AMENDMENT TO RULES COMMITTEE PRINT

117–20

OFFERED BY MS. OCASIO-CORTEZ OF NEW YORK

Insert after section 1002 the following:

Subtitle B—Strengthening Ethics Enforcement and Penalties for Federal Executive Employees

SEC. 1011. ETHICS PLEDGE.

Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

"I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have
used my Government service for private gain, including
by using confidential information acquired and relation-
ships established for the benefit of future clients.

“Accordingly, as a condition, and in consideration, of
my employment in the United States Government in a po-
sition invested with the public trust, I commit myself to
the following obligations, which I understand are binding
on me and are enforceable under law:

“(1) Lobbyist Gift Ban.—I will not accept gifts
from registered lobbyists or lobbying organizations
for the duration of my service as an appointee.

“(2) Revolving Door Ban; All Appointees En-
tering Government.—I will not for a period of 2
years from the date of my appointment participate
in any particular matter involving specific parties
that is directly and substantially related to my
former employer or former clients, including regula-
tions and contracts.

“(3) Revolving Door Ban; Lobbyists and Reg-
istered Agents Entering Government.—If I was reg-
istered under the Lobbying Disclosure Act, 2 U.S.C.
1601 et seq., or the Foreign Agents Registration Act
(FARA), 22 U.S.C. 611 et seq., within the 2 years
before the date of my appointment, in addition to
abiding by the limitations of paragraph 2, I will not
for a period of 2 years after the date of my appointment:

“(A) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

“(B) participate in the specific issue area in which that particular matter falls; or

“(C) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

“(4) Revolving Door Ban; Appointees Leaving Government.—If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.
“(5) Revolving Door Ban; Senior and Very Senior Appointees Leaving Government.— If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections’ implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by—

“(A) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or

“(B) engaging in any such lobbying activities.

“(6) Revolving Door Ban; Appointees Leaving Government to Lobby.—In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for
the remainder of the Administration or 2 years follow-
ing the end of my appointment, whichever is later.

“(7) Golden Parachute Ban.—I have not ac-
cepted and will not accept, including after entering
Government, any salary or other cash payment from
my former employer the eligibility for and payment
of which is limited to individuals accepting a position
in the United States Government. I also have not ac-
cepted and will not accept any non-cash benefit from
my former employer that is provided in lieu of such
a prohibited cash payment.

“(8) Employment Qualification Commitment.—
I agree that any hiring or other employment deci-
sions I make will be based on the candidate’s quali-
fications, competence, and experience.

“(9) Assent to Enforcement.—I acknowledge
that title XVI of the Protecting Our Democracy Act,
which I have read before signing this document, de-
fines certain of the terms applicable to the foregoing
obligations and sets forth the methods for enforcing
them. I expressly accept the provisions of that title
as a part of this agreement and as binding on me.
I understand that the terms of this pledge are in ad-
dition to any statutory or other legal restrictions ap-
applicable to me by virtue of Federal Government serv-

ice.”.

SEC. 1012. DEFINITIONS.

For purposes of this title and the pledge set forth
in section 1101 of this title:

(1) “Executive agency” shall include each “ex-
ecutive agency” as defined by section 105 of title 5,
United States Code, and shall include the Executive
Office of the President; provided, however, that “ex-
ecutive agency” shall include the United States
Postal Service and Postal Regulatory Commission,
but shall exclude the Government Accountability Of-

(2) “Appointee” shall include every full-time,
non-career Presidential or Vice-Presidential ap-
pointee, non-career appointee in the Senior Execu-
tive Service (or other SES-type system), and ap-
pointee to a position that has been excepted from
the competitive service by reason of being of a con-
fidential or policymaking character (Schedule C and
other positions excepted under comparable criteria)
in an executive agency. It does not include any per-
son appointed as a member of the Senior Foreign
Service or solely as a uniformed service commisioned officer.
(3) “Gift”—

(A) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(B) shall include gifts that are solicited or accepted indirectly, as defined in section 2635.203(f) of title 5, Code of Federal Regulations; and

(C) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) and (3), and (j) through (l) of title 5, Code of Federal Regulations.

(4) “Covered executive branch official” and “lobbyist” shall have the definitions set forth in section 1602 of title 2, United States Code.

(5) “Registered lobbyist or lobbying organization” shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, “registered lobbyist” shall include each of the lobbyists identified therein.

(6) “Lobby” and “lobbied” shall mean to act or have acted as a registered lobbyist.
(7) “Lobbying activities” shall have the definition set forth in section 1602 of title 2, United States Code.

(8) “Materially assist” means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual’s subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.

(9) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(10) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(11) “Former employer” is any person for whom the appointee has within the 2 years prior to
the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

(12) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include clients of the appointee’s former employer to whom the appointee did not personally provide services.

(13) “Directly and substantially related to my former employer or former clients” shall mean matters in which the appointee’s former employer or a former client is a party or represents a party.

(14) “Participate” means to participate personally and substantially.

(15) “Government official” means any employee of the executive branch.
(16) “Administration” means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this title.

(17) “Pledge” means the ethics pledge set forth in section 1011 of this title.

(18) “Senior White House staff” means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.

(19) All references to provisions of law and regulations shall refer to such provisions as are in effect on January 20, 2021.

SEC. 1013. WAIVER.

(a) The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of OMB certifies in writing:—

(1) that the literal application of the restriction is inconsistent with the purposes of the restriction; or
(2) that it is in the public interest to grant the waiver. Any such written waiver should reflect the basis for the waiver and, in the case of a waiver of the restrictions set forth in paragraphs (3)(B) and (C) of the pledge, a discussion of the findings with respect to the factors set forth in subsection (b) of this section.

(b) A waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter.

(c) The public interest shall include, but not be limited to, exigent circumstances relating to national security, the economy, public health, or the environment. In determining whether it is in the public interest to grant a waiver of the restrictions contained in paragraphs (3)(B) and (C) of the pledge, the responsible official may consider the following factors—

(1) the government’s need for the individual’s services, including the existence of special circumstances related to national security, the economy, public health, or the environment;

(2) the uniqueness of the individual’s qualifications to meet the government’s needs;

(3) the scope and nature of the individual’s prior lobbying activities, including whether such ac-
tivities were de minimis or rendered on behalf of a nonprofit organization; and

(4) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual’s services, such as those required by paragraph (3)(A) of the pledge.

SEC. 1014. ADMINISTRATION.

(a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency’s general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure—

(1) that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee;

(2) that compliance with paragraph (3) of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President prior to the appointee commencing work;

(3) that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or,
(4) that the agency generally complies with this title.

(b) With respect to the Executive Office of the President, the duties set forth in subsection (a) shall be the responsibility of the Counsel to the President.

(c) The Director of the Office of Government Ethics shall—

(1) ensure that the pledge and a copy of this title are made available for use by agencies in fulfilling their duties under subsection (a);

(2) in consultation with the Attorney General or the Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(3) in consultation with the Attorney General and the Counsel to the President, adopt such rules or procedures as are necessary or appropriate—

(A) to carry out the foregoing responsibilities;

(B) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;
(C) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(D) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by the employees’ official actions do not affect the integrity of the Government’s programs and operations; and

(E) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph (6) of the pledge is honored by every employee of the executive branch; and

(4) in consultation with the Director of OMB, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure. This report shall include recommendations on steps the executive branch can take to expand, to the fullest extent practicable, disclosure of both executive branch procurement lobbying and of lobbying for Presidential pardons. These rec-
ommendations shall include both immediate actions
the executive branch can take and, if necessary, rec-
ommendations for legislation; and

(5) provide an annual public report on the ad-
ministration of the pledge and this title.

(d) The Director of the Office of Government Ethics
shall, in consultation with the Attorney General, the Coun-
sel to the President, and the Director of the Office of Per-
sonnel Management, report to the President on steps the
executive branch can take to expand to the fullest extent
practicable the revolving door ban set forth in paragraph
(5) of the pledge to all executive branch employees who
are involved in the procurement process such that they
may not for 2 years after leaving Government service
lobby any Government official regarding a Government
contract that was under their official responsibility in the
last 2 years of their Government service. This report shall
include both immediate actions the executive branch can
take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver
certifications with respect thereto, shall be filed with the
head of the appointee’s agency for permanent retention
in the appointee’s official personnel folder or equivalent
folder.
SEC. 1015. ENFORCEMENT.

(a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations of this title and for referrals to the Attorney General for consideration pursuant to subsection (c) of this section.

(c) The Attorney General is authorized—

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and
(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

SEC. 1016. GENERAL PROVISIONS.

(a) If any provision of this title or the application of such provision is held to be invalid, the remainder of
this title and other dissimilar applications of such provision shall not be affected.

(b) Nothing in this title shall be construed to impair or otherwise affect—

(1) the authority granted by law to an executive department or agency, or the head thereof; or

(2) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This title shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This title is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.