

INDEPENDENT REPORTING MECHANISM:

UNITED STATES PROGRESS REPORT 2011–2013



First Progress Report



INDEPENDENT REPORTING MECHANISM: UNITED STATES PROGRESS REPORT 2011–13



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EXECUTIVE SUMMARY

INDEPENDENT REPORTING MECHANISM (IRM): UNITED STATES PROGRESS REPORT 2011-2013

The United States action plan was highly varied and, in many respects, ambitious and innovative. Significant progress was made on most of the commitments. Stakeholders noted that many of what they deemed to be the most critical policy areas, many of which require significant political lift, remained outside the action plan.

The Open Government Partnership (OGP) is a voluntary international initiative that aims to secure commitments from governments to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. The Independent Reporting Mechanism (IRM) carries out a biannual review of each OGP participating country's activities.

One of the eight founding countries of the OGP, the United States began formal participation in September 2011.

The Open Government Partnership in the United States was led by a working group within the Executive Office of the President (EOTP) in the White House. During the period of implementation, responsibility for domestic implementation of the plan formally shifted from the Office of Management and Budget to the Office of Science and Technology Policy, both within the EOTP.

The White House is key in policy matters but has limited control over implementation given that departmental and agency budgets and mandates are set by congressional authorizing and appropriating committees. Additionally, many of the actions were carried out largely at the agency level, where there is a certain amount of discretion in implementation and many programs have public constituencies.

OGP PROCESS

Countries participating in OGP follow a process for consultation during development of their OGP action plan and during implementation.

OGP in the United States built on an unprecedented consultation on open government during implementation of the 2009 Open Government Directive. The dedicated consultation for the OGP action plan, however, was more constrained, perhaps because of the short turnaround required for releasing the plan. The civil society organizations (CSOs) that participated most intensively constitute a fairly comprehensive list of organizations from "inside the Beltway" (Washington, DC-based groups) that identify transparency and participation as major themes of their work.

The process for consultation during the action plan was largely at the agency level or within particular implementing offices in the EOTP. As commitments were being implemented, in many cases, agency staff worked directly with civil society groups and the private sector. In some cases, participation was narrow, specialized, and technical while in other situations it stretched to groups well beyond the capital.

AT A GLANCE

MEMBER SINCE: 2011

NUMBER OF COMMITMENTS: 26

LEVEL OF COMPLETION

COMPLETED:	13 out of 26
IN PROGRESS:	12 out of 26
NOT STARTED:	0 out of 26
UNCLEAR:	0 out of 26
WITHDRAWN:	1 out of 26

TIMING

ON SCHEDULE:	18 out of 26
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COMMITMENT EMPHASIS

ACCESS TO INFORMATION:	15 out of 26
CIVIC PARTICIPATION:	11 out of 26
ACCOUNTABILITY:	10 out of 26
TECH & INNOVATION FOR TRANSPARENCY & ACCOUNTABILITY:	9 out of 26

GRAND CHALLENGES

SAFE COMMUNITIES:	3 out of 26
CORPORATE RESPONSIBILITY:	5 out of 26
PUBLIC SERVICES:	7 out of 26
PUBLIC INTEGRITY:	5 out of 26
PUBLIC RESOURCES:	17 out of 26

IMPLEMENTATION OF COMMITMENTS

Table 1 summarizes the 26 commitments made by the United States and gives the IRM's assessment of each commitment's level of completion, whether each is on schedule, and key next steps. The U.S. plan focused primarily on improving public integrity through access to information as well as participation, accountability, and technology and innovation for all three.

Table 2 summarizes the IRM's assessment of progress on each commitment.

Table 1 | Assessment of Progress by Commitment

THEMATIC CLUSTER	COMMITMENT SHORT TITLE AND SYNOPSIS	LEVEL OF COMPLETION				COMMITMENT PROGRESS	NEXT STEPS
		NOT STARTED	LIMITED	SUBSTANTIAL	COMPLETE		
						Ahead of schedule, behind schedule, or on schedule?	
1. OPEN GOVERNMENT TO INCREASE PUBLIC INTEGRITY							
Promote Public Participation in Government	1.1a. Launch "We the People" Petition Platform to enable the public to create and sign petitions.					On schedule	Maintenance and monitoring
	1.1b. Open Source "We the People" by publishing its source code for other countries to emulate.					On schedule	Continued work on basic implementation
	1.1c. Develop Best Practices and Metrics for Public Participation to allow agencies to assess progress on becoming more participatory.					Behind schedule	Continued work on basic implementation
Modernize Management of Government Records	1.2. Reform Records Management Policies and Practices across the Executive Branch.					On schedule	Extension based on existing implementation
Freedom of Information Act Administration	1.3a. Professionalize the FOIA Administration by continuing work on a civil service personnel category for FOIA specialists.					On schedule	Extension based on existing implementation
	1.3b. Harness the Power of Technology to achieve greater efficiencies in FOIA administration.					On schedule	Extension based on existing implementation
Declassify National Security Information	1.4. Lead a Multi-Agency Effort to Declassify Historically Valuable Records of multi-agency interest, and to address more than 400 million pages of backlog.					On schedule	Extension building on existing implementation
Agency Implementation of Open Government Plans	1.5. Monitor Agency Implementation of Plans to improve their efforts to disclose information to the public.					Behind schedule	Continued work on basic implementation

THEMATIC CLUSTER	COMMITMENT SHORT TITLE AND SYNOPSIS	LEVEL OF COMPLETION				TIMING	NEXT STEPS
		NOT STARTED	LIMITED	SUBSTANTIAL	COMPLETE		
						Ahead of schedule, behind schedule, or on schedule?	
Whistleblower Protections for Government Personnel	1.6a. Advocate for Legislation to Reform and Expand Whistleblower Protections.					On schedule	Extension building on existing implementation
	1.6b. Use Executive Authority to Protect Whistleblowers.					On schedule	Extension building on existing implementation
Enhance Enforcement of Regulations	1.7. Provide Enforcement and Compliance Data Online.					Behind schedule	Continued work on basic implementation
Increase Transparency of Legal Entities Formed in the United States	1.8. Advocate for Legislation Requiring Meaningful Disclosure of beneficial ownership information for companies.					Behind schedule	Significant revision of the commitment
2. OPEN GOVERNMENT TO MANAGE PUBLIC RESOURCES MORE EFFECTIVELY							
Natural Resource Revenue	2.1a. Implement the Extractive Industries Transparency Initiative (EITI) to ensure that taxpayers receive every dollar due for extraction of natural resources.					On schedule	Continued work on basic implementation
	2.1b. Work in Partnership with Industry and Citizens to Build on Recent Progress.					On schedule	Continued work on basic implementation
Increase Transparency in Spending	2.2. Apply Lessons from the Recovery Act and Provide Strategic Direction to All Federal Spending to Increase Transparency.					On schedule	Extension building on existing implementation
Increase Transparency of Foreign Assistance	2.3. Release and Implement Governmentwide Reporting Requirements for Foreign Aid including budgets, disbursements, and project implementation.					Behind schedule	Continued work on existing implementation
Create a More Effective and Responsive Government	2.4. Use Performance.gov to Improve Government Performance and Accountability.					On schedule	Significant revision of the commitment

THEMATIC CLUSTER	COMMITMENT SHORT TITLE AND SYNOPSIS	LEVEL OF COMPLETION				COMMITMENT PROGRESS	NEXT STEPS
		NOT STARTED	LIMITED	SUBSTANTIAL	COMPLETE		
						Ahead of schedule, behind schedule, or on schedule?	
3. OPEN GOVERNMENT TO IMPROVE PUBLIC SERVICES							
Expand Public Participation in Development of Regulations	3.1. Overhaul the Public Participation Interface on Regulations.gov.					Behind schedule	Extension building on existing implementation
Data.gov	3.2a. Promote Data.gov as a Platform to Spur Innovation through open sourcing the portal.					On schedule	Extension building on existing implementation
	3.2b. Foster Communities on Data.gov that connect thematic data with users and producers of that data.					Behind schedule	Significant revision of the commitment
Encourage Communication between Government Officials and Citizen Experts	3.3. Launch ExpertNet to enable government officials to better communicate with citizens who have expertise on a pertinent topic.	Withdrawn				Does not apply	Significant revision of the commitment
Reform Government Websites	3.4a. Begin an Online National Dialogue with the American Public on how to improve Federal websites.					On schedule	No further action needed
	3.4b. Update Governmentwide Policies for Websites.					On schedule	No further action needed
Publish Data to Help Consumers and Scientists	3.5a. Promote Smart Disclosure to Ensure Timely Release of Information in standardized and machine-readable formats.					On schedule	No further action needed
	3.5b. Publish Guidelines on Scientific Data to promote preservation, accessibility, and interoperability of scientific digital data.					On schedule	No further action needed
Promote Innovation through International Collaboration	3.6. Launch International Space Apps Competition to use publicly released data to create solutions for global challenges.					On schedule	No further action needed

Table 2 | Summary of Progress by Commitment

COMMITMENT	SUMMARY OF FINDINGS
1.1a. Launch “We the People”	Both of the “We the People” commitments have been achieved. The “We the People” e-petitions site was launched in September 2011 and the source code released on 23 August 2012. The public can petition the White House by creating or signing a petition. The White House responds to petitions that meet a certain threshold of signatures. A response means that the White House makes clear its position on the policy issue. The second part of this commitment dealt with putting the code online in an open source site. The commitment is now online at GitHub, a repository for online, open source code. There is clear evidence of uptake and use by the public. Whether the commitment mattered is a more difficult question. For the development of the We the People platform, the next steps should include serious reflection on what an e-petition platform can achieve and what it cannot.
2. New, higher cost cap for FOI	
1.1c. Develop Best Practices and Metrics for Public Participation	This commitment has been postponed. According to the government self-assessment, this item has not been completed because it will be incorporated into the U.S. government’s overall Digital Government Strategy or will be published alongside it. Therefore, one can only judge the potential outcome of the commitment: it could have had a harmonizing effect across agencies in areas of policymaking not already covered by regulations mandating participation.
1.2. Reform Records Management	This commitment has been completed. It has the potential to change the business of government significantly. Now that the process has been launched, the hard work will be in achieving the next steps. The transition from paper to efficient electronic record keeping is an undertaking requiring many new systems.
1.3a. Professionalize the Freedom of Information Act (FOIA) Administration	This commitment has been fulfilled. The commitment sought to create a job category that would make servicing FOIA a career path in public service. This commitment is the start of what could be a substantial improvement over what went before. However, in their independent report, civil society groups suggest that the category hasn’t lived up to its promise. The IRM researcher recommends that a new commitment furthering professionalization within agencies be made in the next action plan based on the input of civil society.
1.3b. Harness the Power of Technology	This commitment aimed to expand the use of technology for FOIA. It has been fulfilled in the letter, although some reservations remain among members of civil society interviewed. FOIA.gov still refers users to separate websites for more than 100 offices, which adds inefficiency to the process. Several systemic issues like the balance between open government and security needs continue to complicate FOIA. As a consequence of these findings, the IRM researcher recommends that several new commitments be undertaken to more make the process for FOIA access easier in the coming years.
1.4. Lead a Multi-Agency Effort to Declassify Historically Valuable Records	Limited progress has been made on this goal. While a process has been launched and the backlog has been addressed in part, robust implementation of the process may have been beyond the scope of the Administration’s capacity during this time. While civil society stakeholders interviewed were supportive of the National Archives and Records Administration (NARA) and the National Declassification Center (NDC), they were critical of agency reluctance to truly engage. They recommend setting up a way agencies with an interest in declassification can view the proposed change in classification at the same time. This initiative should be the object of significant policy study.

COMMITMENT	SUMMARY OF FINDINGS
1.5. Monitor Agency Implementation of Plans	<p>Through the Interagency Open Government Working Group, the Administration tracked implementation of its initial open government plans. But it is unclear from the self-assessment and the White House website exactly what actions were taken to monitor progress of different plans. Various issues with the dashboard make progress tracking and comparison time and labor intensive, and make interagency learning more difficult. The IRM researcher suggests continued work on basic implementation of the open government action plans.</p>
1.6a. Advocate for Legislation on Whistleblower Protection	<p>Each of these commitments has been completed and was on track for completion at the outset of the action plan process. On 27 November 2012 the President signed the Whistleblower Protection Enhancement Act (WPEA) that closed loopholes and upgraded protections for federal workers. The law did not, however, extend protection broadly to the national security community (with the notable exception of the Transportation Safety Administration), so the President issued in October 2012 Presidential Policy Directive 19, extending whistle blower protections to the national security and intelligence communities. This issue is at the heart of many of the political problems the Administration is facing at the time of writing. While these improvements to whistleblower protection are significant, the Department of Justice is prosecuting a record number of individuals under the World War I-Era Espionage Act. This commitment has been delivered and significant protections have been enhanced, but as discussed in Section VI, "Moving Forward," further commitments will need to be undertaken to address some of the larger issues brought up during this review and elsewhere. The IRM researcher therefore recommends new commitments building on the successful completion of this commitment.</p>
1.6b. Use Executive Authority to Protect Whistleblowers	<p>Each of these commitments has been completed and was on track for completion at the outset of the action plan process. On 27 November 2012 the President signed the Whistleblower Protection Enhancement Act (WPEA) that closed loopholes and upgraded protections for federal workers. The law did not, however, extend protection broadly to the national security community (with the notable exception of the Transportation Safety Administration), so the President issued in October 2012 Presidential Policy Directive 19, extending whistle blower protections to the national security and intelligence communities. This issue is at the heart of many of the political problems the Administration is facing at the time of writing. While these improvements to whistleblower protection are significant, the Department of Justice is prosecuting a record number of individuals under the World War I-Era Espionage Act. This commitment has been delivered and significant protections have been enhanced, but as discussed in Section VI, "Moving Forward," further commitments will need to be undertaken to address some of the larger issues brought up during this review and elsewhere. The IRM researcher therefore recommends new commitments building on the successful completion of this commitment.</p>
1.7. Provide Enforcement and Compliance Data Online	<p>The IRM researcher finds limited progress on this commitment. The President issued a "memorandum on regulatory compliance" on 18 January 2011 that directed, "agencies with broad regulatory compliance and administrative enforcement responsibilities to make the data available online within 120 days." A number of agencies developed plans to meet these requirements. But even in the case of an impressive display of data such as the Environmental Protection Agency's website, Enforcement and Compliance History Online (ECHO), it is not clear what advances were undertaken during the implementation period to move implementation forward. Where there was forward movement, it is not clear that it can be attributed to this commitment. The IRM recommends increased dedication of funds to this mandate and the establishment of a working group to share emerging best practices across agencies and across sectors, especially those which are not currently releasing such data.</p>
1.8. Advocate for Legislation Requiring Meaningful Disclosure	<p>As the government self-assessment states, there has been significant effort by the Obama White House to advocate legislation to release data on ultimate or beneficial ownership of corporations. But civil society groups interviewed were not aware of aggressive legislative advocacy by the White House. In the absence of legislation, the Administration has taken some actions not covered by the letter of the commitment, but in the spirit of the commitment. However, this commitment did not have a significant impact because it was, by and large unimplemented. If implemented in a significant way, it could have a strong impact on the U.S. economy and on the formation of shell companies in the United States and elsewhere.</p>

COMMITMENT	SUMMARY OF FINDINGS
<p>2.1.a. Implement the Extractive Industries Transparency Initiative (EITI)</p> <p>2.1.b. Partnership to Build on Recent Progress</p>	<p>The U.S. government has joined the EITI. Following development of its EITI plan, the government will submit its candidacy for certification. There has been substantial buy-in to the U.S. EITI Advisory Committee. The government held two public comment periods, seven listening sessions (Anchorage, Denver, Houston, New Orleans, Pittsburgh, St. Louis, and Washington, DC), a webinar, and a workshop. The IRM researcher recommends continued work on this commitment, leading to the United States' submitting its candidacy. Some stakeholders interviewed felt that the United States would benefit from "more granular reporting, improved readability of published data, and reporting by industries or subnational governments that are not bound by current federal disclosure requirements."</p>
<p>2.2. Apply Lessons from Recovery Act to Increase Spending Transparency</p>	<p>This commitment was implemented. The new Government Accountability and Transparency Board (GATB) provided a report to the President recommending concrete steps. Following on the development of the strategy, the GATB can be credited with a number of outcomes following implementation. The civil society evaluation of this commitment gave notably low marks for consultation and collaboration with civil society, as much of the commitment action was a foregone conclusion prior to its inclusion in the national action plan. While this commitment is formally completed, the IRM researcher recommends continued work on implementation.</p>
<p>2.3. Governmentwide Reporting Requirements for Foreign Aid</p>	<p>This commitment has seen limited implementation. The first aspect of the commitment, on reporting requirements has been completed. A dashboard is up and running and will expand over time to cover more agencies. In spite of this, the stakeholders interviewed were pessimistic about progress on this issue. George Ingram, co-chair of "Modernizing Foreign Assistance Network," argued that the data on the website are not very useful and that the political will has not been transmitted throughout the bureaucracy. The IRM researcher recommends continued implementation of this commitment. Specifically, the United States can expand coverage of the data gathering and build the International Aid Transparency Initiative (IATI) reporting requirements into the information technology systems for reporting of each agency. This will lessen the reporting burden on each agency.</p>
<p>2.4. Use Performanc.gov to Improve Government Performance and Accountability</p>	<p>This commitment is complete. Performance.gov makes available some very important data and has the potential to make more transparent many of the internal workings of agencies. The substantive problem goes beyond the scope of this recommendation: the data, no matter how accessible, are simply not used for management or political accountability as often as they should be and some of the goals are too vague to be measured. These problems, however, have plagued the performance movement since its inception two decades ago, and are not easily solved by a website. As a consequence, the IRM researcher recommends that responsible entities will need to better understand how accountability will function and identify the potential users of this information.</p>
<p>3.1. Overhaul the Public Participation Interface on Regulations.gov</p>	<p>Regulations.gov, operated by the EPA on behalf of 39 federal agencies has been up and running since 2003. The site has enabled members of the public to participate more actively in rulemaking by enabling searches of the <i>Federal Register</i> and to allow commenting on proposed federal actions. Significant changes have been made to this flagship website in accord with this commitment. While some of the public demands (such as immediate display of comments) were not met in the redesign of the site, others were taken to heart. It is unclear exactly how these changes might affect the rulemaking process, but new application programming interfaces (APIs) have the potential to enable efficiency in analysis of comments and to involve a greater number of people through notification. The IRM researcher recommends continued work on this flagship website.</p>

COMMITMENT	SUMMARY OF FINDINGS
3.2a. Promote Data.gov to Spur Innovation through open sourcing	<p>This commitment has been fulfilled. In March of 2012, the United States and India launched the Open Government Platform (OGPL). The platform provides software that allows individuals, developers, media, academics, and businesses to use open data sets for their own purposes. Pilots have been established to scale out the OGPL in Ghana and Rwanda and, according to the government self-assessment, more than 30 countries have expressed interest in the platform. The IRM researcher recommends continued implementation of this commitment. The principal challenge is identifying potential users and what barriers they face in using the code.</p>
3.2b. Foster Communities on Data.gov	<p>Substantial progress was made on this commitment, but, like a number of other commitments, it is unclear who will use the results. The Administration has committed to adding curated data sets around education, research and development, and public safety. Technically, two of these sets were launched following the implementation period assessed. As each was launched, a forum for discussion of the data was added. However, this forum is a very narrow definition of “fostering communities.” The IRM researcher examined the three new forums and found no evidence of use. It seems that potential users either do not need the forums or do not know about them. The IRM researcher recommends significant revision of this commitment. Data.gov was a significant lift preceding the OGP action plan, but equivalent resources were not dedicated to fostering innovative use of the data.</p>
3.3. Launch ExpertNet	<p>This commitment would have created one government portal where citizens would be able to participate in public consultations. ExpertNet would allow officials to inform and draw on a large body of informed and interested experts and individuals. It was withdrawn because of difficulties in implementation and conflicts with the Federal Advisory Committee Act (FACA) and, according to the government self-assessment, the existence of private sector platforms to enable experts to make proposals. This website does not seem to be an area where an information technology solution would add much to the existing opportunities for citizen engagement. In fact most, if not all, stakeholders engaged in the IRM process felt that this commitment was not a priority.</p>
3.4a. Begin an Online National Dialogue with the American Public	<p>There were two parts to this commitment: open a dialogue with the American public on government websites and improve the sites; and reform policies around the management, look, and structure of government websites. Both have been completed— the second via the government’s Digital Government Strategy. Of all of the commitments in this action plan, the Online National Dialogue on Improving Federal Websites, along with We the People, is one of the most robust examples of participation in the digital age. The national dialogue was begun around the time of the original submission of the action plan. Nearly 1,000 participants submitted more than 400 ideas around 12 given themes. The second commitment in this cluster dealt with updating federal website policy. Both this activity and the Online National Dialogue were integrated into the government’s new, wider Digital Government Strategy, although it is not entirely clear how the specific inputs made by the public during the national dialogue are reflected in the more principle-oriented strategy.</p>
3.4b. Update Governmentwide Policies for Websites	<p>Although the new Digital Government Strategy reflects the state-of-the-art in public information systems, the lay reader would be hard pressed to grasp the nuts-and-bolts character of guidance on reforming federal websites from the user point of view that is found in the Online National Dialogue.</p>

COMMITMENT	SUMMARY OF FINDINGS
3.5a. Promote Smart Disclosure to Ensure Timely Release of Information	<p>There are two parts to this item. "Smart disclosure" refers to the selective release of personal or market data that helps the public make better choices. The innovative aspect of this commitment refers to the (1) timely, (2) standardized, and (3) machine-readable nature of the information. This commitment aimed at releasing health, safety, and the environment information that can spur innovation and inform consumers. The second part of this commitment is the development of guidelines on openness for federally funded scientific information, much of which is currently proprietary. During the evaluation period, the government mandated via a "Public Access Memorandum" that federal agencies make more than \$100 million in research and development results searchable by the public within 12 months of publication.</p>
3.5b. Publish Guidelines on Scientific Data	<p>At the same time, the guidelines for disclosure of personal data will need to be closely monitored and revisited to ensure that privacy concerns are adequately addressed.</p>
3.6. Launch International Space Apps Competition	<p>During the implementation period, the National Aeronautics and Space Administration (NASA) held a two-day international event where scientists and members of the public could use public data to create solutions for pressing technical challenges. Over 9,000 people around the world participated in the first competition in person or online. A follow up was scheduled for 2013. In the next action plan, this model could be used in other areas, such as "health apps," or "transportation apps."</p>

RECOMMENDATIONS

As a consequence of these observations and the findings of the report, a number of general recommendations can be made to improve the design and implementation of the next action plan. These recommendations are crosscutting; commitment-specific recommendations are included with each commitment in Section IV. Recommendations are classed into three categories: Process, Learning, and New Frontiers.

Process

- Continue robust implementation of consultation and participation at the agency level, building off successful attempts in the first plan;
- Make a greater effort to bring a wide variety of stakeholders into action plan development and implementation including more organizations from outside the beltway;
- Take advantage of the next self-assessment process to continue dialogue and deliberation with civil society members.

Learning

- Learn from best practices in stakeholder engagement from agencies with significant success in that area during the first action plan (including the .gov team, NASA, and the National Archives and Records Administration [NARA]);
- Put user needs at the center of new technology. This orientation requires identifying theories of change for how transparency and accountability reforms will be used and identifying core constituencies who will potentially take up new technologies. Digital services can then be designed to meet their needs.

New frontiers

- The new action plan presents an opportunity for the Administration to square its strong support of open government with its commitment to national security, identifying win-win situations in which national security may be enhanced through greater public oversight and disclosure;
- Identify how technology might be used to ensure that laws are evenly applied and that national security interests are balanced with democratic values;
- Consider including ambitious commitments that review major areas that threaten to undermine the credibility of Administration efforts at implementing open government programs. These commitments might include reviews of criteria for prosecuting national security related leaks, whistleblowing, classification, and the FOIA. These areas directly impact democracy and fundamental freedoms enshrined in the U.S. Bill of Rights;
- Consider evaluating the degree to which post-9/11 protocols can be retrenched where no longer compatible with the threat level.

Disclaimer: The eight founding members of the Open Government Partnership were given a brief period to provide corrections for possible factual errors in a draft version of the Independent Reporting Mechanism Progress Report. Because the draft report was provided to the U. S. Government for review during a lapse in federal appropriations, the United States was not able to review and provide comment to the assessment prior to its publication. Readers should keep this in mind.

ELIGIBILITY REQUIREMENTS: 2011

To participate in OGP, governments must demonstrate commitment to open government by meeting minimum criteria on key dimensions of open government. Third-party indicators are used to determine country progress on each of the dimensions. For more information, visit: www.opengovpartnership.org/eligibility

BUDGET TRANSPARENCY:
4 OUT OF 4

ACCESS TO INFORMATION:
LAW ENACTED

ASSET DISCLOSURE:
4 OUT OF 4

CIVIC PARTICIPATION:
9.12 OUT OF 10



OGP aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. OGP's Independent Reporting Mechanism assesses development and implementation of national action plans in order to foster dialogue among stakeholders and improve accountability.



I | BACKGROUND

The Open Government Partnership (OGP) is a voluntary, multistakeholder international initiative that aims to secure concrete commitments from governments to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In pursuit of these goals, OGP provides an international forum for dialogue and sharing among governments, civil society organizations, and the private sector, all of which contribute to a common pursuit of open government. OGP stakeholders include participating governments as well as civil society and private sector entities that support the principles and mission of OGP.

The United States, one of the founding eight countries of the Open Government Partnership, began its formal participation in September 2011, when President Barack Obama launched the initiative along with other heads of state and ministers in New York.

To participate in OGP, governments must exhibit a demonstrated commitment to open government by meeting a set of (minimum) performance criteria on key dimensions of open government that are particularly consequential for increasing government responsiveness, strengthening citizen engagement, and fighting corruption. Objective, third party indicators are used to determine the extent of country progress on each of the dimensions, with points awarded as described below. The United States entered into the partnership exceeding the minimal requirements for eligibility, with a high score in each of the criteria. At the time of joining, the country had the highest possible ranking for “open budgets” (2 out of a possible 2),¹ an Access to Information Law,² the highest possible rankings in “asset disclosure for senior officials,”³ and a score of 8.53 out of a possible 10 on the Economist Intelligence Unit’s Democracy Index Civil Liberties subscore.⁴

Along with the other founding members of OGP, the United States developed its national action plan from June through September 2011. The U.S. action plan was submitted in September and was officially implemented from January 1 through 31 December 2012. A self-assessment was published in April 2013. At the time of writing, officials and civil society members are working on the second national action plan.

Pursuant to OGP requirements, the Independent

Reporting Mechanism (IRM) of OGP has carried out an evaluation of the development and implementation of United States’ first action plan, forming the basis for this report. It is the aim of the IRM to inform ongoing dialogue around development and implementation of future commitments in each OGP participating country. Methods and sources are dealt with in a methodological annex to this report.

INSTITUTIONAL CONTEXT

The Open Government Partnership in the United States is led by a working group within the Executive Office of the President (EOTP) in the White House. During the evaluation period, the senior staff member was Lisa Ellman, chief counselor for OGP in the White House. She coordinated the Open Government Working Group which consists of senior representatives from 35 agencies.⁵ During the period of implementation, responsibility for domestic implementation of the plan formally shifted from the Office of Management and Budget to the Office of Science and Technology Policy, both within the EOTP.

In the United States, the Open Government Partnership was preceded by the Open Government Directive.⁶ The directive mandated that each federal agency take specific actions around open government themes, including the release of high-value data sets and internal agency action plans. This prior experience laid the groundwork for much of the interagency cooperation and collaboration during the action plan.

A background in the U.S. federal system can help one understand how the OGP process was carried out.

The White House is key in direct policy. It has limited control, however, over implementation given that departmental and agency budgets and mandates are most directly influenced by their congressional authorizing and appropriating committees. Additionally, many of the actions were carried out at the agency level, where there is a certain amount of discretion in implementation and many programs have public constituencies. As a consequence, public participation in OGP and implementation, while centralized at the White House, also took place at the agency level.

METHODOLOGICAL NOTE

IRM partners with experienced, independent national researchers to author and disseminate reports for each OGP participating government. IRM partners with local individuals and organizations with experience in assessing open government. An initial version of this report was authored in part by Elaine Kamarck, a Lecturer at Harvard Kennedy School of Government and a Senior Fellow at the Brookings Institution, a nonpartisan think tank in Washington, DC. The IRM then reviewed the government's self-assessment report, gathered the views of civil society, and interviewed appropriate government officials and other stakeholders. OGP staff and a panel of experts reviewed the report.

To gather the voices of multiple stakeholders, the IRM researcher organized a stakeholder forum in cooperation with OpenTheGovernment.org in Washington, DC. The researcher also reviewed two key documents prepared by the government: a report on the first U. S. action plan⁷ and the self-assessment published by the government in April 2013.⁸ Further, OpenTheGovernment.org put forward an assessment of government progress in March 2013. This report refers extensively to these interviews and documents.

List of those attending the forum and interviewees are given in the Annex.

For ease of reading and to shorten the length of the final report, related commitments have been clustered. The original order in the action plan has been maintained.

Disclaimer: The eight founding members of the Open Government Partnership were given a brief period to provide corrections for possible factual errors in a draft version of the Independent Reporting Mechanism Progress Report. Because the draft report was provided to the U. S. Government for review during a lapse in federal appropriations, the United States was not able to review and provide comment to the assessment prior to its publication. Readers should keep this in mind.

¹ Open Budget Partnership, "United States," *Open Budget Index 2010*, <http://bit.ly/1dWrRHq>.

² The Freedom of Information Act, 5 U.S.C. § 552 (1966).

³ Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, "Disclosure by Politicians," (Tuck School of Business Working Paper 2009-60, 2009), <http://bit.ly/19nDEfK>; Organisation for Economic Cooperation and Development (OECD), "Types of Information Decision Makers Are Required to Formally Disclose, and Level of Transparency," in *Government at a Glance 2009*, (OECD, 2009), p. 132, <http://bit.ly/13vGtqS>; Ricard Messick, "Income and Asset Disclosure by World Bank Client Countries," (World Bank, Washington, DC, 2009), <http://bit.ly/1clokyf>.

⁴ Economist Intelligence Unit, *Democracy Index 2010: Democracy in Retreat*, (London: Economist, 2010), <http://bit.ly/eLC1rE>.

⁵ For the names of members of the Open Government Working Group see: www.whitehouse.gov/open/about/working-group.

⁶ Open Government Directive, M10-06, (8 December 2009), <http://1.usa.gov/4sbQJk>.

⁷ United States, *The Open Government Partnership (OGP): National Action Plan*, (Washington, DC: United States of America, 20 September 2011), <http://1.usa.gov/nSqlzt>.

⁸ United States, *The Open Government Partnership: Government Self-Assessment Report*, (Washington, DC: US Government 29 March 2013), <http://1.usa.gov/YO3CII>.

⁹ Open the Government Coalition, "Civil Society Report on Implementation of the First U.S. National Action Plan," (March 2013), <http://bit.ly/1118cRn>.

II | PROCESS: DEVELOPMENT OF ACTION PLAN

Countries participating in OGP follow a process for consultation during development of their OGP action plan.

OGP GUIDELINES

Countries must:

- Make the details of their public consultation process and timeline available (online at minimum) prior to the consultation
- Consult widely with the national community, including civil society and the private sector; seek out a diverse range of views; and make a summary of the public consultation and all individual written comment submissions available online
- Undertake OGP awareness-raising activities to enhance public participation in the consultation
- Consult the population with sufficient forewarning and through a variety of mechanisms—including online and in-person meetings—to ensure the accessibility of opportunities for citizens to engage.

A fifth requirement, during consultation, is set out by the OGP Articles of Governance and covered in Section III: Consultation during Implementation:

- Countries must identify a forum to enable regular multi-stakeholder consultation on OGP implementation—this can be an existing entity or a new one.

TIMING OF CONSULTATION

OGP implementation in the United States drew inspiration from an unprecedented consultation on open government during the implementation of the 2009 Open Government Directive.¹ This consultation, both online and face-to-face, allowed citizens to recommend reforms to federal agencies to make government more transparent, participatory, and collaborative with civil society stakeholders. During later phases, the process required agencies to carry out a series of specific actions including formulating an open government plan meeting requirements for

transparency, participation, and collaboration including a flagship open government program. This was, in part, the inspiration for the Open Government Partnership and constituted significant public input into opening government.

The dedicated public consultation for the OGP action plan, however, was significantly more bounded, perhaps because of the short turnaround required for releasing the plan. Input on particular themes was solicited through face-to-face consultations with known open government advocates and through a series of blog posts, in which key White House staff elicited public input on a set of themes.² While the blog posts stated that all responsive submissions would be posted online later, the IRM researcher was unable to find a summary of participation. In the opinion of Patrice McDermott of OpenTheGovernment.org, the White House did a good job given the amount of time to develop the plan, but did not do all that could have been done.³ In contrast to the participation in the Open Government Directive, OGP's participation was limited.⁴

The government held a number of dedicated in-person civil-society meetings for the major themes that became part of the 26 commitments under the action plan including a meeting between leading open government groups and the President.⁵ During this time, civil society groups were able to make suggestions, but it was not clear how feedback was or was not integrated into the action plan until it was unveiled at the OGP launch in September 2011.

BREADTH OF CONSULTATION

Without a summary of comments and proposals from civil society or a list of invited organizations, it is unclear exactly how many groups were invited or participated in online forums. This assessment is

based on reports from civil society organizations and commentary on individual commitments.

The civil society organizations that participated most intensively constitute a fairly comprehensive list of organizations from “inside the Beltway” (Washington, DC–based groups) that identify transparency and public participation as major themes of their work. The overwhelming majority of participating organizations identify themselves as nonpartisan. Few expressly “right of center” organizations concerned with open government and civic engagement were consulted or included in the consultations. The IRM process was unable to identify any records of invitation to right-leaning organizations that might have an interest in themes of transparency and participation. Nor were any organizations composed of military, former military or intelligence professionals publicly engaged. Thus, publicly at least, stakeholder views came from a subset of potential views on some of the more controversial subjects, such as secrecy issues, declassification of documents, or Freedom of Information Act reform. Open government progress has been relatively slower in these areas.

Despite this composition of participants, or perhaps because of it, the U.S. action plan did not explicitly address the ongoing policy debate over the national security agenda and its implications for open government. These issues are covered in Section VI “Moving Forward.” A reading of the U.S. National Action Plan, however, provides little evidence that lopsided public consultation led to overemphasis on U.S. government actions related to the transparency and security issue.

Online public engagement was carried out primarily through email messages in a series of blog posts. This mode of conversation presented the opportunity for a more diverse geography of participants, but geographic diversity during the development of the OGP action plan through online participation remains unclear without a summary of participants

or comments. Although a summary of comments is available online, a record of individual submissions was not posted online as it would be in more formal regulatory or advisory processes.

The White House also sought input from federal government agencies, soliciting ideas from the Open Government Interagency Working Group. Formed around the earlier Open Government Directive; this working group represents key agencies with large responsibilities in the area of open government, including many chief information officers.

OPENTHEGOVERNMENT.ORG

Because of the limitations of the consultation and the short time span, a civil society coalition, working through OpenTheGovernment.org, stepped in to play a coordination and facilitation role between government and civil society. Its small staff coordinates a large coalition of transparency and accountability organizations⁶ and was able to energize a wide group of relevant public interest groups within and beyond the capital. OpenTheGovernment.org:

- Established a listserv for any interested groups to join;
- Coordinated six face-to-face meetings with a wide range of groups (with phone-in options);
- Held regular conference calls;
- Facilitated communications with the Administration.

It is reasonable to assume that public participation during development of the action plan, and even coordination within government, would have been much weaker without OpenTheGovernment.org.

¹Open Government Directive, 8 December 2009.

²Aneesh Chopra and Cass Sunstein, “Open Government and the National Plan,” Open Government Blog, the Whitehouse, 8 August 2011, <http://1.usa.gov/oMKgaO>; Aneesh Chopra and Cass Sunstein, “Open Government Partnership and Development of the U.S. Open Government Plan,” Open Government Blog, the Whitehouse, 22 August 2011, <http://1.usa.gov/r8BTYw>.

³Patrice McDermott (Executive Director, OpenTheGovernment.org), interview with IRM, May 2013.

⁴As a point of comparison, summaries of the Open Government Directive show more robust participation by the public, the public sector, and private sector actors: <http://1.usa.gov/19VsVHg>.

⁵Danielle Brian, “Open Government Advocates Meet with POTUS: A Firsthand Account,” POGO Blog, Project on Government Oversight, 29 March 2011, <http://bit.ly/gmlGgb>.

⁶“Our Coalition Partners,” OpenTheGovernment.org, <http://bit.ly/WoPOJE>.

III | PROCESS: CONSULTATION DURING IMPLEMENTATION

The process for consultation during the action plan was largely at the agency level or within particular implementing offices in the Executive Office of the President.

As commitments were being implemented, agency staff often worked directly with civil society groups and the private sector. In some cases, participation was narrow, specialized, and technical and in others, it stretched to groups well beyond the capital.

While there were many policy areas in the U.S. National Action Plan with strong participation, two commitments illustrate robust participation during implementation. The National Dialogue on Improving Government Websites (commitment 3.4a) was an example of wide-reaching and in-depth consultation. The .gov team, in charge of the commitment, used an online idea-generation tool to solicit proposals around more than 18 themes, soliciting nearly 500 proposals from over 9,000 unique visitors. Significant traffic was generated through use of social media.

In contrast, the Extractive Industries Transparency Initiative (EITI) commitment (commitment 2.1), led by the Department of Interior, followed a more traditional pattern of participation, possibly because it covered a highly technical narrowly focused agenda. However, the consultation process ultimately reached well beyond the specialist interlocutors based in Washington, DC, with the help of civil society actors. This OGP commitment led to the formation of a multistakeholder (government, civil society, and the private sector) group formally registered in accordance with the Federal Advisory Committee Act. This varied group included labor unions, advocacy nonprofits, oil companies, and investment groups.

Where engagement did not take place within an agency, the White House largely consulted the coalition of organizations coordinated by OpenTheGovernment.org (see prior section).¹ Beyond government-led efforts, the Open the Government Coalition's work during implementation was significant in that it met on a semi-regular basis to propose a roadmap for government² to develop civil society teams that tracked implementation of the plan, commitment by commitment.³ It released a civil society assessment of completion of commitments prior to the first year.⁴

However, it is often difficult to meet the requirement to provide open, ongoing forums beyond the capital. Open the Government Coalition, is a group of primarily Washington-based organizations, and the density of their networks and constituencies outside of the capital varies widely. According to the OGP process, the principal responsibility for creating broad-based, diverse forums for participation lies with the officials based in the executive branch of government responsible for developing the action plan. Open the Government Coalition, with OpenTheGovernment.org playing a coordinating role, is one of the major building blocks for successes in the U.S. action plan implementation, but government overreliance on the coalition could also limit the long-term outreach, and multi-sector approach of the Open Government Partnership in the United States.

¹ <http://www.openthegovernment.org/>; "Our Coalition Partners", OpenTheGovernment.org, <http://bit.ly/WoPOjE>.

² OpenTheGovernment.org, "Recommendations for Implementing the U.S. National Action Plan," OpenTheGovernment.org, December 2011, <http://bit.ly/15M0tGH>.

³ OpenTheGovernment.org, "Our Teams," <http://opengovpartners.org/us/our-teams/>.

⁴ OpenTheGovernment.org. Civil Society Report on Implementation of the First US National Action Plan. March 2013. Washington, DC: OpenTheGovernment.org. <http://www.openthegovernment.org/sites/default/files/NAP%20Final%20Evaluation.pdf>

IV | IMPLEMENTATION OF COMMITMENTS

All OGP participating governments are asked to develop OGP country action plans that elaborate concrete commitments over an initial two-year period.

Governments should begin their OGP country action plans by sharing existing efforts related to their chosen grand challenge(s), including specific open government strategies and ongoing programs. Action plans should then set out governments' OGP commitments, which stretch government practice beyond its current baseline with respect to the relevant grand challenge. These commitments may build on existing efforts, identify new steps to complete ongoing reforms, or initiate action in an entirely new area.

OGP commitments are to be structured around a set of five "grand challenges" that governments face. OGP recognizes that all countries are starting from different baselines. Countries are charged with selecting the grand challenges and related concrete commitments that most relate to their unique country contexts. No action plan, standard, or specific commitments are forced on any country.

The five OGP grand challenges are:

1. **Improving Public Services**—measures that address the full spectrum of citizen services including health, education, criminal justice, water, electricity, telecommunications, and any other relevant service areas by fostering public service improvement or private sector innovation.
2. **Increasing Public Integrity**—measures that address corruption and public ethics, access to information, campaign finance reform, and media and civil society freedom.
3. **More Effectively Managing Public Resources**—measures that address budgets, procurement, natural resources, and foreign assistance.
4. **Creating Safer Communities**—measures that address public safety, the security sector, disaster and crisis response, and environmental threats.

5. **Increasing Corporate Accountability**—measures that address corporate responsibility on issues such as the environment, anti-corruption, consumer protection, and community engagement.

While the nature of concrete commitments under any grand challenge area should be flexible and allow for each country's unique circumstances, all OGP commitments should reflect four core open government principles:

- **Transparency**—information on government activities and decisions is open, comprehensive, timely, freely available to the public, and meet basic open data standards (e.g. raw data, machine readability).
- **Citizen Participation**—governments seek to mobilise citizens to engage in public debate, provide input, and make contributions that lead to more responsive, innovative and effective governance.
- **Accountability**—there are rules, regulations, and mechanisms in place that call upon government actors to justify their actions, act upon criticisms or requirements made of them, and accept responsibility for failure to perform with respect to laws or commitments.
- **Technology and Innovation**—governments embrace the importance of providing citizens with open access to technology, the role of new technologies in driving innovation, and the importance of increasing the capacity of citizens to use technology.

Countries may focus their commitments at the national, local and/or subnational level—wherever they believe their open government efforts are to have the greatest impact.

Recognizing that achieving open government commitments often involves a multi-year process, governments should attach timeframes and benchmarks to their commitments that indicate what is to be accomplished each year, wherever possible.

This section details each of the commitments the United States included in its initial action plan.

1 | OPEN GOVERNMENT TO INCREASE PUBLIC INTEGRITY

1.1a & 1.1b | Promote Public Participation in Government: “We the People” Petition Platform

COMMITMENT SUMMARY	
LEAD INSTITUTION	Executive Office of the President (The White House)
SUPPORTING INSTITUTIONS	None
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Participation, Technology and innovation
OGP GRAND CHALLENGES	Increasing public integrity
SPECIFICITY OF GOAL	High
ACTION OR PLAN	Action

LEVEL OF COMPLETION	LAUNCH “WE THE PEOPLE”	<p>NOT STARTED LIMITED (CURRENT) SUBSTANTIAL COMPLETE</p> <p>(PROJECTED)</p>
	NEXT STEPS	Maintenance and monitoring
	OPEN SOURCE “WE THE PEOPLE”	<p>NOT STARTED LIMITED (CURRENT) SUBSTANTIAL COMPLETE</p> <p>(PROJECTED)</p>
	NEXT STEPS	Continued work on basic implementation

Full text of the commitments

Promote Public Participation in Government

In the United States, we have a government of the people, by the people, and for the people, and the wisdom, energy, and creativity of the American public is the nation’s greatest asset. The United States is committed to expanding opportunities for public participation in government, and will:

- Launch the “We the People” petition platform. Building on President Obama’s desire to hear directly from the American people, the White House has announced that it will launch “We the People” to give Americans a direct line to voice their concerns to the Administration via online petitions. This is a tool to enable the public to create and sign petitions on a range of issues. If a petition meets

a public signature threshold, it will be reviewed by White House policymakers, who will consult relevant Administration officials and provide an official and public response. More information can be found at <http://www.WhiteHouse.gov/WeThePeople>.

- Open source for “We the People.” The White House plans to publish the source code of “We the People” so that it is available to any government around the world that seeks to solicit and respond to the concerns of the public.

What happened?

Both of the “We the People” commitments have been achieved.

The “We the People” e-petitions site was launched in September 2011 and the source code released on August 23, 2012. In essence, the public can petition the



White House by creating or signing a petition.

The White House then responds to petitions that meet a certain threshold of signatures. A response means that the White House makes clear its position on the existing policy issue.

The second part of this commitment dealt with putting the code online in an open source format. The code is now online at GitHub, a repository for online, open source code. It can be accessed at <https://github.com/WhiteHouse/petitions>. This posting allows the code to be used by any individual or country to develop an e-petitions site.

Other, steps were taken following the implementation period.

- Read API: The current code allows users to use and adapt a “read-only” application programming interface (API). This code allows individuals or organizations to send petitions from We the People to other sites (such as industry or civil society group websites).
- Bulk data download: The petitions and accompanying data are now available for a bulk download.¹
- Write API: At the time of writing, this API had not been released, which would allow users to write and sign petitions on websites external to the White House, but still have them appear on the White House site. According to White House staff, this innovation is still in progress.²

Did it matter?

During the assessment period, the site has proved to be an immensely popular innovation with the general public. Since its launch, 7.2 million people registered more than 11.6 million signatures on more than 178,000 petitions. More than 30 percent of these users signed petitions that reached the threshold needed to require a response from the government.³ In fact, the site has become so popular that the number of signatures required to trigger a White House response was increased from 5,000 to 100,000 as of 16 January 2013. At the time of writing, more than 130 official responses to petitions had been released.

Evidence of uptake and use by the public is clear. Whether the commitment influenced government policy or practice is a more difficult question. Clearly the commitment stretched government practice

beyond that which ever existed. The pledge to answer popular petitions created an unprecedented direct channel for mass citizen communication to the federal government. While U.S. citizens have often petitioned their government, the commitment to an official response once the petitions hit a certain level is new and could become quite important.

Policy impacts are difficult to detect, so far. Neither the government, nor the civil society stakeholders interviewed, could identify substantial changes resulting from this website. Minor exceptions were the petition to unlock cell phones from carriers, a petition for White House support for defeat of the Stop Online Piracy Act (SOPA) and Protect Intellectual Property Act (PIPA) legislation, and the attention it drew to “puppy mills.” Few would suggest that these were first-order policy problems. In other cases, the White House has used frivolous or impossible requests as efforts to educate the public, as in the “Deport Piers Morgan” petition (an attack on press freedom), an occasion to discuss freedom of speech and gun violence. (Piers Morgan is a British CNN talk show host who spoke out in favor of gun control.)

So far, this site has made no contribution to the public debate on major issues such as the war in Afghanistan, the budget deficit and debt ceiling battles, gun control, immigration reform or health care implementation. In fact, one government official interviewed said, “I don’t think it’s realistic to see this in the policy process.” That said, the site has delivered what was committed: a direct line to voice concerns and receive an official response.

Finally, there is evidence that the API and bulk data download have been used as evidenced by the 18 apps featured on the White House’s We the People API Gallery. It is unclear if the basic code for We the People has been used for petition platforms in other countries, as envisioned by the original commitment.

Moving forward

A headline in the *Atlantic* said it best: “The White House Petition Site Is a Joke (and Also the Future of Democracy).”⁴ Both citizens and government may yet learn how to use the new technology as a valuable tool in the democratic process.

For the development of the We the People platform, the next steps should include serious reflection on what an e-petition platform can achieve and what it cannot. Important issues might be:

- Does the new technology allow for raising issues that were not previously on the policy agenda?
- How could petitions interface with official policy-making, either in the legislative branch or at the agency level, if at all?
- Is there educational value to the new technology?
- Once interest groups start collecting petitions, will the site turn into just another place for those who try to game the system?
- Will there be a way for the individual to be heard?

With regard to the open sourcing of the code, there has been some innovation, but the site is likely to become even more popular when the public can submit petitions from other sites.

¹United States. "We the People API." Updated September 2013. <https://petitions.whitehouse.gov/developers>

²Leigh Heyman, "There's Now an API for We the People," The White House Blog, 1 May 2013, <http://1.usa.gov/103G2km>.

³Macon Phillips, "Sunshine Week: In Celebration of Civic Engagement," The White House Blog, 13 March 2013, <http://1.usa.gov/WaKnpD>.

⁴Megan Garber, "The White House Petition Site is a Joke (and Also the Future of Democracy)," *Atlantic*, 16 January 2013, <http://bit.ly/S3ST83>.



1.1c | Promote Public Participation in Government: Best- Practices and Metrics for Public Participation

COMMITMENT SUMMARY	
LEAD INSTITUTION	Unclear
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Participation
OGP GRAND CHALLENGES	Increasing public integrity
SPECIFICITY OF GOAL	High
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Continued work on basic implementation

Full text of the commitments

Promote Public Participation in Government

- *Develop best practices and metrics for public participation. We will identify best practices for public participation in government and suggest metrics that will allow agencies to assess progress toward the goal of becoming more participatory. This effort will highlight agencies that have incorporated the most useful and robust forms of public participation to encourage other agencies to learn from their examples.*

What happened?

This commitment has been postponed. According to the government self-assessment, it has not been completed because it will be incorporated into the U.S. government’s overall Digital Government Strategy, or will be published alongside it.

This explanation raises two issues. First, the commitment, as originally phrased was not limited to online participation. Second, at the time of writing

(August 2013), there was no explicit mention of public participation in the draft of the Digital Government Plan.¹

Did it matter?

The development and application of citizen engagement metrics could be significant because currently, implementation and evaluation of participation is uneven across federal agencies. It will be difficult to predict the potential significance of this commitment until implementation begins. It could have a harmonizing effect across agencies in areas of policymaking that are not already covered by regulations mandating participation, such as the Administrative Procedures Act or the Environmental Policy Act.

Moving forward

Next steps for this commitment might include:

- Clarifying the relationship between the Digital Government Strategy and public participation best practices and metrics;

- Publishing the draft of the guidelines;
- Inviting experts, civil society stakeholders, and agency officials to discuss best practices and key metrics; and
- Publishing a revised draft for both online and official participation.

1.2 | Modernize Management of Government Records

COMMITMENT SUMMARY	
LEAD INSTITUTION	Jointly between Office of Management and Budget and the National Archives and Records Administration (NARA)
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	None
OGP VALUES	Accountability
OGP GRAND CHALLENGES	Increasing public integrity
SPECIFICITY OF GOAL	High
ACTION OR PLAN	Make a plan
LEVEL OF COMPLETION	
NEXT STEPS	Extension based on existing implementation

Full text of the commitments

Modernize Management of Government Records

The backbone of a transparent and accountable government is strong records management that documents the decisions and actions of the federal government. The transition to digital information creates new opportunities for records management, but much of government still relies on outdated systems and policies designed during a paper-based world. To meet current challenges, the United States will:

- Reform records management policies and practices across the executive branch. We will launch an initiative that will recommend reforms and require reporting on current policies and practices. The initiative will consider changes to existing laws and ask how technology can be leveraged to improve records management while making it cost effective. The initiative will seek a reformed, digital-era, government-wide records management framework that promotes accountability and performance.

What happened?

This commitment has been completed.

On 24 August 2012, OMB and the National Archives jointly issued the “Managing Government Records Directive” (M-12-18) after gathering significant input from federal agencies and outside groups. The directive includes concrete goals and timetables that begin in 2016 and go to 2019.¹

Civil society organizations felt that although the timelines were long, they were realistic and commendable. Those interviewed were worried that the deadlines are so far out that agencies are at risk of losing or destroying records during the intervening years.²

Did it matter?

This commitment has the potential to change the business of government significantly. The directive officially launches the process, and now the hard work will begin to put it into practice. The transition from paper to efficient electronic record keeping is an undertaking requiring many new systems.

As the Veteran Administration's recent troubles with digitizing large-scale paper records systems illustrates, there needs to be substantial financial and political commitment in this area. This widely-publicized case shows how the absence of modern record keeping can become a significant impediment to serving citizens.³

Moving forward

Because this commitment was to launch a process, future commitments, if they are to be included in a future action plan, could cover:

- Interim steps to ensure progress to 2016;
- Adequate budget to ensure that records can be digitized and systems built to do so;
- Specific proposals for addressing high-profile bottlenecks; and
- Clearer agency guidance on how and when to develop new records management systems.

¹ Managing Government Records Directive, M-12-18, (24 August 2012), <http://1.usa.gov/RJFRwQ>

² Participant at OGP Stakeholder Meeting, 21 May 2013.

³ Leo Shane, "Effort to Integrate DOD, VA Medical Records Draws Criticism," *Stars and Stripes*, 7 February 2013, <http://1.usa.gov/U3loSY>.

1.3a | Freedom of Information Act Administration: Professionalization

COMMITMENT SUMMARY	
LEAD INSTITUTION	Office of Personnel Management (OPM)
SUPPORTING INSTITUTIONS	Department of Justice (DOJ), Office of Government Information Services (OGIS)
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information
OGP GRAND CHALLENGES	Increasing public integrity
SPECIFICITY OF GOAL	Medium
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Extension based on existing implementation

Full text of the commitments

Continue to Improve Freedom of Information Act Administration

The Freedom of Information Act (FOIA) guarantees public access to executive branch agency records that are not exempted from disclosure. The Administration's reforms to date have increased transparency, reduced backlogs, and encouraged disclosure of government information before a FOIA request is made. To improve the administration of FOIA, the U.S. will:

- Professionalize FOIA administration. We will continue work on a new civil service personnel category (or job series) for officials who specialize in administering FOIA and other information programs. It is important to recognize the professional nature of the work done by those administering FOIA.

What happened?

This commitment has been fulfilled.

The commitment sought to create the first specific federal public administration career path for at least

some FOIA specialists. The Office of Personnel Management announced a new civil service personnel category, called the Government Information Series, in March 2012. As of November 2012, 27 agencies employed 229 individuals in FOIA administration.

Did it matter?

This commitment is the start of what could be a substantial improvement over prior practice.

However, in their independent report, civil society groups suggest that the category has not lived up to its promise. Most agencies are simply reclassifying pre-existing job descriptions, rather than creating new, potentially higher-stature, career paths.¹

In particular, they cite the need for collaboration within the agency (between human resources and FOIA personnel), greater education about FOIA and records management among the agency's entire staff, as well as incorporation of FOIA responsiveness into performance reviews for staff.

Moving forward

The next action plan should specify additional steps to further professionalize this career path, based on input from stakeholders.

¹OpenTheGovernment.org. *Civil Society Report on Implementation of the First US National Action Plan*. March 2013. Washington, DC: OpenTheGovernment.org. <http://www.openthegovernment.org/sites/default/files/NAP%20Final%20Evaluation.pdf>

1.3b | Freedom of Information Act Administration: Harness the Power of Technology

COMMITMENT SUMMARY	
LEAD INSTITUTION	Office of Information Policy (OIP) in the Department of Justice (DOJ)
SUPPORTING INSTITUTIONS	DOJ Office of Government Information Services (OGIS)
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information
OGP GRAND CHALLENGES	Increasing public integrity
SPECIFICITY OF GOAL	Medium
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Extension based on existing implementation

Full text of the commitments

Continue to Improve Freedom of Information Act Administration

- *Harness the power of technology. We will expand our use of technology to achieve greater efficiencies in FOIA administration, including utilization of technology to assist in searching for and processing records.*
- *Moreover, as agencies increasingly post information on their websites, we will work to ensure that the information is searchable and readily usable by the public.*

What happened?

This commitment aimed to expand the use of technology for FOIA. It has been fulfilled in the letter, although some reservations remain among members of civil society interviewed.

The Department of Justice improved FOIA.gov, a central website for FOIA requests during the implementation period and with the addition of more agencies now accessible through the website (from six at the initial point of assessment to 29 at the time of writing).

FOIA.gov refers people to agency sites, rather than housing a central repository of FOIA requested information.

Because of the varied needs of different agencies, in terms of level of digitization and budget, OIP has issued guidance and tutorials on how to better use technology.

Did it matter?

In general, there has been some progress on reducing FOIA request backlogs. When the Administration took office, it inherited huge backlogs of FOIA requests. In spite of an increasing number of requests since then, the government has reduced the backlog by 45 percent since 2008. In addition, agencies have improved processing times for requests.

To specifically address this commitment, FOIA.gov presents an online dashboard allowing people to see which agencies have the highest “grant rates” for FOIA and which have the most denials.

FOIA.gov does not, however, solve one of the major problems cited by civil society organizations interviewed during the IRM process: FOIA.gov still refers individuals to separate websites for each of the

more than 100 government offices using the website.² This results in inefficient duplication of requests among agencies. For the non-specialist, who might not be immediately familiar with each of the offices, this complication can mean extensive searching to find the office responsible for a given document. This search adds inefficiency to the government side, as agents must make referrals to other offices.

In a relevant parallel development, several agencies have developed FOIAonline, which provides a central requesting tool and a public repository of requests. The Administration acknowledges the demand for such platforms, but states that, because the project is still in its infancy, expectations should be tempered. A relatively recent study by the FOI Ombudsman for the National Archives and Records Administration found that FOIAonline has the potential to create efficiencies as large as \$200 million by 2017.³

The FOIA-related commitments focus on technology and processing, and do not address several major information access concerns expressed by civil society stakeholders. The first of the persistent systemic issues is that government agencies increasingly declare exemptions in the FOIA law to deny information requests, as documented by the *Washington Post*. In a review of agency websites in the summer of 2012, the Post found that “The federal government was more likely last year than in 2010 to use the act’s exemptions to refuse information. And the government overall had a bigger backlog of requests at the end of 2011 than at the start, largely because of 30,000 more pending requests to the Department of Homeland Security. While the use of exemptions to deny requests fell initially, it rose 10 percent in 2011.”⁴

The denial rate may be linked to the issue of backlogs. The *Washington Post* study of FOIA points out that most of the pending FOIA requests, and the source of the current backlog, are requests at the Department of Homeland Security. No doubt many of these have national security implications. A larger problem with

open government is coming to terms with the competing values of openness and security. In the next stage of this process, leaders of this effort will have to come to terms with the following issue: To what extent do the protocols initiated post 9/11 need to be reviewed?

The Center for Effective Government also raised the issue of widely varying costs for requests among agencies.⁵

A final issue cited was that public servants in the Office of Information Policy (OIP) might have a conflict of interest because OIP is part of the Department of Justice, charged with defending government holdings.⁶

Moving forward

As a consequence of these findings, several new commitments should be undertaken to strengthen FOIA implementation:

- Review the post-9/11 framework for FOIA to identify areas where exemptions, especially in the Department of Homeland Security, and privacy issues need to be refined. This review would include FOIA request denials to determine the extent to which national security issues are contributing to the backlog and whether or not these issues are important enough to deny FOIA requests.
- In addition, as the government improves the FOIA online site, it needs to build in a capacity so that a request for information, if made to the wrong agency, can be routed to the correct agency. This method is in keeping with modern best practice in government known as “the no wrong door” approach.
- The government can develop either a feasibility study or a roadmap for expanding the adoption of FOIAonline or similar approaches, to help usability for the public. Future open government policy should reassess whether the role for coordination of FOIA should continue to be housed at the Office of Information Policy in the Department of Justice.

¹The dashboard is available at: <http://1.usa.gov/1fJKUco>.

²Participant at OGP Stakeholder Meeting, 21 May 2013.

³Mitchell, Kirsten. “FOIA Portal Moving from Idea to Reality,” FOIA Ombudsman Blog, 9 January 2012, <http://1.usa.gov/xrHAeo>.

⁴James Ball, “Obama Administration Struggles to Live Up to Its Transparency Promise, Post Analysis Shows,” *Washington Post*, 3 August 2012, <http://wapo.st/OFFFKY>.

⁵Sean Moulton and Gavin Baker, “Freedom of Information Act Performance, 2012: Agencies Are Processing More Requests but Redacting More Often,” (Center for Effective Government, March 2013), <http://bit.ly/1hFI3B>.

⁶Open the Government Coalition, “FOIA is Looking Great...Through DOJ’s Rose-Colored Glasses,” (22 March 2013), <http://bit.ly/WJJKq8>.

1.4 | Declassify Historic National Security Information

COMMITMENT SUMMARY	
LEAD INSTITUTION	National Declassification Center (National Archives and Records Administration)
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information, Participation
OGP GRAND CHALLENGES	Increasing public integrity
SPECIFICITY OF GOAL	Medium
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Extension based on existing implementation

Full text of the commitments

Declassify Historic National Security Information

In many cases, information that at one time was not made public for reasons of national security can eventually be made available through the declassification process. In Executive Order 13526, "Classified National Security Information," the President established a National Declassification Center to strengthen Open Government by improving coordination among agencies and streamlining the declassification process throughout the federal government. In the next year, the center will:

- Lead a multi-agency effort to declassify historically valuable classified records in which more than one agency has an interest, and to address the backlog of 400 million pages previously accessioned to the National Archives. The center will also oversee the development of standard declassification processes and training to improve and align declassification reviews across agencies. The center will consider public input when developing its prioritization plan, as well as report on its progress, provide opportunities

for public comment in a variety of media, and host at least one public forum to update the public and answer questions.

What happened?

There has been limited progress toward this goal. While a process has been launched and the backlog has been partly addressed, robust implementation of the process may have been beyond the scope of the Administration's capacity during this time. The National Declassification Center (NDC) was established in December 2009 by executive order, before the release of the U.S. OGP National Action Plan. The President then set a deadline of 31 December 2013 for the NDC to eliminate the backlog of almost 400 million pages of classified historical records. This ambitious deadline will not be met. However, the government claims that by the end of 2012 it had completed its assessment of the backlog.¹

Rapid progress toward reduction of the backlog is constrained by the review requirements in the Kyl–Lott Amendment to the National Defense Reauthorization Act (1999). This act requires all agencies "with equity"

(meaning an “interest”) to carry out a page-by-page review of documents that contain “restricted” or “formerly restricted” data. Sufficient resources for reviewing this backlog have never been allocated.²

The commitment also describes the work of the center in training and alignment, but the time frame for this is unclear from the text.

The commitment text refers to the importance of public input in the development of the plan to reduce the backlog and public consultation thereafter. The public consultation was successful. The civil society groups involved gave high marks to the staff members at the National Archives and Records Administration (NARA), who, they remarked, consulted meaningfully throughout the implementation process. In fact, the staff of OpenTheGovernment.org cited this as one of the most exemplary consultations among the commitments.

Did it matter?

Although this item is limited to declassification of historically valuable records, it is at the heart of much of what the government is coping with at the time of this report.

Declassification of historical records takes place in the context where classification and overclassification make many government records publicly inaccessible. According to the *Washington Post*, the volume of material being classified jumped 20 percent in 2011.³ Civil society groups recommend more emphasis on the issue of what should be classified in the first place. This issue may require changes in legislation, given the wide latitude for administrative discretion in deciding which documents should be classified and the relative difficulty of declassification.⁴

While civil society stakeholders interviewed were supportive of NARA and the NDC, they were more critical of agency reluctance to truly engage. They recommend setting up a way for all the agencies with equity in the declassification to view the proposed reclassification at the same time. While NDC has

added an evaluation cycle for the non-backlogged records, it does not seem to have made any impact.

Moving forward

This initiative should be the object of significant policy study. It is clear that, under the existing policy and personnel constraints, the serious declassification backlog will persist.

The Administration needs to lead an interagency process composed of the parts of government that deal with classified material and direct them to develop reforms that would reduce the amount of data classified in the first place and that would streamline the process for declassifying data. This process would include a review of relevant legislation.

Furthermore, if declassification continues to be an important part of the overall initiative, the intelligence community should be represented on the Interagency Working Group.

¹ National Archives and Records Administration, “Bi-annual Report on Operations of the National Declassification Center: Reporting period: July 1, 2012–December 31, 2012,” 22 January 2013, <http://1.usa.gov/1fLqBva>.

² Matthew Aid, “Declassification in Reverse: The U.S. Intelligence Community’s Secret Historical Document Reclassification Program,” *National Security Archive*, 21 February 2006, <http://bit.ly/SLkRVr>

³ James Ball, “Obama administration struggles to live up to its transparency promise, Post analysis shows.” 3 August 2012. Washington, DC: Washington Post.

⁴ Participants at OGP Stakeholder Meeting, 21 May 2013.

1.5 | Support and Improve Agency Implementation of Open Government Plans

COMMITMENT SUMMARY	
LEAD INSTITUTION	Executive Office of the President (the White House)
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information, Participation, Accountability
OGP GRAND CHALLENGES	Increasing public integrity
SPECIFICITY OF GOAL	Low
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Continued work on basic implementation

Full text of the commitments

Support and Improve Agency Implementation of Open Government Plans

The Office of Management and Budget (OMB) Open Government Directive requires agencies to take immediate steps and to establish long-term goals to achieve greater openness and transparency. Over the next year, the United States will:

- Monitor agency implementation of plans. Taking account of the views and perspectives of outside stakeholders, the White House will carefully monitor agency implementation of the plans. As a result, agencies will improve their efforts to disclose information to the public and to make such disclosure useful, identify new opportunities for public participation in agency decisionmaking, and solicit collaboration with those outside government.

What happened?

Through the Open Government Interagency Working Group, the Administration tracked implementation of its initial open government plans. (See Section I, “Background” for an explanation of open government

plans under the Open Government Directive.) White House staff met with representatives from every agency to discuss implementation of their open government plans, and to brainstorm ideas on initiatives for a second version. Agencies released new versions of the plans during the implementation period, mostly in April of 2012. (Some, such as Department of Labor, posted its plan much later, though still within the implementation period. Others, such as the Internal Revenue Service and the Department of Defense suffer from broken website links and the plans are not accessible).

It is unclear from the self-assessment and the White House website exactly what actions were taken to monitor the implementation of the plans. The White House site does have an innovative dashboard which tracks initial implementation.¹ It falls short of providing evidence for this commitment in several respects:

- First, the White House site gave ratings for each agency’s open government plans, along each of the dimensions. These ratings do not, however, reflect the new, updated action plans. (Some agencies,

such as the Department of Commerce, have moved beyond version 2.0.)

- Second, while the ratings analyze each of the agencies plans; they do not review actual delivery of the changes proposed in the action plans.
- Third, underlying data for the ratings are unavailable. While most of the agencies provide easy access to the plans at [www.\[agency_name\].gov/open](http://www.[agency_name].gov/open), fewer have easy access to indicators of implementation.

In sum, these issues make progress tracking and comparison both time and labor intensive and make interagency learning more difficult. This is a lost opportunity, especially for those “flagship initiatives” many of which could be shared between agencies. Additionally, it makes informal mechanisms for influencing agencies either from the White House or from the public less effective.

Did it matter?

The initiative is important because it aims to encourage agencies to adopt specific, new open government goals.

Civil society groups met with several agencies producing open government plans near the time of their publication. The groups concluded that, in general, the lack of responsiveness from the agencies was a sign that these plans were not a White House priority. At the same time, they understood the significant amount of work that went into producing new plans or updating old plans.²

Moving forward

Future action plan goals should specify measures to bolster the official monitoring of agency progress toward their open government commitments.

To fully implement the review and accountability function, monitoring should be built into the ongoing processes of the government. There are two options. One is to build significant staff capacity in the White House itself. By way of comparison, to monitor

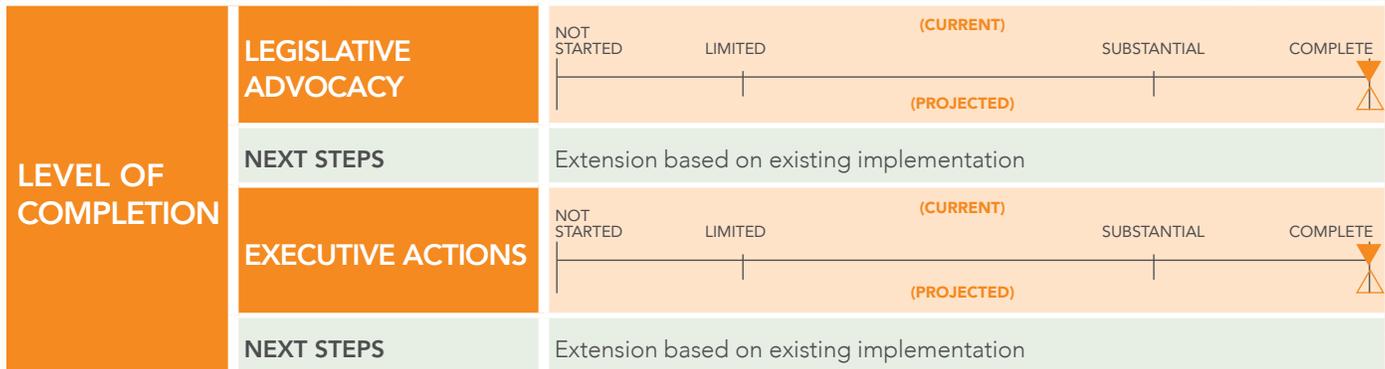
implementation of the National Performance Review’s recommendations, then-Vice President Al Gore’s office had a full-time staff of between 70 and 100 people, in addition to agency staff. A second option is to build a review of these items into the Office of Management and Budget’s (OMB) budget cycle and to make the OMB political associate deputy position responsible for monitoring implementation. Admittedly, positioning the work in OMB would risk having agency staff regard the initiative as another possible budget-cutting proposal.

As components of open government plans are reworked to create more meaningful and realistic goals, agencies could become more enthusiastic about implementation. If open government plans include plans for reducing FOIA backlogs or addressing issues of classification and declassification, they could significantly reinvigorate the process.

¹The White House’s Open Government Dashboard is available at: <http://1.usa.gov/9aFFMq>
²Participants at OGP Stakeholder Meeting, 21 May 2013.

1.6a & 1.6b | Strengthen and Expand Whistleblower Protections for Government Personnel

COMMITMENT SUMMARY	
LEAD INSTITUTION	Executive Office of the President (The White House)
SUPPORTING INSTITUTIONS	None
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Participation, Technology and innovation
OGP GRAND CHALLENGES	Increasing public integrity
SPECIFICITY OF GOAL	High
ACTION OR PLAN	Action



Full text of the commitments

Strengthen and Expand Whistleblower Protections for Government Personnel through Legislative and Executive Actions

Employees with the courage to report wrongdoing are a government’s best defense against waste, fraud, and abuse. Federal law clearly prohibits retaliation against most government employees who blow the whistle, but some employees have diminished protections, and judicially created loopholes have left others without an adequate remedy. To address these problems, we will:

- Advocate for legislation to reform and expand whistleblower protections. Recently, Congress nearly enacted legislation that would eliminate loopholes in existing protections, provide protections for employees in the intelligence community, and create pilot programs to explore potential structural

reforms in the remedial process. The Administration will continue to work with Congress to enact this legislation.

- Explore use of executive branch authority to implement reforms if Congress is unwilling to act. Statutory reform is preferable, but if Congress remains deadlocked, the Administration will explore options for using executive branch authority to strengthen and expand whistleblower protections.

What happened?

Each of these commitments has been completed and was on track for completion at the outset of the action plan process.

On 27 November 2012, the President signed the Whistleblower Protection Enhancement Act (WPEA).¹ It closed loopholes and upgraded protections for federal workers by (1) bringing more areas of worker reporting



under protection of the law; (2) improving procedures when whistleblowers file claims for retaliation; and (3) giving new administrative powers to various federal offices to advocate on behalf of whistleblowers.

The law did not, however, extend protection broadly to the national security agencies (with the notable exception of the Transportation Safety Administration). When it became clear that Congress would not institute these measures, the President issued Presidential Policy Directive 19 (PPD 19), extending whistleblower protections to the national security and intelligence communities in October 2012.² This measure is intended to bolster *internal* governmental channels for officials to report possible waste, fraud, or abuse, outside their normal channels of authority. Specifically, the directive expands the coverage of whistleblower protections to national security and intelligence officers, provides them a list of rights in cases of reprisal, and creates a framework for filing internal complaints against reprisals.³

Did it matter?

This issue is at the heart of many of the political problems the Administration is facing at the time of writing. Although these improvements to whistleblower protection are significant, the Department of Justice has prosecuted a record number of individuals who considered themselves to be whistleblowers.⁴ Evaluating these developments falls outside of the scope of the IRM, but they do point to the controversial political context in which these commitments were addressed.

Civil society groups interviewed in the process of preparing this report gave the Administration high marks in implementing this commitment, making clear that these commitments were a “very heavy lift for the Administration, requiring a lot of sign-off from security agencies.”⁵ Indeed, the Presidential directive was initially an internal document for the White House and relevant agencies, but was made public after pressure from civil society groups.

Civil society groups lauded expansion of protection to a larger number of workers, the expanded definitions of whistleblowing in terms of “waste, fraud, and abuse,” and the enumeration of rights and procedures given to national security and intelligence personnel.

Conversely, a number of issues frustrated the groups, limiting their unequivocal “kudos” to the Administration:

- *Limited consultation in developing the plan and public oversight over implementation.* The PPD will continue to be implemented with only internal oversight. This rule means that there is no required reporting on cases or dialogue with watchdog groups. As a result, whistleblower advocates, to assess implementation, will need to continue to rely on Congress and on those whistleblowers who go outside the procedures established by PPD 19.
- *Excessive amounts of discretion allowed in applying the PPD.* PPD 19 contains a complex set of rights and procedures that will apply differently across agencies. (The provision on the Inspectors General Panel, for example might not apply to the National Security Agency, which does not have such a position.)
- *Lack of education for employees covered by the PPD.* Given the initially nonpublic nature of the document, many employees covered by PPD 19 may not know their rights under the directive.
- *The internal-to-agency system for whistleblower protection.* There are potential conflicts of interest with regard to Inspector General (IG) roles in reviewing alleged cases of retaliation, given that the IGs are responsible for establishing a panel for review of reprisal, but often report to agency heads. Agency heads, in turn have the discretion to take or not take actions based on the IG panel’s recommendations.
- *Growth of the national security state.* Civil society groups have argued that a growing number of federal workers have been reclassified as “sensitive,” meaning that they are moved from the relatively robust whistleblower protections under the WPEA and the Merit-Based Performance System to the weaker protections under PPD 19. Many of those who were moved, according to the Project on Government Oversight do not handle classified documents. An ongoing court case deals with this reclassification issue. According to civil society, an appeal by the Administration after the court found the reclassification excessive erodes faith in the Administration on this issue. Additionally, with the growing classification of documents, issues that previously might not have invoked whistleblower protections will need to do so.

- *Continued exemption for national security and intelligence contractors.* PPD 19 does not provide whistleblower protections to private contractors who work for national security and intelligence agencies, even though they constitute a significant part of the workforce carrying out federal government operations.
- *Limited ability to report to members of Congress.* Whistleblowers covered by the PPD can only report to congressional committees with formal jurisdiction over security issues. Watchdog groups worry that many of these legislative committees are too close to the agencies to provide a valuable outlet.

Moving forward

This commitment has been delivered and significant protections have been enhanced. Yet, further commitments will need to be undertaken to address some of the larger issues brought up during this review and elsewhere.

Specifically:

- A high-level multi-sector working group, perhaps convened by the National Security Council, can consider and identify the major drivers of leaks and whistleblowing cases, including overclassification of documents and limited procedural options for certain classes of workers. This team would be able to establish a sequence of executive actions to begin to address the issues that are undermining whistleblower protection currently. Civil society groups have identified a long list of reforms that might be a starting point for such an action.

¹ Dylan Blaylock, "President Signs Whistleblower Protection Enhancement Act (WPEA)," Government Dylan Accountability Project Blog, 27 November 2012, <http://bit.ly/RgTeVn>.

² <https://www.fas.org/irp/offdocs/ppd/ppd-19.pdf>.

³ "Protecting Whistleblowers with Access to Classified Information," Presidential Policy Directive/PPD-19, 10 October 2012, <http://bit.ly/11TqwZ1>.

⁴ Phil Mattingly and Hans Nichols, "Obama Pursuing Leakers Sends Warning to Whistle-Blowers," Bloomberg, 17 October 2012, <http://bloom.bg/Ralbdz>.

⁵ Angela Canterbury, Project on Government Oversight (POGO), interview with the IRM, September 2013.

⁶ *Berry vs. Conyers and Northover* under Acting Director Berry is now referred to as *Kaplan vs. Conyers and Northover*.

⁷ Angela Canterbury, interview, September 2013.

⁸ OpenTheGovernment.org, "Whistleblowers," in "Mapping an Open Government Legacy: Draft of the Second National Action Plan," <http://bit.ly/1c8DiOp>.

1.7 | Enhance Enforcement of Regulations through further Disclosure of Compliance Information

COMMITMENT SUMMARY	
LEAD INSTITUTION	Environmental Protection Agency, Occupational Safety and Health Administration, National Transportation Safety Board
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information, Accountability, Technology and innovation
OGP GRAND CHALLENGES	Increasing public integrity
SPECIFICITY OF GOAL	Medium
ACTION OR PLAN	Develop a plan
LEVEL OF COMPLETION	
NEXT STEPS	Continued work on basic implementation

Full text of the commitments

Enhance Enforcement of Regulations through further Disclosure of Compliance Information

From highway safety and clean air to workers' safety and toxic chemicals, smart regulations cannot work without effective enforcement. Disclosure of regulatory compliance information helps foster fair and consistent enforcement of important regulatory obligations. The President issued a memorandum requiring federal enforcement agencies to make public compliance information easily accessible, downloadable, and searchable online. In the next year, federal agencies will:

- Provide enforcement and compliance data online. Agencies will continue to develop plans for providing greater transparency about their regulatory compliance and enforcement activities, and look for new ways to make that information accessible to the public.

What happened?

The IRM finds progress on this commitment to be limited.

The President issued a "Memorandum on Regulatory Compliance"¹ on 18 January 2011. The memorandum directed "agencies with broad regulatory compliance and administrative enforcement responsibilities to make the data available online within 120 days."

A number of agencies—the Environmental Protection Agency (EPA), Department of Transportation, Department of Commerce, and the Food and Drug Administration (FDA)—developed plans to meet the requirements set out by the memorandum prior to the implementation period assessed in this report. The FDA updated its plan and provided a summary of public comments on the action plan during the implementation period. For that reason, it seems that most relevant agencies did not "continue to develop plans" during the implementation period.

Did it matter?

The EPA has a well-developed website, Enforcement and Compliance History Online (ECHO), which could be a model for other agencies looking to put law enforcement data online. However, it is not clear what

advances were undertaken during the implementation period to move implementation of ECHO forward. Where there was forward movement, it is not clear that it can be attributed to this commitment.

In some sense, this is a lost opportunity as some U.S. agencies (such as EPA and the Occupational and Safety Hazards Administration) are world leaders in providing this very useful data to scientists, communities, and activists who may often work in concert with law enforcement officers.

Moving forward

The IRM recommends that official enforcement and compliance data sets be prioritized for future disclosure. These data sets can create efficiencies in law enforcement by bringing in the watchful eyes of citizens to sort through much of the self-reported industry data, they can also help law enforcement set priorities by establishing where violations are most often occurring, and they can ensure that law enforcement officers and inspections officers are carrying out their statutory duty.

Progress toward meeting this commitment appears to require increased dedication of funds. The establishment of an interagency working group should be encouraged.

As a stretch goal, the United States might also consider a universal corporate ID. Many facilities owned by parent companies use different IDs. By introducing and adopting a universal corporate ID, agencies would allow various facilities and violations to be tied together by controlling interest where applicable. This ID would serve to unify much of the health and safety data across databases.

Another stretch goal might be to have leading U.S. agencies share enforcement and compliance data systems with other countries, as the United States is currently a global leader in this area.

¹Regulatory Compliance Presidential Memorandum, Federal Register 76, no. 14 (18 January 2011), <http://1.usa.gov/fDzDCi>.

1.8 | Increase Transparency of Legal Entities Formed in the United States

COMMITMENT SUMMARY	
LEAD INSTITUTION	Executive Office of the President
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information
OGP GRAND CHALLENGES	Increasing public integrity, Increasing corporate accountability
SPECIFICITY OF GOAL	Low
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Significant revision of the commitment

Full text of the commitments

Increase Transparency of Legal Entities Formed in the United States

Legal entities can provide access to the international financial system for illicit actors and may frustrate financial investigations. To increase transparency over the next year, we will:

- *Advocate for legislation requiring meaningful disclosure. As a critical element of a broader strategy to safeguard the international financial system from abuse of legal entities, the Administration will advocate for legislation that will require the disclosure of meaningful beneficial ownership information for corporations at the time of company formation.*

What happened?

As the government self-assessment states, there has been significant effort by the Obama White House to advocate legislation to release data on beneficial (ultimate) ownership of corporations. The Administration cleared three legislative proposals in 2010 that would have required transparency of legal entity ownership. They supported Senate Bill 2956, the

“Incorporation Transparency and Law Enforcement Assistance Act,” which was referred to the Homeland Security and Government Affairs Committee twice and died there. Sen. Carl Levin (D-Michigan) reintroduced the bill in August 2011 as Senate Bill 1483 and a companion bill was introduced in the House of Representatives as House Resolution 3416 in November 2011. They also died in committee.

Civil society groups interviewed were not aware of sustained legislative advocacy on the part of the White House. The Department of Treasury had limited engagement with Sen. Levin’s staff and Sen. Thomas Carper’s (D-Delaware) staff, as well as Delaware state officials. (Delaware plays a key role as the state where many U.S. corporations are registered.) The Department of Justice also made remarks before the House Judiciary Committee and at an international conference.¹

During later parts of the implementation period, already limited efforts to advocate for legislation waned. The government self-assessment states that industry interest groups resisted the proposal, claiming that such information would be “burdensome to

states, costly to administer, and hamper legitimate company formation services.”² It is clear from the self-assessment, however, that many in the Administration still feel that such information is key to reducing financial crimes and reducing risk in the international financial system.

In the absence of legislation, the Administration has taken actions not covered by the letter of the commitment, but in the spirit of the commitment. During 2012, the government issued an “advance notice for proposed rulemaking.” The rule that may come from this process could lead to financial institutions being required to collect beneficial ownership information of their corporate clients.³ Such a rule would not gather that information from companies at the time of formation, as described in the commitment, but rather on existing companies. At the time of writing, based on their discussions with White House officials, civil society organizations feel that the intent of Treasury is to make this information available only to regulators, rather than to members of the public. While this would be a major step forward for increasing regulators’ capacity to pursue financial crimes, it is not clear how the actions would have the necessary public interface required to make it relevant to the values of the Open Government Partnership.⁴ The United States, as a member of the inter-governmental Financial Action Task Force, has been criticized for not meeting the international standard of collecting bank information.⁵

The government self-assessment also references work in March 2013 (after the new legislative session had begun and outside of the period of assessment for this report) to reintroduce legislation. It is unclear whether the White House has carried out any actions during the 2013 calendar year to advocate this legislation in committees with jurisdiction. The new legislation seems to lack even the modest support (through blog posting) shown by Treasury and Justice during the last round of legislative advocacy.

Did it matter?

This commitment did not have a significant impact because it was, by and large, unimplemented. If fully implemented, such legislation could aid in regulating risky financial behavior and put limits on the formation of shell companies in the United States and elsewhere.

The U.S. government demonstrated its interest in improving regulatory and enforcement capacities. Even before 9/11 and the 2008 financial crisis, Treasury, especially, had been interested in understanding company ownership and formation in order to fight drug cartels. After 9/11, substantial resources have been expended to understand the sources of money in the war on terror. Additionally, the focus of the Group of Eight (G-8) countries for the UK chair year is on promoting tax compliance and improving transparency. Enhanced citizen oversight through improved transparency could help bolster the regulatory capacity and empower officials to carry out law enforcement activities.

Moving forward

Several new elements could strengthen the prospects for legislation that would mandate public disclosure of corporate ownership:

- Bring in the international law enforcement community to clarify what public disclosure measures would increase their capacity to pursue financial crimes, and to help respond to the objections of business interests.
- Carry out a broader campaign to get senators with appropriate jurisdiction to support the bill.
- Consult with state government officials, such as attorneys general, to increase support for the bill. Consider advocacy by the Vice President of the United States to ensure that legislators from states with significant interest are able to engage in this topic.
- Continue with measures to require banks to collect company information on current and new companies concurrent with the recommendations of the intergovernmental Financial Action Task Force (which has criticized the United States for not meeting standards).

In the absence of legislation, regulatory requirements to enhance disclosure of company information to the public, even if only information gathered from financial institutions, would be consistent with the U.S. commitment to OGP values.

¹Stefanie Ostfeld, Global Witness, personal communication with the IRM, September 2013.

²United States. The Open Government Partnership: Government Self-Assessment Report for the United States of America. 29 March 2013. Washington, DC: United States. Page 22.

³For example: <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Terrorism-and-Financial-Intelligence.aspx>.

⁴Nathaniel Heller, Global Integrity, personal communication with the IRM, September 2013.

⁵Stefanie Ostfeld, Global Witness, personal communication, September 2013.



2 | OPEN GOVERNMENT TO MANAGE PUBLIC RESOURCES MORE EFFECTIVELY

2.1a & 2.1b | Natural Resource Revenue: Implement Extractive Industries Transparency Initiative and Disclosing Revenue Collection

COMMITMENT SUMMARY	
LEAD INSTITUTION	U.S. Department of the Interior
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information, Public participation, Accountability
OGP GRAND CHALLENGES	More effectively managing public resources
SPECIFICITY OF GOAL	High
ACTION OR PLAN	Both

LEVEL OF COMPLETION	IMPLEMENTING EITI	<p>NOT STARTED LIMITED (CURRENT) SUBSTANTIAL COMPLETE</p> <p>(PROJECTED)</p>
	NEXT STEPS	Continued work on basic implementation
	REVENUE COLLECTION PLANNING	<p>NOT STARTED LIMITED (CURRENT) SUBSTANTIAL COMPLETE</p> <p>(PROJECTED)</p>
	NEXT STEPS	Continued work on basic implementation

Full text of the commitments

Implement Extractive Industries Transparency Initiative and Disclose Revenue Collection

The Extractive Industries Transparency Initiative (EITI) has developed a voluntary framework under which governments publicly disclose their revenues from oil, gas, and mining assets, and companies make parallel disclosures regarding payments they make to obtain access to publicly owned resources. These voluntary disclosures are designed to foster integrity and accountability when it comes to development of the world's natural resources. This Administration:

- Commits to implement the EITI to ensure that taxpayers are receiving every dollar due for extraction of our natural resources. The United States is a major developer of natural resources. It collects

approximately \$10 billion in annual revenues from the development of oil, gas, and minerals on federal lands and offshore, and disburses the bulk of these revenues to the U.S. Treasury, with smaller portions disbursed to five federal agencies, 35 states, 41 American Indian tribes, and approximately 30,000 individual Indian mineral owners. By signing onto the global standard that EITI sets, the U.S. government can help ensure that American taxpayers are receiving every dollar due for the extraction of these valuable public resources.

- Will work in partnership with industry and citizens to build on recent progress. The Administration has already made important strides in reforming the management of our natural resources to ensure that there are no conflicts of interest between the pro-



duction and the collection of revenues from these resources. Signing onto the EITI initiative will further these objectives by creating additional “sunshine” for the process of collecting revenues from natural resource extraction. Industry already provides the federal government with this data. We should share it with all of our citizens. Toward that end, the federal government will work with industry and citizens to develop a sensible plan over the next two years for disclosing relevant information and enhancing the accountability and transparency of our revenue collection efforts.

What happened?

The U.S. government has joined the EITI. Following development of its EITI plan, the next step is to submit itself to move from “candidate” status to EITI “compliant” standard.

Civil society, government, and industry representatives have been involved in the U.S. EITI Advisory Committee (officially convened under the Federal Advisory Committee Act guidelines).¹ The government held two public comment periods, seven listening sessions (Anchorage, Denver, Houston, New Orleans, Pittsburgh, St. Louis, and Washington, DC), a webinar, and a workshop. In this sense, this commitment is distinguished by the amount of outreach and participation in comparison with many of the other commitments.

During much of the implementation period, the Department of Interior dedicated its efforts to formation of a multisectoral advisory committee, which will develop the U.S. plan to submit for its candidacy to EITI.²

This committee began formally meeting after the implementation period assessed in this report. Its proceedings, however, are worth noting. In the committee’s first meeting (February 2013) participants unearthed a variety of issues.

- Should the EITI standards apply to state and local revenues as well as to federal revenues?
- Should revenues be monitored at the point of extraction or at the point of processing?

- Are current systems for reporting data adequate?
- Are there other sectors, such as forestry, that should be included in addition to traditional ones such as oil and gas?

The committee held several meetings.³

Did it matter?

The EITI is a collaborative multistakeholder process that brings governments and companies into compliance with a standard of data reporting around extractives revenues. While important, it is overshadowed domestically and internationally by events surrounding Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. That law “requires that the Securities and Exchange Commission (SEC) issue final rules by 17 April 2011 requiring each “resource extraction issuer” to include in its annual report filed with the SEC certain information regarding payments made to the U.S. and foreign governments in furtherance of commercial development of oil, natural gas, or minerals.”⁴ The act is distinguished by its legal nature (EITI is voluntary), the broad coverage of companies, and the specific types of data required that are not required by EITI.

This national law promised to make natural resource revenue payments more transparent worldwide. An initial set of rules was published in August 2012; in July 2013, however, a U.S. District Court ruled that the SEC reconsider Section 1504 of Dodd-Frank, arguing that it required industry to give out too much information to the public. While this ruling was a setback for advocacy groups, the section was not thrown out entirely. The court’s ruling affected only current SEC regulations, not the law itself, and thus this issue is still alive.⁵

Moving forward

The next step toward this commitment is for the U.S. government to complete its preparation and to submit its candidacy as an EITI country.

Additionally, much of the U.S. role as a world leader in revenue transparency will depend on the level of advocacy and support the government is willing to put into the still-disputed regulations around Section 1504 of Dodd-Frank. This advocacy extends beyond

the Administration to the SEC. However, sustained White House support for new SEC regulations in the face of considerable opposition may improve U.S. performance in the EITI by complementing the voluntary reporting standards of EITI with the mandatory reporting requirements under Dodd-Frank.

¹<http://www.doi.gov/eiti/upload/members-2.pdf>

²A constantly updated list of members of this committee is available at: <http://on.doi.gov/1dXPJdN>.

³Minutes of the meetings are available at <http://www.doi.gov/eiti/FACA/meetings.cfm>.

⁴John Elofson and Ryan McGee, "Dodd-Frank Act Disclosure Rules for Extractive Industries Effective Today," *Davis Graham & Stubbs LLP Finance & Acquisitions Alert*, 20 August 2010, <http://bit.ly/15NT75J>.

⁵Stella Dawson, "Advocacy Groups Place Hope on SEC Sharpening Its Rules after Court Strikes Blow to Extractives Disclosure," (Thomson Reuters Foundation, 2 July 2013), <http://bit.ly/18SKlaA>.



2.2 | Increase Transparency in Spending by Applying Lessons from the Recovery Act to All Federal Spending

COMMITMENT SUMMARY	
LEAD INSTITUTION	Government Accountability and Transparency Board (GATB)
SUPPORTING INSTITUTIONS	The Recovery Accountability and Transparency Board, Office of Management and Budget, US Department of the Treasury
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information, Accountability
OGP GRAND CHALLENGES	More effectively managing public resources
SPECIFICITY OF GOAL	High
ACTION OR PLAN	Develop a plan
LEVEL OF COMPLETION	
NEXT STEPS	Extension building on existing implementation

Full text of the commitments

Open Government to Manage Public Resources More Effectively

Increase Transparency in Spending by Applying Lessons from the Recovery Act to All Federal Spending

The Administration has provided the public detailed information about stimulus spending (*Recovery.gov*), federal procurement, and financial assistance spending, down to the subaward level for grants and contracts (*USAspending.gov*), the accuracy of payments to nonfederal recipients to reduce fraud, waste, and abuse (*Paymentaccuracy.gov*), and federal information-technology spending (*it.usaspending.gov*). In the coming year, the United States will:

- Provide strategic direction to increase transparency. On 13 June 2011, the President furthered his commitment to federal spending transparency in Executive Order 13576, which established the new Government Accountability and Transparency Board (GATB). Within six months of its establishment, the GATB was to provide a report to the President

recommending concrete steps that can be taken to achieve the goals of the executive order. The report will focus on integrating systems that collect and display spending data, ensuring the reliability of those data, and broadening the deployment of cutting-edge technologies that can identify and prevent fraud.

What happened?

This commitment was implemented. The Government Accountability and Transparency Board (GATB) provided a report to the President recommending concrete steps to achieve Executive Order 13576.¹ The report covered the required areas of “integrating systems that collect and display spending data, ensuring reliability of data, and broadening the deployment of cutting-edge technologies that can identify and prevent fraud.” In addition, it made recommendations to unify important spending data into a cloud-based system and to develop a universal award ID for contractors.

It is notable that the civil society evaluation of this



commitment gave low marks for public consultation and collaboration because much of the commitment action had already been completed prior to its inclusion in the national action plan.²

Did it matter?

Following on the development of the strategy, the GATB can be credited with a number of outcomes following implementation. Based on the information gathered, in part, by centralizing other databases, the board launched a “Do Not Pay”³ tool to help the federal government avoid improper payments and the Office of Management and Budget (OMB) directed agencies to check a “Do Not Pay List”⁴ before issuing an award.

At the time of writing, the government committed itself to develop a plan with civil society to make USAspending.gov as useful as possible. It remains to be seen through the end of 2013 how much progress will be made. As it stands, USAspending.gov, provides data on financial assistance and contract awards easily searchable by state or by policy area. These data have always been public but this site should make them much easier to see.

One area where progress is unclear based on the government’s self-assessment is the creation of unique award IDs for grants. These IDs would allow faster tracking of spending and outcomes of individual grants. The civil society assessment (March 2013) of unique award IDs states that OMB had received input from agencies on how to proceed, but had not yet issued guidance.

Moving forward

While this commitment is formally completed, continued work on implementation should focus on developing and applying the unique award ID. If other future commitments are to cover priority setting or implementation under the GATB, a more collaborative process with stakeholders, including journalists, who would carry out such assessments, would be appropriate.⁵

¹Government Accountability and Transparency Board, “Report and Recommendations to the President,” (December 2011), <http://1.usa.gov/rSdHWG>.

²The Open Government Partners civil society evaluation of this commitment is available at: <http://bit.ly/174UahV>.

³The Treasury’s “Do Not Pay” tool is available at: <http://donotpay.treas.gov/>.

⁴Reducing Improper Payments through the “Do Not Pay List,” Directive M-12-11, (12 April 2012), <http://1.usa.gov/18SMp2m>.

⁵Participants at OGP Stakeholder Meeting, 21 May 2013.

2.3 | Increase Transparency of Foreign Assistance

COMMITMENT SUMMARY	
LEAD INSTITUTION	Office of Management and Budget
SUPPORTING INSTITUTIONS	U.S Agency for International Development (USAID), Department of State
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information, Accountability
OGP GRAND CHALLENGES	More effectively managing public resources
SPECIFICITY OF GOAL	Medium
ACTION OR PLAN	Both
LEVEL OF COMPLETION	
NEXT STEPS	Continued work on basic implementation

Full text of the commitments

Increase Transparency of Foreign Assistance

Greater foreign aid transparency promotes effective development by helping recipient governments manage their aid flows and by empowering citizens to hold governments accountable for the use of assistance. Increased transparency also supports evidence-based, data-driven approaches to foreign aid (assisted, where appropriate and feasible, by the use of randomized controlled experiments). Building on these commitments, the United States will:

- Release and implement government-wide reporting requirements for foreign aid. These requirements will direct all federal agencies that administer foreign assistance to provide timely and detailed information on budgets, disbursements, and project implementation. Agencies will be responsible for providing a set of common data fields that are internationally comparable. The information collected through this initiative will be released in an open format and made available on a central portal—the Foreign Assistance Dashboard (ForeignAssistance.gov)—that will be updated quarterly.

What happened?

This commitment has seen limited implementation.

The first aspect of the commitment, on reporting requirements, has been completed. The Office of Management and Budget has issued government-wide reporting requirements and is dedicating a full-time team to work on its implementation. Bulletin 12-01 directs agencies to publish their data to the Foreign Assistance Dashboard.

In terms of implementation, the dashboard is up and running and will expand over time to cover more agencies. Three agencies (the U.S. Agency for International Development (USAID), Millennium Challenge Corporation, and Department of Treasury) had data on the Foreign Assistance Dashboard at the end of the implementation period assessed.¹ This has since been expanded to five agencies (to include Department of Defense and Department of State). This represents a portion of total U.S. official development assistance, much of which goes out through 15 other agencies.

In December 2012, the United States agreed to publish its data under the International Aid Transparency Initiative (IATI) guidelines.² Partial information from USAID has been filed to meet compliance with IATI guidelines.³

Following the implementation period assessed in this report, Congress introduced the Foreign Aid Transparency and Accountability Act. This act would strengthen implementation of this commitment by establishing uniform guidelines for aid reporting and ensuring that the Foreign Assistance Dashboard is periodically updated. The bill was still in committee at the time of writing (September 2013).

Did it matter?

The potential benefits of increasing aid transparency are significant for highly indebted poor countries and for aid-dependent governments. Increasing aid transparency down to the country and program level will better allow both policymakers and citizens to track receipts and expenditures of aid, potentially reducing the opportunity for waste, duplication, and corruption. It will also allow aid-recipient governments to better coordinate donor investment and allow donor countries to harmonize those investments.

The foreign aid community of nongovernmental organizations has been watching implementation carefully. They have praised the efforts of the Millennium Challenge Corporation, which they see as a model for other agencies, while criticizing the bottleneck at the State Department in getting data transferred to the IATI system.

In spite of the existence of an interesting and easy-to-navigate dashboard, the stakeholders interviewed were pessimistic about the progress on this issue. One person stated that “there is no political will” and another that the State Department team in control of this process was a “bottleneck” impeding further progress and that it was “consumed by the interagency process.”

Moving forward

Continued implementation of this commitment is warranted. Specifically, the United States can expand coverage of the data gathering to more aid agencies and build the IATI reporting requirements into the information technology systems for reporting at each agency to lessen the reporting burden.

The data provided currently is only disaggregated to the program or project level by USAID. For this information to be truly useful to country advocates or international networks, it will need to be disaggregated for all relevant agencies at the country level, by contractor, and by geography.

Further implementation of this initiative faces the challenge posed by the multiple, sometimes competing objectives that drive U.S. foreign aid policy, including aid effectiveness, country ownership, and geopolitical goals. This tension, inherent in U.S. aid policy, will inevitably be at the core of bureaucratic resistance to full transparency. To deal with it, the contribution of aid transparency to improving aid effectiveness and governance at the national level should be made clearer.

¹The Foreign Assistance Dashboard is available at: <http://foreignassistance.gov/>.

²International Aid Transparency Initiative (IATI). “The IATI Standard.” September 2013. <http://iatistandard.org/>

³“Guidance on Collection of U.S. Foreign Assistance Data,” Bulletin 12-01 (25 September 2012), <http://1.usa.gov/OqjeV>.

2.4 | Create a More Effective and Responsive Government–Performance.gov

COMMITMENT SUMMARY	
LEAD INSTITUTION	Executive Office of the President
SUPPORTING INSTITUTIONS	Forty government agencies reporting on performance.gov. Full list: http://goals.performance.gov/agencies
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Accountability
OGP GRAND CHALLENGES	More effectively managing public resources
SPECIFICITY OF GOAL	Medium
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Significant revision of the commitment

Full text of the commitments

Create a More Effective and Responsive Government—Performance.gov

Responding to the President’s challenge to cut waste, save money, and better serve the American people, Performance.gov provides a window on the Administration’s approach to improving performance and gives the government and the public a view of the progress underway in cutting waste, streamlining government, and improving performance. Over the next year, the United States will:

- Improve government performance and accountability. We will continue to improve the website, including adding data on other government-wide management initiatives. In particular, the site will be updated to meet the requirements of the recently enacted Government Performance and Results Modernization Act [GPRMA], which requires regular progress updates on the top agency-specific performance goals.

What happened?

This commitment is complete. Performance.gov is

up and running and has seen improvements during the implementation period. Cross-agency goals and other government performance plans were added to the site. Agencies have added Sustainability and Energy Scorecards and human resources data to the website. It is not fully compliant with the GPRMA at this time, because the timeframe for fully meeting Office of Management and Budget (OMB) directions for compliance stretch until 2015.

Based on the language of both the government self-assessment and the civil society report, significant work needs to be done to aid navigation and improve user experience.

Did it matter?

The information available on Performance.gov is thorough. The site allows citizens to track agency goals and see progress over time. It is difficult, however, to carry out cross-comparisons on agency performance, even on shared goals. Additionally, underlying data for some of the metrics are not clear.

For civil society groups, it was important that agency performance goals were stated as outcomes,

rather than program outputs (e.g., improvements in student health, rather than number of school lunches subsidized). They reported in their independent assessment that there had been significant progress in this area, with many, if not most agency goals now stated in terms of their intended result.

A bigger question looms for the implementers of the commitment: Who are the users of Performance.gov? What information do they need and what will they do with this information? Will it improve agency performance? Until these questions are answered and the user experience is updated to reflect user needs, Performance.gov runs the risk of serving as a general library of agency plans rather than as a tool for improved accountability. This danger was evidenced during the IRM process by the general lack of interest in this commitment by stakeholders interviewed.

Moving forward

Performance.gov makes important data available and has the potential to make many of the internal workings of agencies more transparent. Its most substantive problem goes beyond the scope of this recommendation: the data, no matter how accessible, are not often used for management or political accountability. In addition, some of the goals are too vague to be measured. These problems, however, have plagued the performance movement since its inception two decades ago, and are not easily solved by a website.

As a consequence, if Performance.gov continues in the OGP action plan as part of a framework for accountability to the public, responsible entities will need to better understand how that accountability will function, who are the potential users of the information, and how they will use it.

3 | OPEN GOVERNMENT TO IMPROVE PUBLIC SERVICES

3.1 | Expand Public Participation in the Development of Regulations

COMMITMENT SUMMARY	
LEAD INSTITUTION	eRulemaking Program Management Office (managed by the U.S Environmental Protection Agency)
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Participation
OGP GRAND CHALLENGES	Improving public services
SPECIFICITY OF GOAL	Medium
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Extension building on existing implementation

Full text of the commitments

Expand Public Participation in the Development of Regulations

For two and a half years, the Administration has promoted public participation in rulemaking, which covers such diverse subjects as energy, education, homeland security, agriculture, food safety, environmental protection, health care, and airline and automobile safety. In January 2010, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," which requires timely consultation with affected stakeholders and the use of Regulations.gov, an online portal to view and comment on pending regulations "in an open format that can be easily searched and downloaded." In the next year, the United States will:

- Overhaul the public participation interface on Regulations.gov. We will revamp public commenting mechanisms, search functions, user interfaces, and other major features to help the public find, follow, and participate in federal rulemakings. In this way,

we will ensure what the President has called "an open exchange of information and perspectives."

What happened?

One of the key opportunities for the public to participate in shaping federal policy comes in the formation of regulations or "rulemaking." Regulations.gov, operated by the EPA on behalf of 39 federal agencies has been up and running since 2003. The site has enabled members of the public to participate more actively in rulemaking by enabling searches of the Federal Register and to register public comments on proposed federal actions. While some regulations receive little to no commentary, some more popular ones can generate extensive activity, from over 700 comments on glyphosate pesticide tolerance¹ to more than 70,000 on endangered species status for chimpanzees.²

A number of criticisms of this website have been raised over the years that are relevant to the public participation interface, including:

- Public comments were not readily displayed at the time of writing.
- The site cannot receive comments from outside websites and other websites cannot easily extract notices and comments from the website.
- The site does not demonstrate how commenting affects the outcomes of rulemaking.
- The site does not adequately educate users about the rulemaking process.

Significant changes have been made to this flagship website in accord with this commitment. While some of the public demands (such as immediate display of comments) were not met in the redesign of the site, others seem to have been taken into account.

Specifically, the commitment activities created a “read” automated programming interface (API), allowing other sites to access comments and notices. At the time of writing (September 2013), a “write” API allowing users to comment from other sites was not completed.

The eRulemaking team added information on how commenting on rulemaking can make an impact and, perhaps most importantly for the average user, provided an easy-to-find “Learn” section on the website which explains the sometimes arcane rulemaking process in lay terms. Helpfully, they provided a “commenter checklist,” which may improve the quality of public comments received.

Did it matter?

Notably, the read API allowing other sites to access comments and notices has been used in the innovative tool “Scout,” which allows users to receive emails or text alerts on issues of importance to them.³ Similarly, the Sunlight Foundation has developed “Docket Wrench,” which allows the user to track and compare similar comments made for a regulation.⁴ This tool allows users to weed out repeated comments (e.g., where organizations have members send form letters to the agency) from comments that are more unique and potentially more substantive.

It is unclear exactly how these changes might affect the rulemaking process at this point. Nonetheless, the APIs have the potential to enable efficiency in analysis of comments and to involve a greater number of people through notification.

Moving forward

Continued work on this flagship website should:

- Continue to build the write API while taking steps to ensure that organizations do not “game the system” by flooding the site with repetitive comments.
- Consider internalizing some of the public notification systems (“push” notifications) pioneered by nonprofits such as Sunlight Foundation that may encourage wider participation by impassioned individuals and organizations.
- Continue to educate the public on how the commenting process can influence rulemaking outcomes.

¹This example is available at: <http://1.usa.gov/1576ZdU>.

²This example is available at: <http://1.usa.gov/11Q8k7f>.

³This tool is available at: <https://scout.sunlightfoundation.com/>.

⁴This tool is available at: <http://docketwrench.sunlightfoundation.com/>.

3.2a | Data.gov: A Platform to Spur Innovation

COMMITMENT SUMMARY	
LEAD INSTITUTION	United States: Office of Citizen Services and Innovative Technologies (General Services Administration); India: National Informatics Centre, Department of Electronics and IT
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information, Participation, Technology and innovation
OGP GRAND CHALLENGES	Improving public services
SPECIFICITY OF GOAL	Medium
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Extension building on existing implementation

Full text of the commitments

Use Data.gov as a Platform to Spur Innovation in Other Countries

The United States champions the publication of machine-readable data and the use of challenges, prizes, and competitions to catalyze breakthroughs in national priorities. The Data.gov site supplies the public with large amounts of useful, machine-readable government data that can be used by innovators without intellectual property constraint. To accelerate this movement, the United States will:

- Contribute Data.gov as a platform. Through the U.S.–India Open Government Dialogue, the two countries have partnered to release “Data.gov-in-a-Box,” an open source version of the U. S. “Data.gov” portal and India’s “India.gov.in” portal. It will be available for implementation by countries globally, encouraging governments around the world to stand up open data sites that promote transparency, improve citizen engagement, and engage application developers in continuously improving these efforts.

What happened?

This commitment has been fulfilled. In March of 2012, the United States and India launched the Open Government Platform (OGPL).¹ The platform provides software that allows individuals, developers, media, academics, and businesses to use open data sets for their own purposes.

OGPL was published on GitHub, a web-based repository for code favored by open software developers. It is unclear what license was used in publication of OGPL. Restrictive licenses could diminish creative reuse by developers by requiring noncommercial uses or not explicitly allowing derivative uses.

Did it matter?

Pilots have been established to scale out the OGPL in Ghana and Rwanda. According to the government self-assessment, more than 30 countries have expressed interest in the platform. It was unclear at the time of writing (September 2013) whether or not any other governments have adopted the platform. The independent civil society evaluation suggested that the absence of a roadmap for the product and other

accompanying documentation might be impeding uptake by developers.

Moving forward

Continued implementation of this goal would allow additional governments to adapt this platform to their information disclosure goals. The principal challenge is to identify potential users, to assess and address the barriers they may face in using the code. Following this diagnosis, the U.S. government, perhaps in partnership with India, can begin to address these issues and “sell” the OGPL more proactively.

3.2b | Data.gov: Foster Communities on Data.gov

COMMITMENT SUMMARY	
LEAD INSTITUTION	General Services Administration (GSA)
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information, Participation
OGP GRAND CHALLENGES	Improving public services
SPECIFICITY OF GOAL	High
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Significant revision of the commitment

Full text of the commitments

Use Data.gov as a Platform to Spur Innovation by Fostering Communities

The United States champions the publication of machine-readable data and the use of challenges, prizes, and competitions to catalyze breakthroughs in national priorities. The Data.gov site supplies the public with large amounts of useful, machine-readable government data that can be used by innovators without intellectual property constraint. To accelerate this movement, the United States will:

- Foster communities on Data.gov. We will work toward expanding the number of Data.gov “communities” that connect data related to particular subject matters with users and producers of that data. With communities focused on health, energy, and law already launched, we will work to launch new communities in education, research and development, and public safety in the next year.

What happened?

There has been substantial progress on this commitment, but, like a number of other commitments, it is unclear what the expectations are regarding who will use it.

The Administration has committed to adding curated data sets that involve education, research and development, and public safety. Technically, two of these sets were launched following the implementation period assessed.

As each set was launched, an online forum for discussion of the data was added. This forum is a very narrow definition of “fostering communities.”

The Administration also cites its work in fostering communities and encouraging innovation through “data jams” and other events to make this initiative result in improvements for citizens.

Did it matter?

While data are being downloaded from the site at an increasing rate—according to a Government Services Administration report, “When adjusted to a 12-month average, the annual rate of growth in downloads was 270 percent”¹—the forums are not being used.

In our analysis, no evidence of use was found on the three new forums. It seems that users either do not need the forums or do not know about them. One possible explanation is that most users crystallize around the agencies and offices where actual decisions are being made, where they are used to participating. For that reason, Data.gov may be useful as a central repository or clearinghouse that directs users to agencies where the data is being used in the day-to-day business of governing.

Moving forward

This commitment should be significantly revised. The development of Data.gov received significant support preceding the OGP action plan, but equivalent resources were not invested in fostering innovative use of the data. Focusing on a user-centered approach could greatly enhance uptake of the data sets on the site.

While the initiative is significant, a more robust theory of participation and use needs to underpin efforts to encourage communities around this data:

- The Administration should look for ways to publicize the data sets contained in Data.gov, including continuing to promote innovation using the data.
- Implement voluntary user surveys to identify who is downloading the data.
- Redirect users to agencies and processes where use of data sets would be most useful. Conversely, ensure that users know that data are available for download and manipulation when participating in processes at the agency level.

¹Alice Lipowicz, "Data.gov Popularity Soaring, GSA Report Says," Federal Computer Week, 6 January 2012, <http://bit.ly/xO1vVv>.

3.3 | Encourage Communication between Government Officials and Citizen-Experts

COMMITMENT SUMMARY	
LEAD INSTITUTION	Unclear
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Participation, Technology and innovation
OGP GRAND CHALLENGES	Improving public services
SPECIFICITY OF GOAL	High
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	Significant revision of the commitment

Full text of the commitments

Encourage Communication between Government Officials and Citizen-Experts

In many cases, those who work in government turn to those outside for advice and support. But too often, officials know only a subset of relevant experts or need to find experts in a new area. To overcome these hurdles, the United States will:

- *Launch ExpertNet. This platform will enable government officials to better communicate with citizens who have expertise on a pertinent topic. It will give members of the public an opportunity to participate in a public consultation relevant to their areas of interest and knowledge, and allow officials to pose questions to and interact with the public in order to receive useful information.*

What happened?

This commitment would have created one government portal where citizens could participate in public consultations. At this portal, officials could inform and draw on a large body of informed and interested experts and individuals. The commitment was withdrawn because of difficulties in implementation and conflicts

with the Federal Advisory Committee Act (FACA) and, according to the government self-assessment, the existence of private sector platforms (such as Quora or IdeaScale, both used by the U.S. government during development and implementation of the action plan) that enable experts to make proposals.

Did it matter?

This commitment was withdrawn. This idea does not seem to add much to existing opportunities for citizen engagement. In fact, most, if not all, stakeholders engaged in the IRM process felt that this commitment was not a priority.

Moving forward

This goal does not need to be reworked into the next action plan. Instead, more innovative commitments might be developed to achieve the same aims. Concurrent with the recommendations on the Regulations.gov commitment, a commitment to develop better alert systems could enervate a larger group of self-described citizen-experts. Participation can then be channeled through Regulations.gov or private platforms

3.4a & 3.4b | Reform Government Websites—Online National Dialogue and Updated Website Policy

COMMITMENT SUMMARY	
LEAD INSTITUTION	Executive Office of the President (White House), General Services Administration (GSA)
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Participation, Technology and innovation
OGP GRAND CHALLENGES	Improving public services
SPECIFICITY OF GOAL	Low
ACTION OR PLAN	Carry out action



Full text of the commitments Reform Government Websites

More citizens seek government information through the internet than any other source. In addition to continuing to be accessible, government websites should be easy to find, use, and navigate. On 27 April 2011, the President issued Executive Order 13571, “Streaming Service Delivery and Improving Customer Service,” to begin sweeping reform of government websites. As part of this ongoing initiative, the United States will:

- Begin an Online National Dialogue with the American public. We will solicit the American public’s input on how best to improve federal agency use of the internet and online tools.
- Update government-wide policies for websites. We will reform the seven-year-old policy that governs

the management, look and feel, and structure of federal government websites to make them more useful and beneficial for the public.

What happened?

There were two parts to this commitment: open a dialogue with the American public on government websites and their improvement; and reform policies around the management, look, and structure of government websites. Both have been completed—the second via the government’s Digital Government Strategy.¹

Of all of the commitments in this action plan, the Online National Dialogue on Improving Federal Websites, along with We the People, is one of the most robust examples of participation in the digital age. The national dialogue was begun around the time of the original submission of the action plan. Nearly 1,000 participants submitted more than 400



ideas around 12 themes. A March 2013 evaluation by civil society organizations gave the Administration high marks for responsiveness. The phased approach was unique in that it used social media to garner a large number of proposals. These proposals were then channeled through an IdeaScale site,² which allowed participants to make and vote on proposals for reforming federal website policy. A final report highlights the high quality and variety of comments received during the online dialogue.³ The civil society evaluators gave the commitment generally high marks, but felt that consultation was relatively rushed.⁴

The second commitment in this cluster dealt with updating federal website policy. Both this specific activity and the Online National Dialogue were integrated into the government's new, wider Digital Government Strategy, although it is not entirely clear how the specific inputs made by the public during the national dialogue are reflected in the principle-oriented strategy.⁵ It could be a loss to lose the concrete and generally high-quality recommendations made during the dialogue, as well as the lessons on how to conduct online consultations.

Did it matter?

There may have been something of a lost opportunity, as the energy surrounding the National Dialogue was not carried forward into the next rounds of strategy development. Although the new Digital Government Strategy reflects the state-of-the-art in public information systems, the lay reader would be hard pressed to grasp the nuts-and-bolts character of guidance on reforming federal websites from the user point of view that was found in the Online National Dialogue.

It is not clear from available documentation whether any of this work had an impact on federal websites, employees, or users.

Moving forward

The Digital Government Strategy represents a general architecture for presentation of federal information. As agencies move to actually implement and update their sites, they will do well to revisit some of the focused themes discussed in the Online National Dialogue that will help developers design a user experience to empower and inform the public.

Further, the new action plan will likely have a number of commitments that involve public engagement. These commitments should be informed by the brief, but effective, participatory approach carried out by the Online National Dialogue described in the section "Measuring Engagement" of its report.⁶

¹"Digital Government," White House. <http://www.whitehouse.gov/sites/default/files/omb/egov/digital-government/digital-government.html>

²The site is available at: <http://web-reform-dialogue.ideascale.com/>.

³gov Task Force, "National Dialogue on Improving Federal Websites," 31 October 2011, <http://1.usa.gov/18SSYlh>.

⁴The Open Government Partners' civil society evaluation of this commitment is available at: <http://bit.ly/19Xe1QJ>.

⁵"Digital Government," White House.

⁶gov Task Force, "National Dialogue."

3.5a & 3.5b | Publish Data to Help Consumers and Scientists: Smart Disclosure and Scientific Data Guidelines

COMMITMENT SUMMARY	
LEAD INSTITUTION	Office of Management and Budget (OMB) and U.S. National Science and Technology Council
SUPPORTING INSTITUTIONS	Unclear
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information, Technology and innovation
OGP GRAND CHALLENGES	Improving public services
SPECIFICITY OF GOAL	Medium
ACTION OR PLAN	Carry out action



Full text of the commitments

Publish Data to Help Consumers and Scientists

In many cases, the government has information that can be leveraged to help consumers make better decisions and to aid scientific research. To unlock the potential of this data, the United States will:

- Promote smart disclosure. The government already discloses data to inform decision making in many areas by, for example, providing access to comprehensive tools to facilitate the search for insurance options best suited to an individual's needs. To build on this work, OMB recently issued guidance to federal agencies on "smart disclosure." We have also established a task force dedicated to promoting better disclosure policies. In response to this guidance, agencies and departments will work over the next year to ensure the timely release of com-

plex information in standardized, machine-readable formats that enable consumers to make informed decisions in numerous domains.

- Publish guidelines on scientific data. We will develop federal guidelines to promote the preservation, accessibility, and interoperability of scientific digital data produced through unclassified research supported wholly or in part by funding from the federal science agencies.

What happened?

There are two parts to this item. "Smart disclosure" refers to the selective release of personal or market data that helps the public make better choices.¹ The innovative aspect of this commitment refers to the (1) timely, (2) standardized, and (3) machine-readable nature of the information. This commitment aimed at releasing health, safety, and environmental data that can spur



innovation and inform consumers. This data has high value for market-based decisions, in contrast to more traditional transparency and accountability data.

During the implementation period, the U.S. National Science and Technology Council established a task force to promote better policies and implementation across government. In March 2012, a Smart Disclosure Summit brought together experts to share best practices. The summit culminated in the publication of Consumer.Data.gov just after the implementation period assessed, which brings together 500 data sets from across agencies.

Although not a part of this commitment, following the evaluation period, the Administration issued the Executive Order, "Making Open and Machine Readable the New Default for Government Information." The order has the potential to transform the accessibility and usefulness of the massive amount of data gathered and released by the government, which may have significant impacts for users.

The second part of this commitment is the development of guidelines on openness regarding federally funded scientific information, much of which is proprietary. During the evaluation period, a "Public Access Memorandum" to federal agencies made more than \$100 million in research and development results searchable by the public within 12 months of publication. While this is a small portion of federal funding for research and development (\$140 billion in FY2013), it forms a basis to take the policy to scale.²

Did it matter?

The government self-assessment remarks that "Smart disclosure's potential for unlocking innovation and economic prosperity is still in its early stages." It might be unreasonable to expect any major successes as a result of this massive release of data just yet. Notably, OpenTheGovernment.org was unable to find any civil society groups interested enough in smart disclosure to carry out an assessment of progress.

The requirement to make federally funded research publically available free of charge 12 months after publication has the potential to accelerate innovation and to improve scientific integrity by encouraging reuse and testing of published research.

Moving forward

Smart disclosure as a concept has had limited uptake by civil society. The federal government should conduct continued awareness-raising about the potential use of the data through sharing innovative uses of data sets with potential developers.

At the same time, the guidelines for disclosure of personal data will need to be closely monitored and revisited to ensure that privacy concerns are being adequately addressed.

See for example: www.Consumer.Data.gov; Alex Howard, "What is Smart Disclosure?" O'Reilly Radar, 1 April 2012, <http://oreil.ly/HDw3yp>.
United States. "Welcome to the Smart Disclosure Community." <http://www.data.gov/consumer/community/consumer>; John F. Sargent, *Federal Research and Development Funding: FY2013*. R42410, (Washington, DC: Congressional Research Service, 2013).

3.6 | Promote Innovation through International Collaboration

COMMITMENT SUMMARY	
LEAD INSTITUTION	The National Aeronautics and Space Administration (NASA)
SUPPORTING INSTITUTIONS	Key space agencies around the world
POINT OF CONTACT SPECIFIED?	No
OGP VALUES	Access to information, Participation, Technology and innovation
OGP GRAND CHALLENGES	Improving public services, Creating safer communities
SPECIFICITY OF GOAL	Medium
ACTION OR PLAN	Carry out action
LEVEL OF COMPLETION	
NEXT STEPS	No further action needed

Full text of the commitments

Promote Innovation through International Collaboration

The United States has used prizes and competition to foster a culture of innovation in both the public and private sectors. In this spirit, the United States will:

- Launch an international space apps competition. The National Aeronautics and Space Administration and key space agencies around the world will gather with scientists and concerned citizens to use publicly released data (e.g., Earth science and planetary observations) to create solutions for global challenges such as weather impacts on the global economy and depletion of ocean resources. An international collaboration website will be created to facilitate citizen participation.

What happened?

During the implementation period, the National Aeronautics and Space Administration (NASA) held an international two-day event where scientists and members of the public could use publicly available data to create solutions for pressing technical challenges. Over 9,000 people around the world

participated in the first competition. A follow up was scheduled for 2013.

Did it matter?

Beyond the practical outputs of the program (apps for mobile devices, software, hardware, and data visualizations), NASA's space apps competition offers lessons for this type of participation. A proliferation of hack-a-thons, both within and outside of government, has shown a lack of sustainable results. The NASA initiative was distinguished by three elements:

- *Real-world challenges:* The hack-a-thon was organized around real-world problems proposed by agency staff; it presented an opportunity for the public to affect the way the agency did business.
- *Collaboration:* Agency staff was available virtually or in person to guide teams through development and to offer resources.
- *Sustainability:* The space apps competition internalized successful apps that will be used by NASA in carrying out its day-to-day operations.

These lessons could be generalized to other agencies

facing the challenge of making hack-a-thons or apps competitions more meaningful.

Moving forward

Building on the success of this commitment, in the next action plan, this model could be used in other areas, such as “health apps,” or “transportation apps.”

Additionally, NASA can advise other agencies planning apps contests. Its experience would inform developers and promoters about the conditions in which apps contribute to improved achievement of government objectives.

V | SELF-ASSESSMENT CHECKLIST

The U.S. government published its self-assessment on 29 March 2013, ahead of the required deadline. The report offers a rich description of the outcomes of each of the commitments. Many commitment descriptions include related activities, some of which fulfill the commitments in ways that are different from the original intent, as well as others that were supplementary.

There were some deviations from the prescribed process for drafting the self-assessment.¹ One was that it did not consistently provide a finding of whether the assessment was fulfilled, partially fulfilled, in progress, withdrawn, or not met. This omission was minor because the status of each commitment could be inferred from the text.

More importantly, the two-week public comment period on the self-assessment was carried out in a perfunctory way. The White House did not post its draft for comments, but instead used the private platform Quora to ask, “What U.S. Open Government commitments should the U.S. Government be focusing on?”² This question appeared without links to either the self-assessment draft or to the original action plan, creating obstacles to informed responses from the public. Given the lack of supplementary material or clear explanation, this question was clearly misleading to the members of civil society and the private sector who participated. The question drew 33 proposals—all new and not included in the first national action plan—rather than comments on the existing proposals.

Further, the U.S. self-assessment treatment of consultation was vague, essentially confirming each of the consultation requirements without providing details on the national process. It noted basic compliance rather than describing any of the exemplary aspects or limitations of the U.S. process.

Was annual progress report published?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Was it done according to schedule?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is the report available in the local language(s)? According to stakeholders, was this adequate?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is the report available in English?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Did the government provide a two-week public comment period on draft self-assessment reports?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Were any public comments received?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is the report deposited in the OGP portal?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Did the self-assessment report include review of consultation efforts?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Did the report cover all of the commitments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Did it assess completion according to schedule?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report reaffirm responsibility for openness?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report describe the relationship of the action plan with grand challenge areas?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

¹ United States, *The Open Government Partnership: Government Self-Assessment Report*, (Washington, DC: US Government 29 March 2013), <http://1.usa.gov/YO3CII>.

² The question and answers are available at: <http://b.qr.ae/WwIS15>.

VI | MOVING FORWARD

COUNTRY CONTEXT

The Obama Administration started strong on themes of open government, leading both at home and internationally. The Administration played an important role as the international partnership grew from eight participating countries to 60 and set forth a national action plan geared toward greater openness and transparency.

However, the country context for the overall goals of the plan (as opposed to its individual items) is difficult. During the spring and summer of 2013, the United States Government was caught in the middle of three controversies that severely undermined its stated commitment to open government.

The first issue—widely seen as a scandal—involved the Internal Revenue Service’s (IRS) alleged targeting of opposition political groups claiming tax-exempt, 501c3 status, and raised questions about respect for freedom of association. Subsequent evidence made clear that the White House had no knowledge of or involvement in the IRS civil service level decision to scrutinize explicitly political groups, a category that turned out to include liberal as well as conservative organizations. Nevertheless, media coverage and opposition campaigning effectively undermined the Administration’s credibility on open government with this issue.

The IRS issue unfolded almost in sync with a set of national security controversies. In the name of national security, the Justice Department was revealed to be collecting telephone data on dozens of reporters in an effort to find the source of leaks. While it appears that nothing unlawful was done by the Justice Department, the pursuit of leaks can create a “chilling effect,” impacting freedom of the press. Additionally, under Attorney General Eric Holder, the government has prosecuted more officials for alleged leaks under the Espionage Act than his predecessors. The prosecutions also run directly counter to the Administration’s policy directive extending whistle-blower protection to national security and intelligence agency employees. Stakeholders such as Danielle Brian, of the Project on Government Oversight, told the President directly that, “the leak prosecutions were undermining his legacy.”¹

These two ongoing controversies threaten to undermine the significant steps taken under the OGP national action plan. A recent third scandal raised further questions about the open government agenda, after the revelation of the government’s secret collection of domestic phone logs and internet usage. Previously, observers had the impression that such widespread surveillance did not take place on U.S. citizens within U.S. borders. This practice, which extended policies begun in the Bush Administration in the name of national security, has a potentially larger effect. These revelations serve to create distance between the Administration’s good faith measures in the OGP action plan and its broader actions. The problem for those interested in open government is that the surveillance was done in secret, relying on secret courts, and even kept secret from Congressional oversight.

In addition to the harm that these scandals may inflict on the cause of open government, they diminish the weight of the many laudable commitments in the first U.S. National Action Plan. Compared with these larger controversies, components of the action plan may look relatively unambitious. Impartial and transparent application of the laws of the land, freedom of the press from intimidation, and freedom from government invasions of privacy are values that may dwarf many of the individual components of the action plan. Put another way, systematic policies of surveillance are in strong tension with the broader open government agenda.

SUMMARY ANALYSIS

The U.S. National Action Plan’s commitments fall into three categories. The first category is exemplified by the “We the People” website. This initiative is future oriented. It is an experiment in democracy on the Internet and it will likely develop into something new and more profound as time goes on and as we better understand the new technology and how we interact with it. “We the People” is well worth pursuing and learning from. No doubt, future public engagement will be transformed by this and similar initiatives into

something more meaningful than what we have seen so far, which may have the potential to shape major U.S. policies.

A second category of commitments has to do with efforts to place what has always been public information—including regulations, performance data, and government contracts—online. Here the government is performing well given budget limitations that make things move more slowly than usual. Much government information has always been public and the transfer of that information from paper to the web is a big step forward in making it even more available. As open data, it may be even more useful, but the conversion requires extra IT resources and staff time, both difficult to acquire in a time of budget cuts. Thus some of these goals will not be accomplished as meaningfully as they could be.

The least progress was made in the third category of commitments—those dealing with declassification, FOIA requests, and whistleblowers. For those who work in the national security area, transparency is not the only value to be maximized. It regularly competes with other important values such as public safety and the protection of American troops, and, in the intelligence area, sources and methods. In the national security arena, the Administration has come down on the side of increased classification of new material and very gradual declassification of historic material. According to some stakeholders interviewed, this tendency has been overly pronounced. In light of the revelations about the scope and secrecy of government surveillance, many stakeholders think the right to privacy agenda is now in tension with the open government agenda.

STAKEHOLDER PRIORITIES

Stakeholders interviewed for this report noted a number of priority areas not reflected in the current action plan that they would want to see in the next action plan. New commitment policy areas include:

- Safeguarding scientific integrity
- Making public and prohibiting secret law and legal interpretation
- Strengthening the role and public interface of Inspectors General

- Reforming the classification system
- Enhance Ethics.gov
- Improving ethics disclosure
- Communications surveillance transparency

Areas stakeholders saw as important to continue to include in the next action plan are:

- Agency open government plans
- Beneficial ownership information
- Streamlining FOIA administration
- Improving transparency of foreign aid
- Improving performance of government websites
- Improving open data availability and standards
- Developing and spreading best practices in public participation
- Regulatory review and compliance data
- Spending transparency
- Enhancing whistleblower protection

Finally, some organizations are arguing for improving the structure of the Open Government Partnership itself either by improving the already existing Interagency Open Government Working Group or forming, through official processes, a Presidential Advisory Committee on Open Government.

These proposals are discussed in greater detail at <http://bit.ly/GzwITF>.

GENERAL RECOMMENDATIONS

As a consequence of these observations and the findings of the report, a number of general recommendations can be made to improve the design and implementation of the next action plan. These recommendations are crosscutting; commitment-specific recommendations are included with each respective commitment. Recommendations fall into several categories: Process, Learning, and New Frontiers.

Process

- Continue robust implementation of consultation and participation at the agency level, building off successful attempts in the first plan;

- Make a greater effort to bring a wide variety of stakeholders into action plan development and implementation including more organizations from outside the beltway;
- Take advantage of the next self-assessment process to continue dialogue and deliberation with civil society members.

Learning

- Learn from best practices in stakeholder engagement from agencies with significant success in that area during the first action plan (including the .gov team, NASA, NARA);
- Put user needs at the center of new technology. This orientation requires identifying theories of change for how transparency and accountability reforms will be used and identifying core constituencies who will potentially take up new technologies. Digital services can then be designed to meet their needs.

New frontiers

- The new action plan presents an opportunity for the Administration to square its strong support of open government with its commitment to national security, identifying win-win situations in which national security may be enhanced through greater public oversight and disclosure;
- Identify how technology might be used to ensure that laws are evenly applied and that national security interests are balanced with democratic values;
- Consider including ambitious commitments that review major areas that threaten to undermine the credibility of Administration efforts at implementing open government programs. These commitments might include reviews of criteria for prosecuting national security related leaks, whistleblowing, classification, and the FOIA. These areas directly impact democracy and fundamental freedoms enshrined in the U.S. Bill of Rights;
- Consider evaluating the degree to which post-9/11 protocols can be retrenched where no longer compatible with the threat level.

¹P. Mattingly and H. Nichols, "Obama Pursuing Leakers." Bloomberg News. October 17, 2012. <http://www.bloomberg.com/news/2012-10-18/obama-pursuing-leakers-sends-warning-to-whistle-blowers.html>

ANNEX: METHODOLOGY

As a complement to the participating government self-assessment, an independent assessment report is written by well-respected governance researchers, preferably from each Open Government Partnership (OGP) participating country. These experts use a common OGP independent report questionnaire and guidelines based on a combination of interviews with local OGP stakeholders and desk-based analysis. This report is to be shared with a small International Expert Panel (appointed by the OGP Steering Committee) for peer review to ensure that the highest standards of research and due diligence have been applied.

Analysis of progress on OGP action plans combines interviews, desk research, and feedback from nongovernmental stakeholder meetings. The IRM report builds on the findings of the government's own self-assessment report and any other assessments of progress put out by civil society, the private sector, or international organizations.

Each local researcher carries out stakeholder meetings to ensure an accurate portrayal of events. Given budgetary and calendar constraints, the IRM cannot consult all interested or affected parties. Consequently, the IRM strives for methodological transparency, and therefore where possible, makes public the process of stakeholder engagement in research (detailed later in this section). In national contexts where anonymity of informants—governmental or nongovernmental—is required, the IRM reserves the ability to protect the anonymity of informants. Additionally, because of the necessary limitations of the method, the IRM strongly encourages commentary on public drafts of each national document.

The following individuals contributed to the report through their participation in the stakeholder forums.

- Abby Paulson, program associate, OpentheGovernment.org
- Gregory Elias Adams, director of Aid Effectiveness, Oxfam America
- George Ingram, co-chair, Modernizing the Foreign Aid Networks

- Laia Grino, manager, Transparency, Accountability and Results, Interaction
- Melissa Kaplan, advocacy manager for aid reform and effectiveness, Interaction
- Patrice McDermott, executive director, OpentheGovernment.org
- Wayne Moses Burke, executive director, Open Forum Foundation
- Elizabeth Goitein, co-director, Liberty & National Security Program, Center for Justice

In addition, the IRM is grateful for interviews carried out with the following individuals:

- Amy Bennet, OpenTheGovernment.org
- Angela Canterbury, Project on Government Oversight
- Gavin Heyman, Global Witness
- Isabel Munilla, Oxfam America
- Lisa Ellman, chief counselor for OGP, White House
- Nathaniel Heller, Global Integrity
- Patrice McDermott, executive director, OpentheGovernment.org
- Stefanie Ostfeld, Global Witness
- Wayne Moses Burke, executive director, Open Forum Foundation

A comprehensive search was done of all media reporting and evaluation of these initiatives. Sources are cited in the document.

About the Independent Reporting Mechanism

The IRM is a key means by which government, civil society, and the private sector can track government development and implementation of OGP action plans on a bi-annual basis. The design of research and quality control of such reports is carried out by the International Experts' Panel, comprised of experts in transparency, participation, accountability, and social science research methods.

The current membership of the International Experts' Panel is:

- Yamini Ayar
- Debbie Budlender
- Jonathan Fox
- Rosemary McGee
- Gerardo Munck

A small staff based in Washington, DC shepherds reports through the IRM process in close coordination with the researcher. Questions and comments about this report can be directed to the staff at irm@opengovpartnership.org



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