

Biden Platform Proposes Major Changes to Government Ethics and Lobbying Regulation

September 2020

Democratic presidential nominee and former Vice President Joe Biden has promised sweeping changes to campaign finance, government ethics, and lobbying laws, regulations, and processes if he is elected this November. Biden's proposed reform program is outlined in The Biden Plan to Guarantee Government Works for the People.

The Biden plan contains several proposals for campaign finance reform, largely centered around reversing *Citizens United*, as well as proposals to reform the U.S. Department of Justice and other Executive branch agency decision-making. This article focuses, however, on summarizing the major government ethics and lobbying reform components of the Biden plan. These include: creating a new Commission on Federal Ethics to oversee and enforce federal anti-corruption and ethics laws; requiring more detailed disclosures by registered lobbyists; lowering and broadening the lobbying registration thresholds; requiring federal government officials to publicly disclose their interactions with lobbyists and interest groups; and tightening federal conflict of interest standards for both the Executive and Legislative branches.

Creation of a Commission on Federal Ethics (CFE)

Perhaps the most concrete component of Vice President Biden's government ethics reform package is the proposal to introduce legislation establishing a Commission on Federal Ethics (CFE).

Purpose and Powers. As described by the Biden-Harris campaign, the CFE would "oversee and enforce federal anti-corruption and ethics laws." It would have broad investigative and civil enforcement

Authors

Robert L. Walker
Of Counsel, Deputy General Counsel
202.719.7585
rlwalker@wiley.law

Practice Areas

Election Law & Government Ethics
Government Ethics

authority, “expanding on powers now held by the [Federal Election Commission], [Office of Government Ethics], and the Office of Special Counsel.” Significantly, the CFE would have the authority to enforce its own subpoenas and “refer matters for criminal investigation to the [Department of Justice (DOJ)]” with the requirement to disclose publicly when the DOJ chooses not to proceed with a referred matter. The CFE would be tasked with creating a centralized website providing a “one-stop destination” where all federal campaign finance, financial disclosure, and lobbying information would be available to the public. The CFE would also “be tasked with tightening existing loopholes that ... let lobbyists cloak influence campaigns in vague disclosures.” It is not clear from this last point whether the CFE would simply be the originating agency for legislative proposals to tighten lobbying disclosure requirements (discussed below), or whether a proposed CFE would take over oversight of lobbying registration and reporting from the Legislative branch, where such oversight – at least in its initial stages – currently resides.

Structure. As proposed, “[t]o avoid the stalemate that afflicts some agencies,” the CFE would comprise five Commissioners, appointed by the President and confirmed by the Senate, no more than three of whom could be from the same political party. Nominees for the CFE would be suggested by a panel of former prosecutors, judges, and state regulators. The Commissioners would have to have “experience in prosecuting public corruption or regulating ethics and campaign finance [to] be eligible for appointment.” The Commissioners would serve staggered 10-year terms and could be removed only for cause.

Oversight. The work and activities of the CFE itself would be monitored and overseen by an 11-member CFE Oversight Board, comprised of “bipartisan experts in ethics, campaign finance, and open government,” who would report to the Commission twice per year “with recommendations on how to strengthen ethics enforcement.” The CFE would be required to publicize Board recommendations and provide explanations for suggestions not followed.

Lobbying Reform

The Biden campaign is proposing significant, broad changes to the current lobbying registration and disclosure scheme. If elected, Biden promises to propose legislation to require:

- Elected officials to disclose monthly all meetings and communications with any lobbyist or special interest trying to influence the passage or defeat of a specific bill;
- Members of Congress to disclose any legislative language or bill text submitted by any lobbying party;
- Executive branch officials to disclose any regulatory text submitted by any outside entity;
- Members of Congress and senior Executive branch officials to develop and disclose any access policies governing requests for appointments.

Biden also proposes legislation to “lower the threshold for when those seeking to influence government must register as ‘lobbyists’. . . .” This would include a requirement to register as a lobbyist for “anyone who earns more than \$1,000 annually to be involved in developing or overseeing a lobbying strategy.” It is not clear whether or how this proposed \$1,000 threshold is intended to replace the current registration threshold for those who actually engage in lobbying contacts with covered officials: At present, registration is required with

respect to lobbying work for a client when a person makes more than one lobbying contact over any period of time for that client and spends 20% or more of their time for that client in any given three-month period on lobbying activities. What is clear is that this proposed new \$1,000 threshold would require registration and regular disclosure by so-called “stealth lobbyists” – that is, persons who advise clients “behind-the-scenes” on developing lobbying strategy but who do not themselves make any direct contacts or communications with covered government officials.

The Biden proposals would also require lobbyists to disclose more details about their lobbying activity, including who they are meeting with, what materials they share, proposed legislative or regulatory language, and exact outcomes sought.

Addressing Conflicts of Interest

The Biden ethics and lobbying reform package also includes various conceptual proposals to address potential conflicts of interest by federal government officials. For example, the Biden plan asserts that “[n]o member of the Biden Administration will be influenced by personal financial holdings.” Biden proposes issuing an Executive Order to “demand strict compliance with ethics agreements” that he will require of each member of his Cabinet and other senior Administration officials, and further proposes “to enact legislation strengthening these practices.” Biden also pledges to “work with Congress to enact legislation to apply similar standards to its members.”

With more specificity, the Biden plan includes a proposal to enact legislation to close a “loophole” in public financial disclosure requirements (imposed by the Ethics in Government Act) through which “candidates and public officials often transfer assets into trusts controlled by family members or close friends. . . .” As characterized in the Biden plan, this “loophole” allows the disclosing official to “disclose just the existence of the trust rather than the assets it holds.”

The Biden plan also includes the promise that, “on day one” as President, Biden would issue an ethics pledge – “building and improving on the Obama Ethics Pledge” – for members of his Administration. The Biden proposal notes this pledge will address “improper influence of lobbyists” and “any improper or inappropriate influence from personal, financial, and other interests” The specific contents of the Biden-Harris pledge have not been released.