CIVIL SOCIETY PROGRESS REPORT

January 2015

Second Check-In on the Implementation of the United States' Second Open Government National Action Plan

Background

The White House released its second National Action Plan (hereafter, Plan) for open government in December 2013. The United States government's action plan fulfills a membership requirement of the Open Government Partnership (OGP), an international and multi-platform initiative that requires government and civil society to work together on the creation and implementation of open government reforms. In September, the administration fulfilled its promise to update the Plan and made several new commitments. As a founding member of the OGP, the United States' plan and its implementation receive international attention and should serve as models for OGP members. The administration's efforts to expand on its Plan throughout the implementation period are commendable and will hopefully be mirrored by other OGP member governments.

The OpenTheGovernment.org coalition has played key roles throughout the US's engagement with the OGP. The coalition coordinates efforts of a wide range of civil society organizations to share policy ideas with the administration, to push the administration to address policy priorities of the diverse open government community in meaningful ways, and to stretch itself and federal agencies toward transformational commitments in the development of its open government reform efforts and its Plans. OTG works with teams of civil society partners to make recommendations on the execution of each of the government's commitments, and to assess the implementation of those commitments.

To encourage steady progress and collaboration throughout the two year implementation period of the second plan, civil society is reporting every six months on any substantive progress on specific commitments and on collaborative efforts and interactions between agencies and civil society. Not all commitments will necessarily be evaluated; some commitments are not evaluated in this report because civil society organizations interested in engaging on the commitments have not yet been identified. These include commitments on improving Performance.gov, expanding visa sanctions, and consolidating import and export systems.

Generally, the new commitments released in September are too new to fairly evaluate. However, the new commitment on spending transparency captures ongoing work in the administration and the civil society evaluators are able to reflect on progress made implementing the DATA Act and other new commitments related to spending transparency. We look forward to engaging with the administration on these promising new commitments. Notably, all of the new initiatives specifically include consultation or collaboration with outside stakeholders as a part of the commitment.

The first check-in report found that the government was on track to meet the majority of the Plan's commitments. The report included an overview of progress made on each commitment and also included a subjective assessment of the level of momentum for implementation of the commitment. Civil society teams also covered the basics of collaboration, reporting whether they had identified the government representative responsible for implementing the commitment and whether they had had any contact with the leads in government.

Summary

At the half-way mark, the government is still on track to meet the majority of the commitments. Efforts to collaborate with civil society stakeholders have increased, though levels of communication still vary greatly by commitment. As we observed in the previous evaluation report, commitments with regular and collaborative engagement of civil society seem to have made more progress over the first year of implementation. The Office of Science and Technology Policy (OSTP) should be commended for its efforts to connect government and civil society stakeholders on all commitments.

Commitments that have successfully combined policy and technical expertise in their implementation process are a highlight in this evaluation period, and make clear other commitments that would benefit from this approach. Particularly, the involvement of the federal government's technology innovation lab 18F has invigorated two open government initiatives. 18F is now leading implementation of the Freedom of Information Act commitment to create a centralized portal for requesters. Its involvement with the Extractive Industries Transparency Initiative (EITI) goes above and beyond the administration's initial commitment.

The public participation commitment was also energized through collaboration between the General Services Administration and the OpenGov Foundation. This progress is particularly notable because civil society groups were not aware of any progress in the previous evaluations. The GSA posted its draft Public Participation Playbook up on the Foundation's Madison platform, which allows open commenting on the document. In this commitment, the government leads went beyond collaboration and co-created with civil society. Other commitments would benefit from more collaboration between government and CSO teams with both policy and technical expertise. As the team monitoring foreign assistance transparency notes, in some cases "coordination across teams (such as policy and technical) is lacking." Government agencies could also explore creating future open government plans with a Madison-like approach.

Overall, we are hopeful that the administration's engagement with civil society will continue to increase in frequency and depth, as it has over the first year of implementation. Although many agencies still struggle to open up to collaboration and criticism, the United States' participation in the Open Government Partnership provides a promising opportunity to positively change the culture of government.

Commitments where there is substantial progress
The commitments below have made considerable progress at the one-year mark for implementation and seem to have momentum to continue progress. These commitments are generally characterized by strong engagement with civil society.

- **Extractives Industry Transparency Initiative (EITI)** – Since the last evaluation, the government has made progress meeting both the letter of the commitment and working beyond it, launching a complementary effort with 18F to create a new natural resources revenue data website. As the evaluator notes, "Given the multi-stakeholder set-up of USEITI, civil society collaboration with government (as well as industry) has been really robust, and the government contacts have been incredibly responsive and helpful."

- **Open Data** – Despite significant staff turnover at the implementing agencies, OMB and OSTP, the work on this commitment has continued steadily and largely transparently. As the evaluation team notes, OMB monitors agency compliance on a public dashboard to allow the public a sense of internal progress and speaks frequently with civil society and "takes feedback into consideration and action." Civil society has also met with government representatives working to expand access to agriculture and nutrition data through the GODAN initiative.

- **Spending Transparency** – In September, the administration added a commitment expanding the government's work on spending transparency, including implementation of the DATA Act. Although much of the progress has remained internal, the administration has conducted outreach efforts to collect input, host workshops, and keep civil society stakeholders informed of progress.

- **Public Participation** – Activity on the commitment to publish best practices and metrics for public participation has accelerated in the past few months, since the GSA published the Public Participation Handbook for comment on Madison, an open source participation platform. Additionally, the White House released a new 'write' Application Programming Interface (API) in October, allowing third parties to collect and submit signatures to We The People petitions.

- **Public Participation in the Development of Regulations** – In addition to launching a new commenting API in July that connected public comments on Federal Register documents through both Regulations.gov and FederalRegister.gov, the civil society team reports that Regulations.gov continues to improve in ways that "make it easier for people to find open rulemakings, review relevant documents, and submit their comments."

Commitments where there has been some progress, but concerns remain
The following commitments are in progress, but that progress may be slower or in danger of stalling. In some cases, civil society groups have concerns that the commitments do not go far enough to meaningfully address the challenges the commitments are intended to tackle.

- **Improving FOIA** – The commitments to improve FOIA are numerous and wide ranging, so implementation of the overall commitment includes some areas with substantial progress and others, such as the efforts to improve FOIA training in government, that appear to have stalled. Both the Office of Information Services and Office of Government Information Services took meaningful steps to collaborate with civil society on all aspects of the commitment.

- **Whistleblower Protection** – The Office of Special Counsel (OSC) has engaged in a "fruitful dialogue around the potential, and limitations, for government and civil society collaboration," and has met with many outside stakeholders. Most agencies are making significant progress in

completion of the OSC whistleblower rights certification program. The civil society team notes, however, that the commitment for whistleblower training is an "ambitious unfunded mandate that may not realize its full potential due to limited resources."

- **Transparency of Legal Entities Formed in the US** – Limited progress has been made on this commitment, although the administration has made some efforts to achieve progress in this area. Specifically, they have publicly advocated for policy change on legal entity transparency both nationally and internationally, and have advanced a U.S. Treasury rule-making intended to require financial institutions to identify the owners of legal entities who are their clients. However, the civil society team notes that "there are significant disagreements and questions from civil society regarding whether the policy initiatives proposed by the administration that are intended to fulfill the commitments made on this issue would actually do so in a meaningful way, as well as with the administration's approach to passage and implementation." The administration has engaged in semi-frequent communication with stakeholders.

- **Foreign Aid Transparency** – The civil society team reports that the US is unlikely to meet its December 2015 deadline to have all federal agencies managing or implementing foreign assistance "establish an automated and timely process for publishing foreign aid data to ForeignAssistance.gov." Agencies' efforts to improve the quality and timeliness of their foreign assistance data are greatly uneven. Although some agencies have made great progress, the quality of the data posted is "usually poor, with financial data often provided without the descriptive project information that would put this data in context."

- **Agency Open Government Plans** – The majority of agencies issued their open government plans by the June 1st deadline, or shortly thereafter, and some agencies not specifically required to issue plans participated in the initiative. However, OMB has yet to publish an updated plan. Also, unlike the public monitoring dashboard for open data, there is not a public mechanism for holding agencies accountable for making good on their plans.

- **Reform Government Websites** – In August, the White House released the Digital Services Playbook and the TechFAR Handbook for public comment. The playbook includes a checklist for agencies to build digital services that are simple and easy for the public to use and includes 13 'plays' built from best practices in government and private industry. The White House receives feedback on the playbook and TechFAR handbook through GitHub.

- **Modernize Records Management** – The National Archives and Records Administration (NARA) continues to push agencies forward, despite lengthy timelines set for implementation. However, the CIA's recent proposal to implement the Capstone program excluded the email records a large majority of CIA officials. NARA agreed to hold a public meeting on the schedule and is revisiting the proposal.

- **Controlled Unclassified Information** – NARA has made steady progress on the draft rule on Controlled Unclassified Information (CUI). However, civil society groups "still remain concerned about the lengthy timeline that the CUI office has presented for implementing the reforms."

- **Public Participation in Community Spending Decisions** – The previous civil society report did not include an evaluation of the community spending decisions. The Participatory Budgeting Project reported that work on this commitment started off strongly. The PBP and the OSTP

worked together to host a national convening on participatory budgeting in May. However, other sub-commitments have moved more slowly and the government's next steps are currently unclear.

- **Privacy Compliance Information** – In the previous evaluation, civil society had not met with government officials on this commitment. Since that point, the administration identified points of contact for this commitment, met with civil society on the issue in September, and made progress implementing this commitment.

- **National Security Classification** – Civil society groups met with Security Classification Reform Committee and shared their recommendations in a follow-up letter. They have yet to receive feedback on the letter. The Public Interest Declassification Board (PIDB) held a public meeting on the declassification of Formerly Restricted Data (FRD) on nuclear activities. However, the team notes "despite efforts by the Board, its staff, and the Classification Reform Committee, there has been little apparent agency progress on FRD classification."

- **Foreign Intelligence Surveillance Activities** – The White House's commitments preceded the President's Review Group NSA Report and the Privacy and Civil Liberties Oversight Board's reports. In response to a variety of outside pressures, the administration and intelligence community have made disclosures that go beyond the National Action Plan's promises. However, the team notes that the breadth of the commitment and current disclosures "fall far short of the disclosures needed for public understanding of the scope of surveillance."

Commitments where there has been no progress

- **Fossil Fuels Subsidies** – OSTP has worked to connect civil society groups with government leads on this commitment. The government leads assert they have met this commitment. However, civil society has not had any substantial correspondence or meetings with government officials on this commitment and are unaware of any progress.

Evaluation Forms

The forms filled out by each team are linked below.

Improve Public Participation in Government
Modernize the Management of Government Records
Modernize the Freedom of Information Act
Transform the National Security Classification System
Reform Government Websites
Implement the Controlled Unclassified Information Program
Increase Transparency of Foreign Intelligence Surveillance Activities
Increase Transparency of Legal Entities Formed in the United States
Make Privacy Compliance Information More Accessible
Support and Improve Agency Implementation of Open Government Plans
Strengthen and Expand Whistleblower Protections for Government Personnel

Implement the Extractive Industries Transparency Initiative
Increase Transparency in Spending
Increase Transparency of Foreign Assistance
Promote Public Participation in Community Spending Decisions
Further Expand Public Participation in the Development of Regulations
Open Data to the Public

Previous evaluation forms:
Improve Public Participation in Government
Modernize the Management of Government Records
Modernize the Freedom of Information Act
Transform the National Security Classification System
Implement the Controlled Unclassified Information Program
Increase Transparency of Foreign Intelligence Surveillance Activities
Make Privacy Compliance Information More Accessible
Support and Improve Agency Implementation of Open Government Plans
Strengthen and Expand Whistleblower Protections for Government Personnel
Implement the Extractive Industries Transparency Initiative
Make Fossil Fuel Subsidies More Transparent
Increase Transparency in Spending
Increase Transparency of Foreign Assistance
Further Expand Public Participation in the Development of Regulations
Open Data to the Public
Continue to Pilot Expert Networking Platforms
Reform Government Websites