



# Restoring Science, Protecting the Public

43 Steps for the Next Presidential Term

JUNE 2020



# PREFACE

## Restoring Scientific Integrity Is Essential for Beating COVID-19

The COVID-19 pandemic has demonstrated in stark life-and-death terms how essential it is for government decisionmakers to heed and prioritize science. The United States quickly surpassed other nations in COVID-19 infections, and has suffered catastrophic losses. However, our nation is still home to a wealth of scientific skills and expertise, and if we swiftly rectify the White House's dangerous patterns we can save lives and position ourselves to rebuild promptly.

To respond effectively to the COVID-19 pandemic, state and local governments, first responders, health-care systems, and the public need timely and accurate information based on the best science and expertise we have available. Once the immediate crisis has passed, public health experts must be involved in a critical review of the US response, to generate lessons learned and recommendations to improve preparedness. Protecting public health in an era of pandemic diseases requires strengthening the federal infrastructure that governs how agencies use, produce, and communicate science.

Although the recommendations below existed well before this coronavirus was identified, each is essential for ensuring an effective COVID-19 response:

- **Protect government science from political manipulation.** Government leaders need to make decisions about requiring public health measures such as physical distancing, approving therapies and vaccines, and determining whether and how people can return safely to work that cannot be done remotely, such as manufacturing. To make these decisions, they must have access to accurate information presented without political interference. The administration should ensure agencies' scientific independence by restoring the voices of experts in policymaking, directing agencies to strengthen scientific integrity policies and infrastructure, and protecting government scientists. (See the memo "Agency Scientific Independence.")
- **Ensure public access to data collected by the federal government.** Results from government-sponsored research into COVID-19 testing, treatments, vaccines, and disease course, as well as information about the federal response, must be accessible so researchers can conduct additional analyses and leaders of organizations and state and local governments can make informed decisions. The administration should reverse a recent trend toward restricting data and denying Freedom of Information Act (FOIA) requests, and institute new safeguards that will ensure the continued collection, dissemination, and preservation of data and protect against its improper removal. (See the memo "Data Collection and Dissemination.")
- **Restore the role of independent expert advice in government.** Federal Advisory Committees (FACs) have long been a valuable source of independent information for the federal government on a wide range of issues, including vaccines, diseases, and how populations are disparately affected by diseases and inequities. However, a recent executive order capping the total number of FACs and requiring that the current number be slashed calls into question the extent to which federal agencies will be able to rely on FACs to address COVID-19. The administration should rescind damaging directives that restrict committee membership and activity, and should instruct agencies to improve transparency and conflict-of-interest management. (See the memo "Federal Advisory Committees.")
- **Ensure government leaders are qualified, ethical, and accountable.** Trust in federal officials is particularly important when educating the public about pandemics and related health behaviors, but appointing senior officials with conflicts of interest and insufficient scientific credentials can compromise that trust. To demonstrate its commitment to qualified and accountable public servants, the administration should commit to reforms of personnel practices and ethics rules. (See the memo "Federal Personnel Policy.")
- **Restore the role of independent science in the regulatory process.** As COVID-19 creates a new reality for our health-care system and economy, regulatory

changes will be needed for topics ranging from telehealth to worker protections. The administration should remove unnecessary steps in its review of proposed public protections, reassess the role of cost-benefit analysis, increase transparency in rulemaking, and decrease barriers to participation in the notice-and-comment process. (See the memo “Regulatory Reform and Science.”)

- **Ensure federal agencies that use and produce science can perform effectively.** Now more than ever, we need the Centers for Disease Control and Prevention, Food and Drug Administration, National Institutes of Health, Occupational Safety and Health Administration, and other public health agencies to have the staffing, leadership, and resources they need to conduct effective disease surveillance and support the development, testing, approval, and distribution of lifesaving therapies and vaccines. The administration must fill open positions quickly, undo recent actions that have harmed recruitment and retention, and create robust budgets. (See the memo “Restoring Strength to Scientific Agencies.”)

- **Ensure public and policymaker access to independent science.** Local leaders and the public need access to scientific expertise in order to make informed decisions about the public health measures they adopt as COVID-19 knowledge and circumstances evolve. Agency policies that require scientists to receive approval before speaking with journalists or the public can delay action, distort findings, and reduce trust in federal scientists’ communications. The administration should affirm that the era of government censorship of scientists and scientific information is over, require agencies to develop media policies that allow scientists to share their expertise without political vetting, and advance other initiatives to improve scientific communication. (See the memo “Scientific Communications.”)
- **Help civil servants and contractors feel safe when reporting agency shortcomings.** Under the many pressures that a pandemic creates, agency missteps are inevitable. Responding to those missteps with transparency and good-faith efforts to improve, rather than with punitive efforts to silence and discredit whistleblowers who raise serious concerns, can strengthen both agency functioning and public trust. The administration should increase protections for whistleblowers by strengthening policies, training, and the infrastructure for handling whistleblower complaints. (See the memo “Whistleblower Protection.”)

# EXECUTIVE SUMMARY

## Restoring Science, Protecting the Public

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The coronavirus pandemic has laid bare how the nation suffers when science and its role in governance is sidelined or eliminated. A successful emergence from the pandemic will require the development of scientific capacity and safeguards that improve the nation's ability to protect people's health, root out corruption, and improve our quality of life. This is especially true for communities that bear disproportionate impacts from public health and environmental threats.

Support for the role of science in policymaking—and for government conducting and sharing science on behalf of the people—is strong across the political spectrum. Making independent science a core pillar of an agenda for the next presidential term has the support of good-government, public health, environmental, consumer, and human and civil rights advocates representing tens of millions of Americans of varying political affiliations.

There is an urgent need to rebuild trust in the ability of government institutions to provide reliable information and make decisions in the public interest. This series of memos provides concrete steps the administration can take—without significant expenditures—to make government more effective, efficient, transparent, and accountable. The memos outline how executive branch leaders in the next presidential term can:

- Allow government scientists to pursue their research free from political interference
- Guarantee public and policymaker access to federal government experts and the data they collect
- Establish better ways for the government to receive science advice
- Ensure federal agency leaders are qualified, ethical, and accountable
- Invigorate the role of independent science in the regulatory process
- Ensure federal agencies have the necessary resources to use and produce science to meet their public service missions
- Promote the independence of federal government science and scientists
- Help civil servants and contractors feel safe when reporting agency shortcomings

### MEMOS

- Agency Scientific Independence
  - Data Collection and Dissemination
  - Federal Advisory Committees
  - Federal Personnel Policy
  - Regulatory Reform and Science
  - Restoring Strength to Scientific Agencies
  - Scientific Communications
  - Whistleblower Protection
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# Agency Scientific Independence

## Protecting government science from political manipulation

Effective policymaking in the public interest relies on independent scientific research and data. The same applies for the ability of individuals to protect themselves from public health and environmental threats. Science-based government decisionmaking has resulted in safer air and road travel, cleaner air and water, safer working conditions, medical advances, and much more. The use of objective science, coupled with respect for experts, not only makes policies more robust but also strengthens the government's legitimacy and builds public trust in agency decisions.

In recent years, government officials have suppressed, manipulated, and censored scientific findings that don't align with their political agendas. To combat this, the administration should ensure agencies' scientific independence. These recommendations have strong support from science, public health, human rights, environmental, and good-government groups.

### Background

The federal government has long been a crucial source of scientific research and funding, with profound benefits for public health and the environment. Equally important, government experts' research and science advice have also served as the foundation for effective federal policymaking. In recent years, government scientists have faced retaliation for unpopular results and seen their findings suppressed or manipulated to align with political leaders' objectives, and funded projects have been abruptly canceled when their approaches or findings do not support the president's political agenda. This puts the American public at risk and reduces accountability for, and faith in, government decisions.

To ensure that researchers have the ability to conduct research free from the threat of political interference, the administration must recommit to policymaking that is fully informed by independent science, and giving the public access to that science. This requires establishing standards and procedures for preserving the independence of science in federal agencies, as well as preventing the suppression or manipulation

of government research and retaliation against government scientists.

The following recommendations for action during the presidential term beginning in 2021 will help ensure scientific independence in federal decisionmaking processes. Regardless of the outcome of the election, these actions will strengthen the role of science, improve the nation's capacity for science-based decisionmaking, and help protect and preserve our democracy.

### Recommendations for the Next Presidential Term

- 1. Strengthen the role of federal scientific experts in policymaking. (first year)**
  - To ensure that independent science underpins federal policies designed to keep the public safe and healthy, the president should issue an executive order committing to filling open science positions in accordance with the limits set forth by the Federal Vacancies Reform Act and requiring all science agencies to have chief science officers. Analogous to evaluation officers required by the Foundations for Evidence-Based Policymaking Act, a chief science officer would oversee strategic coordination of agency science that informs decisions, as well as the implementation of policies affecting federal scientists. The executive order should note that existing offices of chief scientist satisfy this requirement.
  - The president should ensure that each agency's budget request includes funding for enough full-time-equivalent positions to effectively conduct its scientific work.
  - The president should roll back rules and guidance that inappropriately restrict the types of science that can be used in policymaking or agency scientific work, including current guidance and expected rules at the Department of the Interior and Environmental Protection Agency.

## 2. **Direct agencies and the White House Office of Science and Technology Policy (OSTP) to strengthen scientific integrity policies and the infrastructure to enforce them. (first 30 days)**

- The OSTP should create an assistant director for scientific integrity with sufficient authority to make scientific integrity a priority for the office.
- The OSTP should direct each agency head to appoint or assign an official to oversee scientific integrity; this official should be insulated from political appointees and report to the agency's highest-ranking civil servant. This official should develop an agreement with the agency's inspector general for addressing misconduct, and work with the OSTP on cross-government coordination of scientific integrity practices.
- The OSTP should direct the official overseeing scientific integrity within each agency to review and, as needed, improve existing scientific integrity policies to ensure they include provisions that:
  - Protect the right of scientists to share scientific data and analysis with the public and lawmakers free from political interference and filters, and to review content that will be released publicly in their name or that significantly relies on their work.
  - Explicitly prohibit retaliation against government employees who raise concerns about scientific integrity or offer scientific opinions that differ from those of the administration or the agency that employs them.

- Provide a clear, detailed policy and procedure for addressing allegations of scientific integrity violations (including appeal rights) and for publicly reporting their resolution.
- Encourage the agency to conduct training on scientific integrity for all federal employees who use science to a significant degree in their jobs.

## 3. **Restore protections for government scientists, solidify safeguards for whistleblowers, and ensure that work environments across federal agencies support and celebrate scientists' critical efforts. (first year)**

- The president should ensure the White House Office of Management and Budget (OMB) does not direct agencies to change scientific findings, and should support legislation to codify this.
- To safeguard against the political vetting of research grants, the president should issue a memorandum instructing agencies to allocate funding based on evaluations by experts with relevant qualifications, in response to criteria that are publicly available.

## Additional Resources

- Forthcoming Brennan Center for Justice report on executive actions (Summer 2020 release expected)
- ***Presidential Recommendations for 2020*** (2020 report from the Union of Concerned Scientists)
- ***Proposals for Reform Volume II: National Task Force on Rule of Law & Democracy*** (2019 report from the Brennan Center for Justice)
- ***Protecting Science at Federal Agencies*** (2018 report from 12 organizations)

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# Data Collection and Dissemination

## Ensuring public access to data collected by the federal government

The federal government collects and disseminates data about public health, the environment, consumer and workplace safety, the economy, and so much more. Recently, and increasingly, public access to such data is being restricted, and on some contentious issues, data collection is being curtailed or abandoned. This hinders scientific progress, makes decisionmaking more difficult, and diminishes the government's accountability to the American people. The administration should reverse this dangerous trend and institute new safeguards to ensure the continued collection, dissemination, and preservation of data, and to protect against its improper removal. These recommendations have strong support from science, public health, human rights, environmental, and good-government organizations.

### Background

The federal government has a long history of collecting data and making it available to the public. These efforts include conducting surveys and intervention studies, and collecting enforcement data and information from corporations and nonprofit institutions. The government's collection and dissemination of data are critical not only to scientific endeavors but also to public trust and government accountability.

Disturbing recent trends threaten long-standing agency practices regarding data collection and dissemination. Agencies have stopped collecting information on critical matters such as *wages* and *methane production* and have removed information about *climate change*, *animal abuse*, and *tax policy* from their websites. Additionally, there have been *reports* of lengthy delays in the processing of Freedom of Information Act (FOIA) requests and the insertion of political appointees into the FOIA response process.

To ensure that the scientific community and the public continue to have access to these valuable sources of information, agencies must recommit to collecting data, as well as guaranteeing public access to it and ensuring it is preserved for future access and usability. To that end, agencies must

establish standard procedures for the collection, disclosure, and maintenance of data.

### Recommendations for the Next Presidential Term

#### Collection and Access

**1. Direct agencies to establish standard procedures for the collection, disclosure, and maintenance of data. (first 30 days)**

The president should specify that research and data that are digitally formatted and in the public domain are to be made available online and freely accessible to the general public, to the extent permitted by law and with protections for intellectual property rights and other proprietary interests and for the confidentiality of individuals about whom data has been collected.<sup>1</sup>

- To the extent permitted by law, open data formats should be used that are nonproprietary and publicly available, with only the minimal necessary restrictions upon their use.
  - Full public access to government-supported publications' metadata should be ensured without charge upon first publication.
  - Federal agencies should encourage technical and legal interoperability to facilitate international sharing of government-supported scientific data, using compatible, publicly available, open-source formats.
- 2. Issue an executive order affirming a presumption of disclosure for FOIA requests regarding data. (first 30 days)**

The president should specify that the presumption of disclosure for data is intended to increase access to

documents, and reaffirm the prohibition on withholdings not explicitly required by FOIA. The executive order should direct agencies to allocate sufficient resources to substantively respond to FOIA requests in the time frames mandated by law, develop technology to streamline the FOIA process, and rescind rules that authorize the involvement of political appointees in the FOIA response process.

The president should also affirm that news media, educational, and scientific requesters intending to use the data for noncommercial means are not commercial-use requesters, particularly for purposes of fees.

- Creating an enforcement mechanism to ensure compliance with public access requirements, along with remedies for noncompliance (for example, disclosure and restoration of the improperly withheld information, as well as penalties).<sup>3</sup>

## Additional Resources

- Forthcoming Brennan Center for Justice report on executive actions (Summer 2020 release expected)
- *Presidential Recommendations for 2020* (2020 report from the Union of Concerned Scientists)
- *Proposals for Reform Volume II: National Task Force on Rule of Law & Democracy* (2019 report from the Brennan Center for Justice)

## Endnotes

1. Protections can include recognizing proprietary interests and business confidential information, as well as anonymizing or aggregating data that includes identifiable information about individuals (e.g., in health survey data).
2. The life cycle of information extends from its creation or collection through processing, dissemination, use, storage, and permanent preservation or scheduled disposition.
3. Penalties could include cost-shifting and discipline for responsible agency personnel, depending on the magnitude of, and motive for, noncompliance.

## Preservation/Protection

### 3. Issue a memorandum requiring federal agencies to ensure the management of scientific data throughout its life cycle<sup>2</sup>, to determine which scientific data should be preserved and made accessible, and to ensure scientific data is sufficiently described to enable its use. (first 30 days)

The memorandum should set forth standards and requirements such as:

- Requiring agencies to establish safeguards against the removal of government research and data, including (as required by statute) giving the archivist of the United States *advance notice* of planned data removal.

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# Federal Advisory Committees

## Restoring the role of independent expert advice in government

Federal advisory committees help safeguard public health and well-being by ensuring that agencies have access to relevant evidence and advice when making decisions. However, recent actions have reduced their role and independence. To restore public confidence and ensure agencies can make informed decisions, the administration should rescind damaging directives that restrict committee membership and activity, and should instruct agencies to improve transparency and conflict-of-interest management. These recommendations have strong support from science, public health, human rights, environmental, and good-government organizations.

### Background

Federal advisory committees (FACs) are a cost-effective way for agencies to receive valuable advice from subject matter experts. Scientific and technical advisory committees provide independent reviews of the evidence and offer advice. Other committees provide an avenue for agencies to receive feedback from key stakeholder groups, such as women serving in the armed forces or representatives from agricultural and rural communities.

To realize the many benefits FACs can deliver, agencies must renew FACs that continue to serve a valuable purpose (while allowing expiration of those whose work is no longer needed), establish new FACs when warranted, and fill vacancies with well-qualified members. To preserve confidence in FACs, agencies must operate them transparently, achieve balance in membership in terms of points of view and committee functions, and manage conflicts of interest.

The 2019 executive order “Evaluating and Improving the Utility of Federal Advisory Committees” ([EO 13875](#)) required each agency to cut its FACs by one-third, and arbitrarily capped the number of all FACs at 350. At the Environmental Protection Agency (EPA), then-Administrator Scott Pruitt tilted FAC membership sharply in favor of industry by considering receipt of an EPA grant a conflict of interest that precludes a researcher from serving on an advisory

committee—but not considering industry funding or employment to be a similar conflict.

### Recommendations for the Next Presidential Term

#### 1. Rescind the executive order requiring elimination of FACs and encourage restoration of necessary eliminated committees. (first 30 days)

When the next term begins, the president should issue a new executive order rescinding EO 13875 and encourage agencies to re-establish still-necessary FACs that were eliminated because of that order.

#### 2. Reverse the EPA directive barring agency grant recipients from serving on FACs. (first 30 days)

EPA leadership should rescind the October 2017 directive “*Strengthening and Improving Membership on EPA Federal Advisory Committees*” and issue a statement affirming that receipt of an agency grant does not represent a conflict of interest that precludes FAC service.

#### 3. Direct agencies to increase transparency around FAC composition and member selection. (first year)

The president should issue an executive order instructing agencies to:

- Publish clear criteria for nominating and selecting qualified committee members, prohibiting current members from having veto power over candidates.
- After selecting the first round of candidates for membership, make that roster public and request comments.
- Identify and make public the process used for committee formation, including how agencies screen members and assess committees for balance.

- Publish background information on each committee member on a public online portal (e.g., integrity.gov), including information on qualifications, employers, and funding sources for the previous five years, along with any conflict-of-interest waivers granted.
  - When allowing FACs to expire, archive their websites and all related documents so agencies and the public can still access the information.
- 4. Encourage the Office of Government Ethics to provide guidelines on conflicts of interest. (first year)**
- The president should encourage the Office of Government Ethics to provide agencies with clear guidelines that:
- Explicitly define what constitutes a conflict of interest and transparently outline the degree to which a conflict of interest would disqualify a nominee from participating on a committee.
  - Direct agencies to clarify their criteria for appointing advisory committee members as individuals or as organization representatives, and take steps to ensure that conflicts of interest are properly scrutinized.
  - For committees with a mission solely dedicated to providing objective scientific advice (as opposed to committees designed to gather input from diverse stakeholders), ensure members are appointed as special government employees and vetted for financial conflicts of interest. They should recuse themselves from scientific discussions with which they have a direct conflict of interest, and those recusals should be announced to the public at the start of meetings and be included on meeting notes, reports, and other documents.
- Ensure that scientists who have taken public positions on issues or received government funding for scientific work are not excluded from advisory committees because of unfounded concerns about bias.
- 5. Direct the White House Office of Science and Technology Policy (OSTP) to identify ways for FACs to address cross-cutting issues. (first year)**
- The president should direct the OSTP to help agencies determine whether and how new FACs could help fill interagency needs on issues that cut across multiple agencies' responsibilities.
- 6. Establish a process for dealing with complaints regarding FACs. (first year)**
- Instruct agencies to identify outstanding complaints made against existing FACs, investigate those complaints, and take corrective action where warranted.\*

## Additional Resources

- [“77 Groups Join to Counter Trump Administration Attack on Science Advice”](#) (2019 press release from the Union of Concerned Scientists)
- [Abandoning Science Advice](#) (2018 report from the Union of Concerned Scientists)
- Brennan Center for Justice recommendations: see [Proposal 4 in Proposals for Reform Volume II: National Task Force on Rule of Law & Democracy](#) and forthcoming report on executive actions (scheduled for Summer 2020 release)

## Endnotes

1. For example, the Center for Reproductive Rights has written to the Secretary of State to allege that the Department of State's Commission on Unalienable Rights violates the Federal Advisory Committee Act (FACA) because “it is duplicative of an existing government bureau; the State Department failed to follow FACA requirements in the formation of the Commission; and as a consequence the Commission does not have a balanced membership.”

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# Federal Personnel Policy

## Ensuring government leaders are qualified, ethical, and accountable

The president has the power to appoint executive branch leaders to carry out policy objectives, subject to the advice and consent of the Senate. Other leadership positions in the executive branch do not require Senate confirmation but are just as critical to the efficient and effective administration of government. Congress has taken steps to ensure that public officials serve the public interest, through the establishment of a merit system for civil service hiring and promotion, as well as ethics and disclosure rules. Presidents have nonetheless appointed agency leaders who have strong financial ties to the same industries they are charged with regulating, and have appointed people lacking scientific backgrounds to positions that require scientific understanding.

To demonstrate their commitment to qualified and accountable public servants, the president should commit to reforms of personnel practices and ethics rules. Such reforms would restore public trust in government and ensure federal agencies are equipped to carry out their statutory missions. These recommendations have strong support from science, public health, human rights, environmental, and good-government organizations.

### Background

Presidents rely on appointees to lead federal agencies and implement their policy agenda. These appointees should be qualified and ethical professionals who have the experience and expertise to make complex policy decisions in the public interest. From a science perspective, this means that those with the authority to make policy about health, the environment, and worker and food safety (among other things) should possess sufficient subject matter expertise to make educated decisions based on the best available science. Public trust in government's ability to make decisions that serve the public interest has suffered when presidents have put unqualified political allies, personal associates, and people with conflicts of interest into leadership positions and avoided the Senate confirmation process by appointing "acting" officials.

Laws such as the 1978 Ethics in Government Act and the 1998 Federal Vacancies Reform Act, which places limits on who can serve as acting officials as well as the amount of time that acting officials can serve, have helped ensure the appointment of ethical and qualified executive branch personnel. Additionally, Congress has imposed statutory qualifications regarding the professional training and experience of political appointees in numerous executive branch positions. These reforms are significant, but they have limitations that allow unqualified and unethical people to serve in government. Sometimes appointees serve as acting officials for long periods of time without undergoing the Senate confirmation process that their positions require. On occasion, judges have found acting officials to be improperly serving in their positions, resulting in the overturning of regulatory decisions they have issued—even if justified on the merits. To ensure that key federal positions are held by qualified, ethical, and accountable people, the president must pledge to adopt and enforce key personnel reforms concerning vacancies, qualifications of appointees, and ethics.

### Recommendations for the Next Presidential Term

#### 1. Issue a robust ethics pledge that creates strong requirements for appointees. (first 30 days)

The president's ethics pledge should prohibit appointees from participating in matters involving parties related to their former employers or clients, and require appointees who leave government service to adhere to post-employment restrictions on communications with their former agencies. The pledge should include additional restrictions on federal employment for those who served as registered lobbyists prior to their appointment—although the president should allow for well-reasoned waivers in cases where the best interests of the country support it—as well as for appointees leaving government to become lobbyists.

These measures will help ensure political appointees make decisions based on the best available science, not the financial interests of past or future employers.

**2. Establish criteria for, and increase transparency of, ethics waivers. (first 30 days)**

The president should issue an executive order establishing criteria for granting conflict-of-interest waivers, which must be articulated in writing and transmitted to the Office of Government Ethics (OGE) within 30 days of issuance. The order should also direct the OGE to disclose the waiver to the public.

**3. Commit to filling positions with highly qualified personnel. (first 30 days)**

The White House should establish criteria for critical executive branch positions, including necessary subject matter expertise and other relevant experience. The president should commit to selecting nominees who meet the requisite criteria to the greatest extent possible.

**4. Commit to filling vacancies promptly. (first 30 days)**

To reduce vacancies and reliance on acting officials, the president should direct White House staff to establish

procedures that facilitate the timely nomination of qualified candidates for executive branch appointments, such as streamlining the background investigation process. The president should also direct executive branch agencies to routinely publish lists of all vacancies that require Senate confirmation as well as acting appointments.

**5. Establish a presumption of disclosure for agency leaders' calendars. (first 30 days)**

To deter the potential undue influence of special interests in agency decisionmaking, the president should establish a presumption that agency leaders' calendars will be publicly disclosed on a monthly basis, except for items subject to Freedom of Information Act (FOIA) exemptions. This will increase public accountability and reduce the need for members of the public to submit FOIA requests for such documents.

## Additional Resources

- Forthcoming Brennan Center for Justice report on executive actions (Summer 2020 release expected)
- *Presidential Recommendations for 2020* (2020 report from the Union of Concerned Scientists)
- *Proposals for Reform Volume II: National Task Force on Rule of Law & Democracy* (2019 report from the Brennan Center for Justice)

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# Regulatory Reform and Science

## Restoring the role of independent science in the regulatory process

Agency experts analyze proposed public protections to ensure they are based on the best available science, will meet policy objectives, and are consistent with agency mandates. Increasingly, however, steps have been introduced in the regulatory process that slow it down and dilute the role science plays in policymaking. Slowing down the regulatory process has tremendous costs in human life and well-being: for instance, it is estimated that the delay in setting a standard for exposure to a single chemical—benzene—caused between 30 and 490 excess *leukemia deaths*. There are 40,000 chemicals on the active inventory of the Toxic Substances Control Act, and most of them have yet to be regulated.

To restore science to a central role in the regulatory process, the administration should remove unnecessary steps in the review of proposed regulations, reassess the role of cost-benefit analysis, increase transparency in rulemaking, and decrease barriers to the public's participation in the notice-and-comment process. These recommendations have strong support from science, public health, human rights, environmental, and good-government organizations.

### Background

Regulatory agencies are charged with crafting detailed rules based on broad mandates from Congress. Science has informed regulations that protect public health and safety, as well as environmental sustainability; ensure air, water, and food quality; improve consumer and worker safety; and so much more.

Promulgating regulations should be a transparent, democratic, and deliberative process that is science-based and can respond to contemporary needs in a timely fashion. However, the White House Office of Information and Regulatory Affairs (OIRA) has tremendous power to determine which proposed rules get implemented, strengthened, and weakened, and to overrule agencies' subject matter experts. Regulated industries and political actors seeking to influence regulations have found ways to use OIRA mechanisms to argue for rules that run contrary to the scientific evidence.

Another example of an impediment to efficient regulation based on the best science is the Small Business Regulatory

Enforcement Fairness Act (SBREFA). SBREFA requires the Consumer Financial Protection Bureau (CFPB), Environmental Protection Agency (EPA), and Occupational Safety and Health Administration (OSHA) to either submit each proposed rule to a "small business" panel or certify that it will not have a significant impact on small businesses. SBREFA has served as a Trojan horse for large corporate interests that have supplied "small business" representatives to these panels. Additionally, while the EPA makes its draft rules public before convening a SBREFA panel, OSHA does not, giving business interests more time to review and respond to proposed rules than other stakeholders.

Additionally, a number of nonscientific factors have been introduced into the rule assessment process. For instance, a guidance document from the Small Business Administration's (SBA's) Office of Advocacy requires agencies to provide a large amount of highly specific data, the collection of which is resource-intensive, in order to certify that a rule will not have a significant impact on small businesses. As a result, some rules that could be certified are nonetheless submitted to SBREFA panels.

Most recently, the Department of the Interior (DOI) and EPA have proposed rules that will cut science out of rulemaking unless scientists violate their privacy and confidentiality commitments to the individuals involved in research studies—actions that would also violate the conditions the federal government placed on their research funding. These new rules greatly politicize the decisions about what scientific evidence should be considered in rulemaking, using nonscientific criteria for determining what is the best available science.

To ensure regulations continue to be based on the best available science, the presidential administration that begins in 2021 should take steps to safeguard the integrity of the regulatory process.

### Recommendations for the Next Presidential Term

- 1. Issue an executive order directing federal agencies to encourage members of the public who**

**comment on proposed rules to disclose the funding sources and sponsoring organizations of research mentioned in their comments. (first 30 days)**

This will help agency personnel assess comments as they prepare regulations. Another potential benefit is being able to track which stakeholders are responding and whose voices are missing from the discussion.

**2. Direct executive agencies to give the public access to research, sources, and correspondence involving political appointees (including meetings, telephone calls, and emails) that informed the rulemaking process. (first 30 days)**

These records should be available before publication of a proposal in the Federal Register.

**3. Direct agencies to encourage diverse, widespread, and fair participation in agenda-setting and regulatory decisionmaking, especially by people with low incomes and members of marginalized racial/ethnic or other groups. (first year)**

One possible approach for agencies to explore is establishing teams of local engagement staff who would work with community leaders to obtain a comprehensive understanding of a regulation's potential community-level impacts.

**4. Issue an executive order directing OIRA to defer to agency experts' scientific analysis underpinning rulemaking. (first 30 days)**

This will reduce unnecessary delays in the regulatory process and ensure that regulations are based on science.

**5. Issue an executive order requiring agencies to put draft regulations in the regulatory docket, making them publicly available via [www.regulations.gov](http://www.regulations.gov)**

**at the same time they are being provided to "small business" panels pursuant to SBREFA. (first 30 days)**

This will ensure all interested parties get the same opportunity to see the draft text.

**6. Rescind Executive Order 13272. (first 30 days)**

*Executive Order 13272* directs agencies to "[g]ive every appropriate consideration" to comments from the SBA's Office of Advocacy. This requirement dilutes the role of science and causes delays in the regulatory process.

**7. Issue an executive order directing OIRA and agencies to use cost-benefit analysis as indicative but not prescriptive in their assessment of proposed regulations.**

This will help ensure that regulations are based on the best available science and reduce delays and revisions caused by cost-benefit analysis and other considerations not mandated by statute.

**8. Rescind any finalized DOI or EPA rules that restrict the research agency scientists can rely on. (first year)**

In the event that the *DOI* and *EPA* implement their proposed rules that use inappropriate metrics, leaders at those departments should repeal them.

**9. Propose legislation to repeal SBREFA. (first year)**

Small businesses should have the same participation in the regulatory process as any other stakeholder, without getting extra opportunities not available to others.

## Additional Resources

- *Behind Closed Doors at the White House* (2011 report from the Center for Progressive Reform)
- *Presidential Recommendations for 2020* (2020 report from the Union of Concerned Scientists)

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# Restoring Strength to Scientific Agencies

Ensuring federal agencies that use and produce science can perform effectively

As the COVID-19 pandemic reminds us, the well-being of our nation relies on the strength and effectiveness of federal agencies that produce and use science. To meet challenges effectively, agencies must have strong leadership and be able to attract and retain highly qualified career staff members for science-related positions. To meet those goals, the administration must fill open positions quickly, undo recent actions that have harmed recruitment and retention, and create robust budgets. These recommendations have strong support from science, public health, human rights, environmental, and good-government organizations.

## Background

US federal agencies have long attracted a workforce of people dedicated to using their skills and training for the public good, but several years of inadequate budgets coupled with recent harmful actions have harmed their ability to carry out their missions. *Morale has dropped*, and a *2018 survey of federal scientists* found concerns about workforce cuts, political interference, and agencies' ability to fulfill their missions. The Trump administration has *failed to fill nearly half of scientific leadership positions*. Staffing at agencies such as the Centers for Disease Control and Prevention *suffered under a 2017 hiring freeze* that contributed to the nation's inadequate response to the COVID-19 pandemic.

Across agencies, *political appointees have cut off collective bargaining or unilaterally imposed new contracts* that reduce protections and benefits—for example, by slashing telework options that help attract and retain a diverse group of workers who may live far from worksites and have health conditions or family responsibilities, and whose importance for reducing virus transmission has become clear. *Nearly 1,600 workers left the Environmental*

*Protection Agency* during the first 18 months of the Trump administration, and the agency recently announced it is *suspending enforcement of environmental laws during the pandemic*. Months after the abrupt relocation of two US Department of Agriculture (USDA) research agencies, *nearly two-thirds of the positions at the Economic Research Service were unfilled*. Such departures represent a tremendous loss of institutional knowledge and expertise, which take time to rebuild.

The administration should fill scientific leadership and civil service positions with well-qualified individuals who reflect this country's diversity, and propose budgets that will allow scientific agencies to function effectively and improve morale. Preventing “burrowing,” the process by which political appointees convert to civil service positions that should be based on merit, can also help ensure these positions are filled by the best candidates.

## Recommendations for the Next Presidential Term

### 1. Promptly nominate and appoint qualified individuals to scientific leadership positions. (first 90 days)

Send nominations to the Senate for all scientific leadership positions that require confirmation, and make offers to qualified individuals for political appointments that do not require confirmation. Ensure nominees and appointees reflect the diversity of the nation and have relevant qualifications and a demonstrated respect for the role of science in decisionmaking. Priority positions to fill include those at the White House Office of Science and Technology Policy.

**2. Propose robust budgets. (first 30 days, and by February each year)**

Instruct agencies to ensure their budget requests include the following:

- Enough full-time-equivalent positions to conduct their scientific work effectively.
- Sufficient resources to respond to Freedom of Information Act (FOIA) requests within the statutory deadlines.
- Career development, including attendance at scientific conferences.
- Workplace environments and equipment conducive to long-term morale as well as health and safety.

**3. Fill vacancies for science positions promptly. (first 30 days)**

- Issue an executive order instructing agencies to fill vacancies promptly and appoint chief science officers (see the memo “Agency Scientific Independence,” Recommendation 1).
- Instruct the Office of Personnel Management (OPM) to create a streamlined process for rehiring qualified government officials who left public service during the previous four years.
- Designate OPM officials to assist agencies in filling positions as effectively as possible while following all relevant rules and policies.

**4. Reverse recent changes that harm recruitment and retention. (first 90 days)**

- Halt enforcement of labor contracts between federal agencies and employee unions in situations where an agency

imposed the contract without the union’s agreement, and bargain in good faith for new contracts.

- Restore flexible working arrangements, including telework, at agencies that removed them.
- Examine options for ameliorating the harm caused by Department of the Interior and USDA office relocations.

**5. Ensure enforcement of anti-burrowing rules. (first year)**

The OPM is already *required to review* any proposed selection of current or former (within the past five years) political appointees to permanent positions. Ensure that the team carrying out this function is appropriately resourced and trained.

**6. Direct agencies and the White House Office of Science and Technology Policy (OSTP) to strengthen scientific integrity policies and the infrastructure needed to enforce them. See the memo “Agency Scientific Independence” for details.**

**7. Restore and strengthen federal advisory committees. See the memo “Federal Advisory Committees” for details.**

**Additional Resources**

- *Presidentially Appointed Science and Technology-Related Positions* (from the 1992 book *Science and Technology Leadership in American Government* by the National Academy of Sciences, National Academy of Engineering, and Institute of Medicine)
- *Science under Trump: Voices of Scientists across 16 Federal Agencies* (2018 report from the Union of Concerned Scientists)

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# Scientific Communications

## Ensuring public and policymaker access to independent science

One of the most important functions of scientific agencies is to communicate the results of scientific research to the public in an accurate and timely manner. However, political appointees are increasingly censoring scientific information, delaying or restricting public access to that information, and deterring federal scientists from communicating openly with the public and the press. Suppression of science can lead to poor policymaking and individual decisions when policymakers and the public are unable to access the best available scientific information regarding threats to public health and safety. Moreover, the increased reliance on remote work due to COVID-19 accelerates the need for sensible records retention and related policies.

### Background

There is no better situation to demonstrate the importance of access to independent scientific information than the federal response to the COVID-19 pandemic. When the White House task force sidelined the Centers for Disease Control and Prevention (CDC) from communicating about the pandemic, information about testing kits, disease prevalence, and the need for more protective equipment became considerably less available. Contradictory statements from administration officials confused the public and politicized understanding of the threat, reducing public compliance with science-based safety recommendations. The CDC stopped holding press conferences, and the White House instead became the primary source of information. Information was removed from CDC and Department of Health and Human Services (HHS) websites without explanation, making it more difficult for communities to prepare. This has unequivocally worsened our response to the virus, with catastrophic consequences.

Recent surveys of scientists across federal agencies find that thousands of experts experience significant censorship and self-censorship on issues ranging from climate change to toxic chemical exposure. Federal websites have been scrubbed of scientific information on environmental and public health

topics. Federal experts were prohibited from speaking about gun violence and the projected path of Hurricane Dorian. And new restrictions were put in place at agencies including the US Geological Survey, increasing political control over scientists' communications.

Federal agencies' current scientific integrity and related policies are uneven, and enforceability depends on political leadership. Government experts and the public deserve clarity on how scientists' findings and advice are shared, and a presumption that scientific conclusions should be shared absent a compelling reason to keep them private.

### Recommendations for the Next Presidential Term

- 1. In the Inaugural Address, affirm that the era of government censorship of scientists and scientific information is over, and pledge specific steps to restore scientific integrity and public faith in government decisions. (immediately)**

Current and potential federal scientists look for evidence that their work is valued in decisionmaking and will reach the public. Early signals will be critical to quickly and efficiently rebuild federal scientific capacity.

- 2. Require federal agencies to develop media policies that allow scientists to share their expertise publicly without political vetting or approval. (first 100 days)**

Several federal agencies, including the Department of Energy and National Oceanic and Atmospheric Administration, have media policies that encourage open communication. The White House Office of Science and Technology Policy should ensure all federal agencies and departments that create or utilize scientific information have policies that meet minimum transparency standards.

**3. Invite the public to identify high-priority information needs. (first 100 days)**

Agencies must have sufficient data to make informed decisions. Each agency should ask its employees and the public what information collection and monitoring needs in line with the agency’s mission are not being met. With this feedback, the government should develop plans to fill any gaps on public health and environmental threats and develop plans to make this information publicly accessible and easy to find and use.

**4. Support strengthened scientific integrity legislation. (first year)**

The Scientific Integrity Act requires agencies to develop effective, enforceable scientific integrity policies that will prevent—and establish consequences for—censorship of scientists and political interference in their work. It has bipartisan support and is endorsed by scores of public-interest organizations. The administration should signal support for any legislation that improves scientific integrity, and act swiftly to implement any law that has passed that protects scientists from political interference in their work. Regardless of what protections exist in statute, the White House should ensure that agencies develop and implement more consistent and effective scientific integrity policies (see the memo “Agency Scientific Independence” for additional details).

**5. Implement a Presidential Task Force on Implementation of Electronic Records Management. (first year)**

Empower the task force to develop robust policies to ensure proper records retention and uniform standards for online access to federal scientific information. Direct the chief technology officer to work with the National Archives and Records Administration (NARA) to enhance digital repositories of scientific information, making scientific data and publications easily accessible to the public. Records retention rules, digitization guidelines, and model contracts should be revised to ensure consistent access to both original and digital records in nonproprietary formats (see the memo “Data Collection and Dissemination” for additional details).

## Additional Resources

- ***Presidentially Appointed Science and Technology-Related Positions*** (from the 1992 book *Science and Technology Leadership in American Government* by the National Academy of Sciences, National Academy of Engineering, and Institute of Medicine)
- ***Mediated Access: Transparency Barriers for Journalists’ Access to Scientists and Scientific Information at Government Agencies*** (2015 report from the Union of Concerned Scientists)

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# Whistleblower Protection

## Helping civil servants and contractors feel safe when reporting agency shortcomings

Promoting legal compliance and preventing fraud, waste, abuse, and threats to public health and safety are essential to restoring trust in government and fulfilling the missions of all federal agencies. Whistleblowers—employees who report concerns about misconduct—are crucial assets to agency leaders, particularly those responsible for implementing policies and practices that depend on scientific integrity. Encouraging and defending whistleblowers also helps protect an agency’s reputation from the harm caused by the whistleblower’s disclosures and the perception that the agency might be hiding the truth from the American people.

The level of attrition of federal employees has risen in the last few years as their morale and trust in political leadership has fallen, but empowering agency employees to report wrongdoing and protecting them from retaliation could reverse that trend by improving morale, public trust, and overall agency effectiveness. Without whistleblower protections that encourage employees to report problems while they are still small, serious flaws in policies could potentially go unchallenged and small problems may fester into unnecessarily massive public scandals. Whistleblower protection laws have traditionally enjoyed nearly unanimous, bipartisan support. These recommendations have strong support from science, public health, human rights, environmental, and good-government organizations.

### Background

Several laws that protect the right of federal employees and contractors to report misconduct define whistleblowing as “any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences any violation of any law, rule, or regulation or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,” so long as that information is not classified or otherwise prohibited by law from disclosure.

Few if any whistleblowers benefit personally from their disclosures. In almost every case, whistleblowers face personal shaming, mockery, harassment, damage to their professional careers, and health effects from the stress of the endeavor.

The mechanism most whistleblowers use to defend themselves against retaliation is an appeal to the Merit Systems Protection Board (MSPB). Currently, the MSPB has no members, and has not had a quorum in years. As a result, it has a backlog of more than 2,500 cases, and even in ordinary circumstances an appeal can take as much as a year to resolve, by which point an employee facing removal has often exhausted their resources and is forced to abandon their appeal and seek other work.

Currently there is no prohibition on anything that falls short of a “personnel action.” Agencies recently won the absolute right to launch **legally sanctioned** retaliatory investigations into employees, and whistleblowers regularly report that their agencies have orchestrated “whisper campaigns” to undermine their credibility, leak information about them to hostile media outlets, and deter future whistleblowers.

Whistleblowers report on matters that prompt agency reforms, benefiting both the functioning and the reputation of the agency *ex post*. To recognize whistleblowers’ courage and reduce barriers to disclosure, the administration should adopt policies that increase options and speed decisions for whistleblowers.

### Recommendations for the Next Presidential Term

- 1. Immediately nominate and confirm qualified members to the MSPB to restore the process used by federal employees to make disclosures without fear of retaliation. (first 30 days)**

The MSPB is currently the only avenue for federal employees to enforce their rights under the Whistleblower Protection Act (WPA), but it has no members and has

been unable to issue decisions since January 2017. This has resulted in a large backlog of cases, the inability of the Office of Special Counsel to seek stays for temporary relief against retaliation, and a situation in which employees who prevail in administrative hearings are kept in limbo while agencies petition for review by a nonexistent MSPB. Further, due to a related constitutional challenge (*Lucia v. SEC*), many employees cannot even request an administrative hearing to challenge violations until the MSPB has a quorum.

**2. Nominate and appoint independent, nonpartisan, experienced individuals responsible for receiving and investigating complaints made by whistleblowers, and bolster the strength of inspectors general to investigate specific as well as systemic abuses. (first 90 days)**

The Inspector General Act of 1978 mandates that the head of each agency's Office of Inspector General shall be appointed "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations." Inspectors general (IGs) and their offices are one of the most important mechanisms for receiving and investigating whistleblower complaints from both federal employees and contractors and addressing concerns of retaliation. Ensuring that IGs are equipped to conduct thorough investigations is essential to restore the health of this essential agency oversight vehicle.

**3. Support legislation enabling whistleblowers to oppose retaliation by appealing directly to federal courts when the MSPB does not act on an appeal within 90 days, and issuing stays on personnel actions against whistleblowers until their appeal is resolved. (first year)**

The ability to appeal directly to federal court and receive a jury trial would decrease the backlog of cases, allow faster resolution, and ensure whistleblowers' rights are enforced. Allowing employees to have their termination stayed pending the resolution of their retaliation claim would ensure they are not forced to abandon their rights because of administrative delays and would deter agencies from retaliating.

**4. Support legislation adding retaliatory investigations to the list of prohibited personnel practices in the Whistleblower Protection Act. (first year)**

**5. Ensure protection and functioning of agency IGs and the Office of Special Counsel (OSC) by advocating for legislation that increases their funding and grants IGs for-cause removal protections. (first year)**

The OSC and agency IGs are the main actors charged with investigating whistleblower allegations and, for OSC, enforcing the WPA and the Whistleblower Protection Enhancement Act of 2012 (WPEA), but their chronic understaffing forces whistleblowers to endure long waits. Agency budget requests should include the necessary number of full-time-equivalent positions (as well as training funds) to ensure IGs can carry out their functions without unnecessary delay.

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