicts of interest. His failure to address them by divesting himself of his business empire and releasing his income tax returns is a blow to government accountability. His conflicts threaten to distract him from his official responsibilities, cast doubt on the motives driving nearly every presidential decision, allow him to profit from his office, and may be impeachable violations of the Constitution.

The president’s family exacerbates his ethical challenges. While his elder sons run the Trump Organization on his behalf, they expand the net of conflicts around his administration. Meanwhile, his daughter and son-in-law face similar conflicts of interest but, because they work in the White House, are subject to more serious liability.

In staffing his administration, the president has deepened rather than drained “the swamp.” Many of his staffers are former lobbyists, and he has virtually ignored their ethical breaches. On top of this, a rushed vetting and confirmation process has resulted in a cabinet with an unsettling variety of ethics issues of its own.

The president’s efforts to create new ethical standards for his White House by executive order, while superficially encouraging, do not withstand close scrutiny. Loopholes in the language of his orders and toothless enforcement have left the Trump White House more open to special interest influence than were previous administrations.

In our conclusion we note that the first hundred days need not decide the fate of his administration and provide recommendations based on Common Cause’s 47-year history of moving toward more open and transparent government, a trend that continues at the local and state level, despite recent backsliding in some areas on the federal level.

**President Trump**

Trump has greater conflicts of interest than any previous president, but has done less to address them.

Every president since Richard Nixon has released his income tax returns to the public (or, in Gerald Ford’s case, released a detailed 10-year summary). Though not a legal requirement, the practice has become a tradition, shielding presidents from some charges of corruption and providing the public with important information on the sources and amounts of presidential income and the extent of the president’s charitable giving. President Trump departed from this tradition as a candidate and has adopted the same policy as president, claiming that an IRS audit prevents him from releasing his returns. Trump’s claim ignores former President Richard Nixon’s release of returns while Nixon was under audit and the absence of any IRS restriction on a taxpayer’s release of his or her returns.

Every president since passage of the 1978 Ethics in Government Act has either placed his assets in a blind trust or limited them to non-conflicting investments like mutual funds. A blind trust puts the president’s assets in the hands of an independent trustee, who re-invests and manages them on the president’s behalf without his knowledge or approval. Because the trustee’s decisions — and the contents of the trust — are kept secret, the president is insulated from the temptation to pursue policies that would benefit him financially.
Donald Trump’s business holdings present a novel situation. There have been many wealthy presidents, but none whose wealth was so concentrated in a personal brand. A trustee selling the organization’s assets likely would also be selling the Trump name; without it, the assets would be much less valuable to the buyers. And with his name still on the properties, Trump would have an incentive to continue looking out for their well-being, the better to ensure the name remains valuable after he leaves the White House and needs or wants to use it again.

Of course, the president also could direct his trustee to condition the sale on the new owners’ agreement to drop the Trump name. That would lower the price, perhaps an unhappy result for the president but one that would be consistent with his responsibility to abide by high ethical standards in office. Rather than pursue that course, President Trump simply tossed ethical concerns out the window.

Following months of calls by Common Cause and other ethics watchdogs for him to divest his business holdings and put his assets into a blind trust, Trump announced on Jan. 11 that he would turn management of the Trump Organization and its assets over to a trust controlled by his sons Donald Jr. and Eric. That evening, Walter Shaub, director of the Office of Government Ethics, declared that if the president-elect wished to eliminate his conflicts of interest, the announced plan “cannot achieve that goal.” The trust would not be blind at all, Shaub said; Trump would remain aware of his properties, and his sons would be answerable to him on their management.

“Nothing short of divestiture will resolve these conflicts,” Shaub concluded.

Even this meager barrier between the president and his businesses is porous. Eric Trump plans to give his father quarterly reports on the company’s profitability, and a Feb. 10 filing revealed that the newly-created trust “shall distribute net income or principal to Donald J. Trump at his request.” Given President Trump’s knowledge of his business and his ability to withdraw money from it whenever he wishes, his arrangements do more to streamline the Trump Organization’s operations than to eliminate his conflicts.

**Trump’s conflicts distract him from official business.**

Repeatedly since his election, President Trump has openly promoted his businesses or business partners. These actions are, at best, irrelevant distractions from his official responsibilities, and, at worst, violations of those responsibilities.

The president remains an executive producer of the NBC program *The Apprentice,* which he formerly hosted. The show’s future is unclear, but since taking office Trump repeatedly has weighed in on its declining ratings and carried on a running public battle with its new host, former California Gov. Arnold Schwarzenegger, until the governor announced he will not return for a second season. The president has offered his thoughts via Twitter and at the National Prayer Breakfast.

Early in the transition, when the president-elect traditionally speaks with world leaders and organizes his White House, Trump found time for a meeting with three Indian business partners to discuss a Trump-branded apartment complex under development in Mumbai. His personal business has even intruded into his conversations with foreign officials. In a meeting with British politician Nigel Farage, for instance, Trump urged Farage and his allies to oppose offshore wind farms such as those that “mar the pristine view” from his Aberdeen, Scotland golf course. And when President Tayyip Erdogan of Turkey called to congratulate him on winning the election, Trump praised Mehmet Ali Yalcindag, a business partner involved with Trump real estate developments in Istanbul. He kept up his praise of foreign business associates at his New Year’s Eve party, when he gave special recognition to Hussain Sajwani, with whom he has collaborated in building two Trump golf courses in Dubai.

The president has even taken time during official state visits to promote his business interests. Prime Minister Shinzo Abe of Japan was the first world leader President Trump invited to Mar-a-Lago, his private club in Palm Beach, FL. During their visit, the president felt obligated to introduce the prime minister to other guests, since they had been “members of this club for a long time” and had “paid [him] a fortune.” Diplomacy, at least temporarily, took a back seat to promoting Mar-a-Lago’s newest amenity: meet-and-greets with the president and his visitors.
Trump’s conflicts create a cloud of suspicion over his decisions as president.

Separate from those examples of President Trump clearly acting to promote his financial interests, there is a much larger category of ambiguous cases. His lack of disclosure and continued role in his business empire make it impossible to rule out self-interest as a factor in any decision. When those decisions effect Trump properties, even slightly, questions inevitably emerge.

President Trump pledged to pursue no new foreign business deals while in office. Some projects in the early stages of development appear to have been halted. Following reports that Trump had discussed a Trump-branded Buenos Aires tower during a congratulatory phone call from the president of Argentina, the Trump Organization announced that there were no plans to continue with the project. Eight new Trump companies were established in Saudi Arabia during the 2016 campaign, but at least some of them were dissolved after the election. A Trump presence in Taiwan, though previously explored, also appears to have been shelved.

The new no-foreign-deals pledge is not absolute however, or at least the term “new deals” is ambiguous. Deals that were in preliminary — or even exploratory — stages seem to count as “old” deals to the president. Although no construction had begun on two planned Trump resorts in Indonesia, the Trump Organization confirmed in late December that the project would move forward. In February 2017, the Trump Organization began work on a Trump-branded resort in the Dominican Republic that had been effectively abandoned for a decade. This is not the only dormant deal to spring to life since Trump’s election. A hotel in the Republic of Georgia had been languishing since 2013, but after the election its developers insisted they were “waiting for them to give us the green light.”

Setting aside the possibility of new foreign deals, the Trump Organization already has a presence in 25 countries. Both President Trump and the leaders of those countries have an incentive to use that presence to their advantage. Shortly before Trump’s election, the Philippines appointed Jose E. B. Antonio, whose company built Manila’s...
Trump Tower, as a special envoy to the United States for trade, investment, and economic affairs. And in February 2017, a Trump business associate and founding member of the Mar-a-Lago club was chosen as ambassador to the Dominican Republic.

The ethical risks of Trump's established relationships extend to are even — or perhaps especially — evident in countries with failed or abandoned Trump projects. The Trump Organization exited a Rio de Janeiro project after it was implicated in a Brazilian criminal investigation for investment fraud. For an Azerbaijan project stalled since 2015, the Trump Organization partnered with an Azeri family with reported ties to the Iranian Revolutionary Guard. These existing relationships are not inherently compromising, but there is a risk of improper favors or threats that would be impossible had President Trump divested.

Questions about the president's business empire already have inserted themselves into his foreign policy. When Trump spoke with the president of Taiwan by phone, breaking protocol and threatening to upend America's decades-old One China policy, critics immediately questioned whether the move was aimed at bolstering the Trump Organization's plans to expand to Taiwan. When he then recommitted to the One China Policy, the Chinese government's decision to approve 38 Trump trademarks in the country raised new suspicion about his motives.

The president's decision to impose a travel and immigration ban on six (originally seven) majority-Muslim countries in the Middle East and North Africa drew similar attention to his businesses. The chosen countries did not include the entire Muslim world or even the countries with the highest incidences of terrorism. The ban ignored Saudi Arabia, home of many of the 9/11 attackers, along with the United Arab Emirates, Qatar, Egypt, and Turkey, all of which have Muslim majorities. Also left off were India, and the Philippines, which have substantial Muslim populations. Each of those countries has some form of Trump Organization presence.
The president’s ties to Russia are perhaps the most sensational collision of his business and governance. In 2008, Donald Trump Jr. noted that “in terms of high-end product influx into the US, Russians make up a pretty disproportionate cross-section of a lot of our assets... We see a lot of money pouring in from Russia.” In light of Russian efforts to encourage Trump’s election and ongoing congressional and FBI investigations into possible Russian collusion with the Trump Campaign, these Russian connections become more worrisome. They underscore the fact that had President Trump dealt with his conflicts as predecessors handled theirs, he would not know what his investments were, and no one could reasonably accuse him of acting to benefit them while in office.

As president, Trump has power to shape and direct an enormous federal bureaucracy, including agencies that regulate his businesses. This sets the stage for a new cast of domestic conflicts. The Trump International Hotel, which now occupies the Old Post Office building in Washington, D.C., is under a lease from the General Services Administration (GSA) that prohibits any elected official from being part of the lease or deriving any benefit from it. The head of the GSA is appointed by the president, effectively making President Trump both tenant and landlord of the Old Post Office. On March 23, 2017, despite the objections of ethics and conflicts experts, the GSA announced in a letter that the Trump Organization was in “full compliance” with the lease.

The Trump Organization has at least $250 million in loans from banks around the world. One of its largest creditors is Deutsche Bank, which at the time of the election was negotiating a multi-million-dollar settlement with the Justice Department over its activities leading to the 2008 financial crisis. The negotiations were completed January 17, three days before Trump took office. If a similar investigation was to take place in the future, it would be under the direction of an attorney general appointed by President Trump. Thus, the president has the potential to punish or reward his own creditors.

The president also appoints members of the National Labor Relations Board (NLRB), the body that resolves such labor disputes as the cases culinary workers brought against Trump hotels in Las Vegas and Washington, D.C. In another near-miss, these disputes were settled before President Trump took office. Should Trump Organization employees wish to file a future complaint, however, they may have to do so before an NLRB with members appointed by their own boss.

**Trump’s conflicts enable him to use his office for personal profit.**

President Trump’s ability to use his office for personal gain is more than hypothetical; he’s already done it. And long before his 2016 presidential campaign, Trump mused that “I could be the first presidential candidate to run and make money on it.” He may have been prophetic: before the election, the Trump campaign spent millions of its donors’ dollars on Trump business, paying to fly in the Trump plane, rent the Mar-a-Lago club for campaign events, and rent office space in Trump Tower.

These practices have continued during the Trump presidency. At Trump Tower, the full-time home of the First Lady and the Trumps’ young son, the Secret Service requires two floors to house its protective detail. To lease the space at prevailing rates, it must pay $3 million dollars per year to the Trump Organization. Far from being inconvenienced by the extra security measures, Trump Tower is looking to cash in on them: its promotional materials now highlight Secret Service protection as one of the building amenities. The Secret Service is not alone in Trump Tower. The Defense Department traditionally establishes a headquarters at any presidential residence, so it is renting a Trump Tower floor of its own, at a cost of $1.5 million per year.

The self-enrichment continues at Trump clubs, hotels, and golf courses. The president makes frequent weekend trips to his own golf courses, have already earned $35,000 from Secret Service golf cart rentals alone. While there, he increases his venues’ attractiveness by providing members with access to the president and proximity to historic events. During the transition, he invited members of his Bedminster, N.J. club to join him as he summoned candidates to staff his administration: “We’re going to be interviewing everybody,” he told them. “Treasury, we’re...
going to be interviewing secretary of state... We have everybody coming in — if you want to come around, it’s going to be unbelievable ... so you might want to come along.” Mar-a-Lago, site of two visits by foreign heads of state and nicknamed the “Southern White House,” has doubled its membership fee to $200,000 since the election.\textsuperscript{43}

**Trump’s conflicts may be unconstitutional.**

These acts of personal enrichment may expose President Trump to more than public disgust. The Domestic Emoluments Clause in Article II of the Constitution specifies that, apart from his salary, the president “shall not receive within that Period any other Emolument from the United States, or any of them.”\textsuperscript{44} The term “emolument” is broad, conveying payment, profit, or advantage.\textsuperscript{45} It’s arguable that a payment from the U.S. government to a business owned by the president constitutes a forbidden emolument. If so, the president is breaking the highest law in the land.

More attention has been paid to the president’s potential violation of the Foreign Emoluments Clause, which requires that no one holding any “office of profit or trust” under the United States government “accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State.”\textsuperscript{46} With no apparent concern for this constitutional provision, the Trump International Hotel in Washington, D.C. has been “actively courting” foreign diplomats with business in D.C.\textsuperscript{47}

Foreign officials have received the message. After Trump’s victory, Kuwait cancelled its National Day celebration event at the Four Seasons and switched to the Trump hotel, reportedly under “political pressure.”\textsuperscript{48} Azerbaijan and Bahrain also were quick to schedule events at the Trump hotel during the transition.\textsuperscript{49} “Why wouldn’t I stay at his hotel blocks from the White House,” one diplomat asked, “so I can tell the new president, ‘I love your new hotel!’ Isn’t it rude to come to his city and say, ‘I am staying at your competitor?’”\textsuperscript{50} Patronizing the president’s hotel is a simple gesture to encourage more favorable treatment.

China’s decision to approve 38 Trump trademarks — which some experts consider an emolument — can be viewed in the same light.\textsuperscript{51} Put simply, foreign powers have concluded that paying the president of the United States is a useful way to gain his favor. The Trump Organization’s response? It has begun pursuing a second D.C. hotel.\textsuperscript{52}

**The Trump Family**

Donald Jr. and Eric Trump exacerbate their father’s conflicts.

After Donald Trump resigned his officer positions within the Trump Organization, sons Donald Jr. and Eric assumed primary control. Far from shielding the president from conflicts of interest, this arrangement has worsened them. The Trump sons’ main responsibility is to shepherd and grow a business empire that remains largely owned by their father. By diligently devoting themselves to continuing their father’s work, they lengthen an already extended list of ethical issues.

As children of the president, both sons are entitled to Secret Service protection. American taxpayers foot a portion of the bill for their business trips to promote the family brand. When Eric Trump took a promotional trip to Uruguay in January, for example, the Secret Service and embassy staff’s costs totaled $97,830.\textsuperscript{53}

While the president promised to halt foreign expansion of the Trump empire, an aggressive expansion effort within the U.S. is underway. The CEO of Trump Hotels is dissatisfied with a presence in only five of the nation’s top 26 metro areas. “I don’t see any reason that we couldn’t be in all of them eventually,” he said.\textsuperscript{54} Either oblivious or indiffer-
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Ivanka Trump and Jared Kushner have conflicts of their own.

President Trump’s daughter Ivanka and her husband Jared Kushner play a different role in the ethics of the Trump administration. Like the president and the Trump sons, they have business interests that could be affected by administration policy. In addition to her stake in the Trump Organization, Ivanka owns her own clothing and accessories business. Kushner, meanwhile, has a large stake in Kushner Companies, his family’s real estate firm.58

What separates Ivanka and Jared from Don and Eric is their status as White House employees. Unlike the president, other federal officials and employees are subject to criminal liability for financial conflicts of interest. So far, Ivanka and Jared have adopted a conflict resolution system reminiscent of President Trump’s: they have stepped down from leadership positions, but retained ownership. Ivanka has resigned from positions in the Trump Organization and her own business, but her holdings remain in trust with her brother-in-law and sister-in-law.59 Jared has resigned from 260 officer positions; though he has divested from 80 holdings, he has retained ownership of the rest.60

Mere resignation from leadership positions may not be sufficient to avoid violating conflict of interest laws. Federal law prohibits Ivanka and Jared from official participation in any matter in which either has a financial interest (one spouse’s conflicts are attributed to the other).61 This gives them a choice: either they may advise the president on all matters while liquidating the businesses they’ve spent their lives building, or they may keep their businesses while recusing themselves from all areas that touch upon their businesses (including financial regulation, taxes, and trade).62 Neither option is attractive for the pair, but they must choose one. The alternative is criminal penalties — and their choice is to date unclear.

The administration is still in its infancy but the ethical dangers of Ivanka’s and Jared’s business arrangements already are evident. Presidential counselor Kellyanne Conway was rebuked by the Office of Government ethics after exhorting a national TV audience to “go buy Ivanka’s stuff,” but the plug – delivered from the White House - coincided with a 10,700 percent increase in sales for the first daughter’s fashion line over the same month (February) in 2016.63

Ivanka’s brand also has gotten getting preferential treatment from at least one foreign government, a gesture that government no doubt expects President Trump will appreciate. In early April, around the same time as Chinese President Xi Jinping met with Trump at Mar-a-Lago, Xi’s government approved Ivanka’s trademark for use in China. The action came nine months after Ivanka applied for approval, less than half the normal waiting period.64

The Trump Administration

Executive Branch Staff

Their internal squabbles on other subjects have been well-chronicled, but on ethics the president’s aides take their cues from the boss. Before the administration took office, the Trump transition chose not to administer a budgeted ethics course for its new employees.65 Although the incoming Bush and Obama teams had used the course, the Trump team wished to control all speakers and content for its new employee orientation.66
The record of the first hundred days suggests additional ethics training may have been beneficial. Far from “draining the swamp,” the president and his staff have been filling the executive branch with former lobbyists. Among them is George David Banks. Now the special assistant to the president for international energy and the environment, he was previously a lobbyist for a natural gas company and executive vice president of a trade association that lobbied against a carbon pollution tax.\(^5\)

The list goes on. Geoffrey Burr, special assistant at the Labor Department, previously lobbied on overtime and wage regulations for Associated Builders and Contractors.\(^6\) Before serving as special assistant for domestic energy and environmental policy, Michael Catanzaro was a lobbyist for American Fuel and Petrochemical Manufacturers.\(^6\) Shahrira Knight, special assistant for tax and retirement policy, formerly lobbied against the fiduciary rule for retirement accounts for Fidelity.\(^7\) Grace Koh, special assistant for technology, telecom, and cybersecurity policy, worked in the lobbying office of Cox Enterprises while it opposed net neutrality.\(^7\) Lance Leggit, chief of staff at the Department of Health and Human Services, lobbied for 10 different health care companies.\(^7\) And Chad Wolf, who previously lobbied the Transportation Security Administration, is now the TSA’s chief of staff.\(^7\)

Staffing isn’t the only area in which the administration has made questionable ethics decisions. Multiple staffers and advisors have already committed ethical breaches, or perhaps broken the law, with few consequences. Christopher Liddell, an assistant to the president and director of strategic initiatives, revealed through his financial disclosure filings that, before selling his stake in General Motors and International Paper, he participated in multiple White House meetings affecting those companies.\(^7\) This could violate the criminal conflict of interest statute, but no action has been taken to date.

Maverick investor Carl Icahn, currently serving President Trump as an informal special adviser on regulatory matters, has offered several policy and staffing recommendations that have directly benefited his financial interests. He has pushed for an ethanol regulation that would help his Texas oil refinery, advised on leadership for the Securities and Exchange Commission while it investigates two companies in which he has an interest, and benefited from a special IRS rule that favors oil and gas companies.\(^7\) Because his advisory role is unofficial, the administration argues that Icahn is not subject to conflict of interest laws.

Dan Scavino, White House social media director, may have violated the Hatch Act, which prohibits government officials making use of their government positions to influence elections. In a Tweet, he criticized Rep. Justin Amash, a member of the House Freedom Caucus and frequent critic of President Trump, and called for his defeat in a primary election.\(^7\) Scavino and the White House have insisted that the Hatch Act is not implicated because the tweet was not sent from an official government account—an argument ethics watchdogs reject.\(^7\)

On Feb. 9, Special Counselor to the President Kellyanne Conway appeared on television to discuss the retailer Nordstrom’s decision to drop the Ivanka Trump clothing line.\(^7\) After she added, “I’m going to give a free commercial here. Go buy it today, everybody. You can find it online.” Common Cause complained to the Office of Government Ethics, which later described the statements as a clear violation of the Standards of Ethical Conduct for Employees of the Executive Branch.\(^7\) Because OGE can only recommend disciplinary action, Conway was “counseled,” but no additional action was taken.

**The Trump Cabinet**

The highest-level Trump appointees are not immune from the administration’s ethical shortcomings. Cabinet-level officials are subject to conflict of interest laws, so most have more effectively disclosed and divested from conflicting assets than has the president. There are exceptions however. Secretary of Education Betsy DeVos remains the beneficiary of three family trusts, though she did not disclose the assets of two of them during the Senate confirmation process.\(^8\) The assets of one DeVos trust include a stake in Sextant Education, operator of a chain of for-profit colleges.\(^8\) DeVos’s ethics agreement with OGE did not require her to divest from Neurocare, a biotech company aimed at helping children with attention deficit and hyperactivity disorders, a subject with obvious relevance to education.\(^8\) To former White House ethics counsels Norman Eisen and Richard Painter, these conflicts and failed disclosures were “disqualifying.”\(^8\)

Former National Security Advisor Michael Flynn was forced to resign after 24 days for misleading Vice President Mike Pence and others about his conversations with Russian Ambassador Sergey Kislyak. Only after his resignation did Flynn disclose that he had been paid more than $500,000 to lobby on behalf of a Turkish company with close
ties to the country’s president, performing work that “could be construed to have principally benefited the Republic of Turkey.”

Flynn officially registered as a foreign agent on March 7. The White House stated it had no knowledge of Flynn’s actions in this capacity.

John F. Kelly, secretary of homeland security, failed to disclose several positions with outside organizations on his legally-required ethics forms. The omissions included his position as vice chairman of the Spectrum Group, a lobbying group for defense contractors, and board memberships with defense contractors Michael Baker International and Sallyport Global.

Steve Mnuchin, secretary of the treasury, may have deliberately violated federal ethics laws. He is a co-founder of RatPac Dune Entertainment, which produced The Lego Batman Movie, and he was credited as an executive producer. Acknowledging that he was legally prohibited from promoting the film, he nevertheless added, “you should send all your kids to Lego Batman.” It is unclear whether he had divested from RatPac Dune when he made the remarks.

Former Rep. Tom Price, secretary of health and human services, repeatedly misstated or failed to mention the timing of some of his stock purchases and traded health care stocks with enough frequency to become subject to ethics probes by federal securities regulators and the House Ethics Committee. His suspicious investment activities, including buying shares in a medical equipment company days after he introduced a bill on Medicare reimbursement for medical equipment, are possible violations of House ethics rules and the STOCK Act.

Former Sen. Jeff Sessions, attorney general, may have committed perjury before the Senate Judiciary Committee during his confirmation hearing. When discussing interaction between the Trump campaign and Russian government officials, Sessions said, “I’m not aware of any of those activities. I have been called a surrogate at a time or two in that campaign and I did not have communications with the Russians.” It was later discovered that Sessions had met twice with Russian Ambassador Kislyak. Sessions recused himself from Justice Department investigations of 2016 campaign matters after these revelations, but there have been no additional consequences for his misstatements.

With rare exceptions, ethical lapses by Executive Branch officials have caused few if any problems for the officials involved. Criticism from ethics officers and watchdogs is occasionally acknowledged but often ignored, and there are rarely significant consequences. A typical response is “The White House requires all of its employees to work closely with ethics counsel to ensure compliance and has aggressively required employees to recuse or divest where the law requires.” What “the law requires” unfortunately, is a long way from the transparency and strengthened ethics enforcement candidate Trump promised. And as this report demonstrates, the administration often even falls short of the legal minimums.

New Ethics Policies

President Trump’s forays into ethics policy are far different from his campaign rhetoric. In a break from the practice during the Obama administration, the Trump White House no longer releases White House visitor logs. The administration also has ended the Obama-era contract with Open.gov, the website that hosted White House financial disclosures, salaries, and appointments in addition to visitor logs. The visitor log information will be available to the public through Freedom of Information Act (FOIA) requests, but not until five years after Trump has left office.

On Jan. 28, the president signed an executive order to implement portions of his five-point “drain the swamp” plan. Its central feature was an “ethics pledge” aimed at reducing the influence of lobbyists in the Trump administration. It has several key points:

- Former employees may not engage in “lobbying activities” with their agency for five years after leaving government service. At first glance, this seems to strengthen President Obama’s similar executive order, which imposed a two-year ban. However, the Trump executive order uses an atypical definition of “lobbying activities” that excludes agency rulemaking, adjudication, and licensing. Those are the very activities former executive employees are most likely to engage in on behalf of high-paying private sector clients, so the loophole renders the Trump restriction weaker than Obama’s two-year ban.
- Certain senior former Executive Branch officials may not attempt to influence employees of their agency for one year after the end of their employment. This requirement is only the statutory minimum. The Obama administration extended the restriction to two years, so this is a step backward.

- Former employees may not engage in “lobbying activities” with any covered Executive Branch official for the remainder of the administration. Once again, Trump’s narrow definition of “lobbying activities” permits most actual methods of Executive Branch lobbying.

- Former employees may not engage in lobbying that would require registration under the Foreign Agents Registration Act (FARA), permanently. There is a loophole here: FARA exempts those who register under the Lobbying Disclosure Act, leaving them free to engage in foreign lobbying without becoming foreign agents.

- Employees may not accept gifts from lobbyists or lobbying organizations. This is identical to the Obama provision.

- Employees may not work on matters relating to their former employers or clients for two years. This is also identical to the Obama provision.

- Employees who were registered lobbyists in the past two years may not work on the specific subject of their lobbying or the general issue area for two years. Though this seems like a limitation, it is another step back. Under Obama, former lobbyists could not be hired at all by the federal government for two years, and the ban on work in their areas of lobbying activity continued after they started work.

The Trump handling of waivers is another significant departure from Obama-era practice. The Obama administration issued waivers from its ethics requirements only if 1) their literal application was inconsistent with the restriction’s purpose, or 2) it was in the public interest. The waivers were then disclosed annually in a public report. The Trump executive order makes the granting of waivers entirely discretionary, and they remain secret unless requested under FOIA. Even the Director of OGE has “no idea” how many waivers have been issued.

Because this is an executive order, the legal power of President Trump’s ethics rules — e.g., the lifetime ban on lobbying for foreign governments — will end when Trump’s successor repeals the Trump order and issues a new order on Executive Branch ethics. To make a meaningful, long-term impact on the “revolving door” between the White House and lobbying groups, these policies will need to be passed by Congress. The order is not even being fully enforced during President Trump’s term: Senior White House budget advisor Marcus Peacock already has left the administration and immediately gone to work at the business lobby Business Roundtable. He received a waiver, but no special circumstances for its issuance were announced by the White House.

**Conclusions**

Americans are alert to the Trump administration’s ethical shortcomings. The Office of Government Ethics, which routinely fields emails, phone calls, and letters from concerned citizens, received 733 public contacts between October 2008 and March 2009, as the Obama administration was taking shape. In the same period for President Trump, OGE received 39,105 contacts, an increase of 5,235 percent.

Does this mean that President Trump’s White House is 52 times more corrupt than Obama’s? Corruption is hard to quantify and takes many forms, and not every inquiry from a concerned citizen is legitimate.

Some past presidents came to power with help from ethically challenged political machines. U.S. Grant and...
Warren G. Harding had self-dealing, embezzling cabinets and staff. And Andrew Jackson — Trump’s model president — replaced an Executive Branch of experienced bureaucrats with loyal lackeys and made himself rich by expropriating Native American land. Whatever their transgressions, none of the actions of the previous 44 presidents raised a fraction of the concerns about their moral and ethical compass within their first hundred days, nor the opportunities for worldwide corruption, as have the actions of the 45th.

As for Obama, with whom President Trump often invites comparisons, he served two terms without a hint from even his most persistent critics that he, his family or his appointees had tried to enrich themselves. Nor was there even a hint of personal scandal in the Obama White House. President Trump, by his own choosing, seems to have set up an administration rife with potential for multiple scandals and all the costs - to the public treasury, the nation’s leadership in the world and his personal reputation - that go with them.

President Trump has been more opaque about his finances than any president in at least 40 years while openly profiting from his office and soliciting payments from foreign governments. He has casually risked violating customs, statutes, and the Constitution. He has weakened standards of ethical conduct and ignored their breaches by his employees. At every stage, the counsel of ethics advisors has been answered only with new scandals. A president so indifferent to transparent and accountable government must be called corrupt.

To have reached this state within the first hundred days of an administration is unprecedented among American presidencies. TR had the Square Deal, FDR the New Deal; Trump prefers to self-deal. This president’s first hundred days have seen no progress in “draining the swamp”; instead, they have been the most corrupt in our national history.

Recommendations: Forward, Not Back

The first hundred days is not the end of the story. For 47 years, Common Cause has organized millions of Americans to pry open the once smoke-filled backrooms where government meetings were conducted free from public scrutiny or political accountability. From our role in filing the initial lawsuit that led to the Watergate investigations and passing sunshine laws forcing public meetings, to securing disclosure of campaign contributions, we have made real progress toward transparent government and clean elections. But the last decade on the federal level, first on campaign finance and now on ethics and transparency, has been marked by a retrenchment. The silver lining is that the American people are rallying to revive the trend toward more open government and we continue to win laws strengthening our democracy at the local and state level. Common Cause will continue its fight to clean up our democracy by advocating for presidential ethics and transparency reforms including the following:

- **Required disclosure of at least five years of federal tax returns by major party candidates for president and vice president, in order to give the voting public information regarding such candidates’ personal finances and potential conflicts of interest;**

- **Strengthened personal financial disclosure requirements, see 5 U.S.C. app. §§ 101-111, to require president and vice president to disclose more detailed information regarding income and debt;**

- **Required disclosure of White House visitor logs and visitor logs of other venues where the president regularly conducts business (e.g., H.R.1711 / S.721, MAR-A-LAGO Act);**

- **Required electronic public disclosure via the White House website of ethics agreements signed by Executive Branch political appointees, and any waivers granted by the White House to the signing of such agreements;**

- **Strengthened “revolving door” lobbying restrictions for political appointees both entering and leaving Executive Branch employment; and**

- **Requiring the president and vice president to place all assets that create conflicts of interest into a blind trust managed by an independent trustee who oversees the conversion of the assets into conflict-free holdings (e.g., H.R.371 / S.65, Presidential Conflicts of Interest Act of 2017).**
Post Script

This report was built around traditional definitions of ethical conduct and conflict of interest. We would be remiss if we failed to note that the Trump administration also faces another, decidedly untraditional ethical challenge.

There is a considerable body of disturbing evidence\(^{105}\) that the president or people working for his campaign last year collaborated with the Russian government in efforts to promote his candidacy and undermine his opponent. The Russian effort apparently included electronic invasions of computer systems run by the Democratic National Committee, the Clinton campaign, and several state election agencies. During the campaign, candidate Trump publicly applauded the release of Clinton campaign documents the hackers had obtained and encouraged the Russians to leak additional documents.\(^ {106}\)

If the president took part in or tolerated cooperation with the Russians by his staff or other associates, he has committed the most serious ethical violation by a public official or candidate in American history. House and Senate committees, along with the FBI, are investigating the matter, but the conclusions of these partisan bodies are guaranteed to be viewed with suspicion by millions of Americans.

Common Cause believes such a serious potential violation demands attention by an independent commission of distinguished Americans, perhaps including retired judges, military leaders, academics and others whose conclusions would engender bipartisan confidence.\(^ {107}\) The best way for the president to begin making good on his promise to drain the swamp would be to join in calls for such an investigation and fully cooperate with the resulting commission.
Notes

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85 Id.
87 Id.
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