

Via online portal

Re: Comment of Citizens for Responsibility and Ethics in Washington in response to Seeking Public Input for the 6th U.S. Open Government National Action Plan, 89 FR 74275 (November 12, 2024)

Citizens for Responsibility and Ethics in Washington (CREW) respectfully submits this comment in response to the General Services Administration (GSA) request for public input, issued on September 12, 2024. CREW is a nonpartisan nonprofit organization focused on ethics, transparency and accountability, and appreciates this opportunity to work with the GSA to co-create the 6th U.S. Open Government National Action Plan.

The proposed commitments outlined below aim to address the lack of government accountability and the related low levels of public trust in U.S. government institutions.<sup>1</sup> By increasing transparency in the following areas, the National Action Plan (NAP) can help prevent corruption, enable watchdogs and the public to hold bad actors to account and enhance public access to government.

### **1. Create a comprehensive White House visitor log database.**

In 2009, then-President Obama began periodically releasing White House visitor logs to the public. This practice substantially increased the public's knowledge of who was meeting with and potentially influencing the president. Unfortunately, citing unsubstantiated national security concerns, President Trump reversed this process when he entered the White House.<sup>2</sup> Although President Biden reinstated their release, because the current practice of visitor logs only captures physical meetings at the White House and not virtual meetings or meetings at other locations, it provides an incomplete picture of who the president is meeting with and therefore who might be influencing the president's decisions.<sup>3</sup>

The 6th NAP should include a commitment to regularly release White House visitor logs and improve the release process. A June 2023 analysis by Bloomberg News<sup>4</sup> revealed inaccuracies, missing data and duplications in public visitor logs—issues that a NAP 6 commitment could address. Additionally, it is critical that these logs be expanded to capture virtual meetings, which have become commonplace since the start of the COVID-19 pandemic.

Other reforms that should be included in this commitment include a process for publishing the justification of any exemptions for logs excluded from the release, guidelines for

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<sup>1</sup> *Public Trust in Government: 1958-2024*, PEW Research Center (June 24, 2024), <https://www.pewresearch.org/politics/2024/06/24/public-trust-in-government-1958-2024>.

<sup>2</sup> Press Release, CREW, CREW statement on White House refusal to release visitor logs (Apr. 14, 2017), <https://www.citizensforethics.org/news/press-releases/crew-statement-white-house-refusal-release-visitor-logs>; Darlene Superville and Chad Day, *Trump White House drops policy of identifying visitors*, Associated Press (Apr. 15, 2017), <https://apnews.com/united-states-government-9ed190feb84c4d6081b27f0775260f43>.

<sup>3</sup> *Voluntary Disclosure Policy for White House Visitor Logs*, The White House, <https://www.whitehouse.gov/voluntary-disclosure> (last visited Nov. 1, 2024).

<sup>4</sup> Eric Fan and Josh Wingrove, *Who's Visiting the White House? The Logs Include 300,000 Names and Are Still Incomplete*, Bloomberg (Jan. 26, 2023), <https://www.bloomberg.com/news/articles/2023-06-26/biden-re-opens-white-house-visitor-logs-but-some-names-are-missing>.

releasing the exempted logs no later than a year thereafter, requiring staff to list their supervisor if they are signing someone in on their behalf and requiring visitors to disclose if they are registered lobbyists. These enhancements will ensure White House visitor logs provide a comprehensive and accessible record for public oversight.

## **2. Establish a database for legal opinions issued by the Office of Legal Counsel**

The Department of Justice's Office of Legal Counsel (OLC) has issued binding legal guidance on a range of significant and controversial issues, including the legality of warrantless surveillance<sup>5</sup>, the torture of enemy combatants<sup>6</sup> and whether Donald Trump should be charged with obstruction of justice.<sup>7</sup> But the vast majority of OLC opinions have been kept secret, creating a substantial body of secret law that is inaccessible to the public. This lack of transparency makes the OLC uniquely opaque. When Congress makes laws, the courts issue decisions or the president takes executive action, each almost always does so on the record. Binding legal guidance issued by the OLC should similarly be made public in a timely manner.

Congress has already made clear that they believe the OLC should adopt a "presumption in favor of publication" when deciding whether to make some advice confidential.<sup>8</sup> NAP 6 should operationalize this commitment by having the Attorney General establish a public website with all OLC legal opinions, subject to exemption when disclosure would cause specific harm to national security or when information contained in the opinion is specifically exempted from disclosure by Section 552 of Title 5 United States Code, and ensure that adequate resources are dedicated to this endeavor so that it can be conducted within a reasonable timeframe. The DOJ should regularly update this public website with new opinions, as they are issued. A NAP 6 commitment to promoting proactive disclosure of OLC opinions would increase government transparency and accountability of the Executive Branch. It would also reduce the unnecessary resource strain placed on good-government organizations, the DOJ and the courts filing, responding to and litigating FOIA requests.

## **3. Develop guidelines and a system for cabinet secretaries and deputy secretaries to make their meeting calendars publicly available.**

The 6th NAP should include a commitment to establish consistent guidelines for disclosing the calendars of cabinet secretaries and deputy secretaries. When the public has access to the calendars of high-ranking government officials, it is better able to understand who might be influencing policy and how. Increased transparency in this area can also help deter corruption and reveal conflicts of interest.

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<sup>5</sup> *Legal Authorities Supporting The Activities Of The National Security Agency Described By The President*, U.S. Dep't of Just. (Jan. 19, 2006), <https://www.justice.gov/archive/opa/docs/whitepaperonnsalegalauthorities.pdf>.

<sup>6</sup> Andrew Cohen, *The Torture Memos, 10 Years Later*, *The Atlantic* (Feb. 6, 2012), <https://www.theatlantic.com/national/archive/2012/02/the-torture-memos-10-years-later/252439>.

<sup>7</sup> Press Release, CREW, CREW gets secret Barr memo on Trump obstruction (Aug. 24, 2022), <https://www.citizensforethics.org/news/press-releases/crew-gets-secret-barr-memo-on-trump-obstruction>.

<sup>8</sup> H.R. Rep. No. 117-97, at 60 (2021), <https://www.congress.gov/117/crpt/hrpt97/CRPT-117hrpt97.pdf>.

Some departments already release the secretaries' calendars, including the Department of Treasury.<sup>9</sup> In crafting this commitment, the GSA should consult departments like Treasury to determine how to best implement this process in other departments. This commitment should take into account necessary exemptions, and include a process by which information that would be exempt from FOIA is redacted before release. By creating uniform guidelines, NAP 6 can help ensure consistent, fulsome and timely disclosure of secretary and deputy secretary calendars.

#### **4. Improve upon the existing database of Executive Branch ethics documents and disclosures**

NAP 6 should include a commitment to enhance the Office of Government Ethics (OGE) database of ethics documents that are already required by law to be released, but which in practice are hard to access.<sup>10</sup> Creating an easily accessible database would strengthen public access to information about conflicts of interest and financial disclosures within the Executive Branch. The existing database of ethics-related disclosures by Executive Branch officials is incomplete and difficult to navigate. While some documents are directly accessible through the database, many are not available within the statutory timeframe and require the public to navigate several forms and submit individual requests for documents.

To resolve these issues, a commitment should be made to work with the OGE to establish a process for agencies to upload ethics documents to the database and for the OGE to release them within the time frame already required by law.<sup>11</sup> To ensure documents are available on time, the OGE should make all covered financial disclosure reports available within the timeframe required by statute after they have been filed with the federal agency, and signal whether or not they have been reviewed by the agency and OGE. OGE should make all other ethics documents, including ethics agreements, waivers and authorizations, available immediately upon finalization.

Improving the ethics documents database will not only give the public insight into potential conflicts of interest, but will also help rebuild public trust in government by demonstrating government officials' compliance with the ethics procedures and requirements designed to prevent corruption.

#### **5. Establish a Chief Anti-Corruption and Accountability Officer in the White House**

Implementing these, and other, proposed commitments to an open government requires leadership, resources and expertise. Accordingly, the White House should establish a Chief Anti-Corruption and Accountability Officer to oversee ethics and transparency initiatives and to ensure that all necessary measures are in place to protect the U.S. government from the threat of corruption by foreign and domestic actors. While there is precedent for an "ethics czar" position— both President Bush and President Obama appointed "ethics czars,"

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<sup>9</sup> *Calendars and Travel of the Secretary*, U.S. Dep't of the Treasury, <https://home.treasury.gov/footer/freedom-of-information-act/electronic-read-room/calendars-and-travel-of-the-secretary> (last visited Nov. 1, 2024).

<sup>10</sup> 5 U.S.C. § 13107; see *Officials' Individual Disclosures Search Collection*, U.S. Off. of Gov't Ethics, <https://www.oge.gov/web/oge.nsf/Officials%20Individual%20Disclosures%20Search%20Collection?OpenForm> (last visited Nov. 1, 2024).

<sup>11</sup> 5 U.S.C. § 13107.

that position has not been maintained across administrations, leaving a leadership gap in federal ethics and transparency programs and lack of focus on preventing and combating corruption at the highest levels of government. A Chief Anti-Corruption and Accountability Officer would not only serve as an ethics czar but would also liaise with the GSA's Open Government Secretariat. In that capacity, the Chief Anti-Corruption and Accountability Officer would coordinate with other federal agencies to support the implementation of NAP 6 and the fight against corruption through international anti-corruption peer-review mechanisms in which the U.S. participates, such as the Council of Europe's Group of States Against Corruption (GRECO).

We thank the GSA and the Open Government Secretariat for the opportunity to comment on the 6th National Action Plan, and welcome further discussion if we can be of assistance in crafting these commitments.

Kind regards,

A handwritten signature in cursive script that reads "Debra Perlin".

Debra Perlin  
Policy Director