

# Independent Reporting Mechanism (IRM): United States Design Report 2019–2021

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This report was prepared in collaboration with Dr. Jason I. McMann (independent researcher).

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## Executive Summary: United States

The United States' fourth national action plan contains commitments of broad interest to the American public. However, almost half of the commitments are recycled from pre-existing, ongoing government programs and, as written, do not signal significant changes in government practice. The U.S. should reengage and deepen trust with stakeholders by designing and implementing a clear, well-publicized, and well-documented co-creation process where civil society has greater buy-in. Future commitments should respond to national priorities with significant, measurable, and specific milestones.

The Open Government Partnership (OGP) is a global partnership that brings together government reformers and civil society leaders to create action plans that make governments more inclusive, responsive, and accountable. The Independent Reporting Mechanism (IRM) monitors all action plans to ensure governments follow through on commitments. The United States joined OGP in 2011. Since, the United States has implemented three action plans. This report evaluates the design of the United States' fourth action plan.

### General overview of action plan

The United States' fourth national action plan (NAP4) was published during heightened tension between civil society and the federal government due to the former's concerns of diminishing open government in the U.S. This tension was pervasive during the NAP4 co-creation process and in the run-up to the action plan's release, which was itself delayed for two years. In light of this, some civil society stakeholders who participated in prior co-creation processes declined to do so for NAP4. Others who *did* participate expressed concerns surrounding limited opportunities for engagement throughout the co-creation process, as all government-led, in-person engagement efforts were held entirely in Washington, DC. Despite these concerns, the action plan itself, which includes eight commitments, draws substantially from civil society input solicited during the co-creation process: half of all commitments directly align with comments submitted by stakeholders.

While the action plan has no overarching theme, several commitments address timely issues of broad concern for the American public, including leveraging data to reduce the ongoing opioid crisis and improving transparency within the intelligence community. With respect to the OGP values, the majority of commitments focus primarily on improving public access to information, ranging from broadening access to federally-funded research

### Table 1. At a glance

Participating since: 2011  
Action plan under review: fourth  
Report type: design  
Number of commitments: 8

### Action plan development

Is there a multistakeholder forum: yes  
Level of public influence: consult  
Acted contrary to OGP process: yes

### Action plan design

Commitments relevant to OGP values: 7  
(87.5%)  
Transformative commitments: 1 (12.5%)  
Potentially starred commitments: 1 (12.5%)

to streamlining procedures and information availability for individuals seeking federal assistance. By contrast, the action plan places limited emphasis on civic participation and public accountability, echoing civil society concerns during the co-creation process. While the action plan’s release is laudable given the extensive delays during its development, it is comprised primarily of commitments with limited potential impact—many of which derive directly from open government initiatives that were already underway prior to the action plan’s release—and does not address the majority of recommendations proposed by the IRM during the previous action plan cycle.

**Table 2. Noteworthy commitments**

<b>Commitment description</b>	<b>Moving forward</b>	<b>Status at the end of implementation cycle</b>
<b><i>Commitment 2: Ensure Accountability for Grants</i></b>	<i>Complete the positioning of the System for Award Managements (SAM) as the central repository for government-wide certifications and representations required of federal grant recipients by the end of the action plan implementation period.</i>	<i>Note: this will be assessed at the end of action plan cycle.</i>

## Recommendations

The IRM recommendations aim to inform the development of the next action plan and guide implementation of the current action plan. Please refer to Section V: General Recommendations for more details on each of the below recommendations.

**Table 3. Five KEY IRM recommendations**

Adhere to the regular OGP action plan co-creation and reporting cycle via the clear designation of a responsible government agency early in the creation process.
Engage more fully and with a broader range of key stakeholders during the co-creation process, and systematically respond to all proposed commitments and feedback on draft commitments.
Design an action plan that makes a more concerted attempt to go beyond existing efforts, as opposed to including a large number of commitments that reflect ongoing efforts.
Design more ambitious commitments by improving commitment specificity (clearly identifying the public problem the commitment will address and the proposed solution). Consider a logic model and milestones that lead to the desired results.
Expand the thematic scope of future action plans to include strategic commitments related to pressing public issues.

## About the IRM

OGP's Independent Reporting Mechanism (IRM) assesses the development and implementation of national action plans to foster dialogue among stakeholders and improve accountability.



**Dr. Jason I. McMann** collaborated with the IRM to carry out desk research and interviews to inform the findings in this report. Dr. McMann obtained his PhD from Princeton University's Politics Department in May 2016 and served as the IRM researcher for the third U.S. National Action Plan (NAP3). He is an expert in regulatory benchmarking, with a technical emphasis on metrics and methodology design for index-based policy assessments.

## I. Introduction

The Open Government Partnership is a global partnership that brings together government reformers and civil society leaders to create action plans that make governments more inclusive, responsive, and accountable. Action plan commitments may build on existing efforts, identify new steps to complete ongoing reforms, or initiate action in an entirely new area. OGP's Independent Reporting Mechanism (IRM) monitors all action plans to ensure governments follow through on commitments. Civil society and government leaders use the evaluations to reflect on their own progress and determine if actions have made an impact on people's lives.

The United States joined OGP in 2011. This report covers the development and design of the United States' fourth action plan for 2019–2021.

The Independent Reporting Mechanism of OGP has partnered with Dr. Jason I. McMann (independent researcher) to carry out this evaluation. The IRM aims to inform ongoing dialogue around development and implementation of future commitments. For a full description of the IRM's methodology, please visit <https://www.opengovpartnership.org/about/independent-reporting-mechanism>.

## II. Open Government Context in the United States

The United States continues to perform well according to most key metrics of open government (such as the Global Right to Information Index and the Open Budget Index). However, a recent decline in cross-country indices, such as the Civicus Monitor and Freedom of the Press index, coincides with growing civil society concern about the current administration's commitment to open government, resulting in heightened tension throughout the NAP4 co-creation process.

The United States is a founding member of the Open Government Partnership and released its first National Action Plan (NAP) in 2011 (covering 2011–2013),<sup>1</sup> followed by NAP2 in 2013 (2013–2015)<sup>2</sup> and NAP3 in 2015 (2015–2017).<sup>3</sup> U.S. participation in the OGP remains informed by the 2009 White House Memorandum on “Transparency and Open Government” which committed the administration “to creating an unprecedented level of openness in Government...[and] work[ing] together to ensure the public trust and establish a system of transparency, public participation, and collaboration” with the goal of strengthening democracy and rendering government more efficient and effective.<sup>4</sup>

The United States has performed well historically in widely known cross-country rankings on various aspects of open government: transparency and access to information (both *de jure* and *de facto*); upholding civil liberties and civic space; government accountability and anticorruption efforts; and budget transparency.

Data affirming the U.S.' historically strong performance in these areas can be found in a variety of reputable cross-country indices.

The U.S. retains a ranking of “Free” under Freedom House's 2020 *Freedom in the World* ranking (which assesses countries through the end of 2019),<sup>5</sup> and consistently scores among the 80<sup>th</sup> percentile or higher across all components of the Worldwide Governance Indicators, excepting “Political Stability and Absence of Violence/Terrorism” and “Voice and Accountability.”<sup>6</sup> Regarding access to information—and the quality of laws governing access to information—the Center for Law and Democracy's *Global Right to Information Rating Index* assigns the U.S. a score of 83 out of 150, placing it above the index's midway point. With respect to civil liberties, civic space, and access to information (in practice), the United States similarly maintains a score of 4 (the highest possible) in Freedom House's 2019 *Media* index,<sup>7</sup> reflecting a free and independent media environment in the country. The U.S. similarly continues to perform well in the areas of anticorruption and budget transparency, ranking 23 out of 180 and 69 out of 100 respectively on Transparency International's 2019 *Corruption Perceptions Index*<sup>8</sup> and an overall score of 77 out of 100 on the International Budget Partnership's 2017 *Open Budget Index*, with scores above 60 indicating that a country “provid[es] sufficient budget information to enable the public to engage in budget discussions in an informed manner.”<sup>9</sup>

The U.S. performed well in the prior action plan cycle. The 2019 *Open Government Partnership Global Report: Democracy Beyond the Ballot Box*<sup>10</sup> positions the U.S. among the upper half of all countries regarding several key OGP metrics following NAP3's evaluation. Regionally, the U.S. led the Americas in the number of “outstanding” commitments (with two appearing in NAP3), and was among the upper half in terms of the number of “starred” commitments (with four in NAP3). The NAP3 remained in the top half of all OGP countries for both metrics.

Despite historically strong performance in open governance, recent evidence indicates a decline in U.S. government openness. Freedom House's 2019 *Freedom in the World* report notes that while “[t]he great challenges facing U.S. democracy did not commence with the inauguration of President Donald Trump, [including] intensifying political polarization, declining economic mobility, the outsized influence of special interests, and the diminished influence of fact-based reporting in favor of bellicose partisan

media...there remains little question that President Trump exerts an influence on American politics that is straining our core values and testing the stability of our constitutional system.”<sup>11</sup> The report further notes that the administration “has assailed essential institutions and traditions including the separation of powers, a free press, an independent judiciary, the impartial delivery of justice, safeguards against corruption, and most disturbingly, the legitimacy of elections.”<sup>12</sup> These concerns are echoed in the 2020 *Report* (covering calendar year 2019), which notes that “The Trump administration in 2019 frequently clashed with Congress in ways that challenged the legislature’s constitutional authority.”<sup>13</sup> Freedom House notes ongoing “efforts to undermine democratic norms and standards...including pressure on electoral integrity, judicial independence, and safeguards against corruption.”<sup>14</sup> In light of this, the U.S. experienced a largely unprecedented three-point drop in its *Freedom in the World* score in 2017 (corresponding to the 2018 *Freedom in the World Report*) and has remained there since.<sup>15</sup>

Beyond a decline in its Freedom House ranking, the U.S. similarly fell on the *Corruption Perceptions Index*, dropping from a score of 74 (and rank of 18 of 180) in 2016 to a score of 69 (and rank of 23 of 180) in 2019.<sup>16</sup> Regarding civic space, the country currently maintains a rating of “narrowing” on Civicus’ real-time civic space monitor.<sup>17</sup> The IRM progress report (2015–2016) revealed challenges to the freedom of assembly due to the excessive use of violence from law enforcement during peaceful protests, which continue today.<sup>18</sup> Production of this current report coincides with widespread protests drawing attention to police brutality and racial tensions in the country’s criminal justice system, sparked by the death of George Floyd.<sup>19</sup> On 19 June 2020, the Human Rights Council adopted a resolution strongly condemning “the continuing racially discriminatory and violent practices perpetrated by law enforcement agencies against Africans and people of African descent,” and expressed “alarm at the recent incidents of police brutality against peaceful demonstrators defending the rights of Africans and of people of African descent.”<sup>20</sup> Reporters Without Borders’ “Press Freedom Tracker” tells a similar story concerning civic space, with the U.S. ranking declining to 48 of 180 countries in 2018 from a ranking of 41 of 180 in 2016 (though its ranking experienced a decline of similar magnitude from 2013–2014 under the Obama administration).<sup>21</sup>

The Carnegie Endowment for International Peace’s Democracy, Conflict, and Governance Program assessed whether governments are increasingly making superficial commitments to openness, particularly regarding the OGP. Their report notes, “[t]he United States is [a] case in point” alongside other countries like Hungary and the Philippines. “Although the United States was one of the Open Government Partnership’s founding members, President Donald Trump’s administration has shown little interest in realizing its underlying principles, has withdrawn from the [Extractive Industries Transparency Initiative] despite a commitment to engage more fully with the Initiative under NAP3, “and has reversed a number of transparency gains.”<sup>22</sup> These sentiments are similarly reflected, albeit to a narrower degree, in civil society sentiment surrounding the political environment in which the fourth national action plan was created and released. Section III has an in-depth analysis of civil society engagement in the co-creation process of NAP4.

### **Response to COVID-19 and its institutional impact**

This report is focused on the 2019 co-creation of the United States’ action plan. However, at the time of this report’s production, the world was disrupted by the COVID-19 pandemic. This subsection is a preliminary analysis of the U.S. response to the crisis and the implications this response has on open government.

By the end of August 2020, the number of confirmed COVID-19 cases in the United States had surpassed six million and the death toll had reached the 175,000 mark.<sup>23</sup> In response to the pandemic, the U.S. implemented measures including a declaration of national emergency, travel restrictions, and increased testing at the national level, as well as social distancing and the closure of schools and non-essential businesses at the state level.<sup>24</sup>



Under the authority of the Stafford Act, President Trump declared a national emergency on 13 March.<sup>25</sup> This declaration authorized the use of upwards of \$50 billion in federal assistance to state and local governments and activated the Federal Emergency Management Agency to provide technical, financial, and logistical help to deal with the effects of the pandemic. On 27 March, the government passed the largest relief package in U.S. history. The \$2 trillion CARES Act offered “relief to state and local governments, individuals, small and large businesses, and hospitals affected by the coronavirus crisis.”<sup>26</sup>

Given the U.S. federalist system, mobility restrictions varied widely across states and local governments. As of late May, less than half of the states had active stay-at-home orders but the majority had announced school closures through the end of the academic year.<sup>27</sup> Besides mobility, the pandemic affected other rights, among them the implementation of the Freedom of Information Act (FOIA). Some of the information related to the outbreak was eligible for expedited processing, but processing times were extended due to decreased or remotely working staff.<sup>28</sup> Some states, such as Maryland and New Jersey, suspended deadlines for responding to public-record requests during the emergency.<sup>29</sup>

Generally, the measures addressing the pandemic were grounded on authority. But they have not come without scrutiny. In various instances, stay-at-home orders were challenged with mixed outcomes. Wisconsin’s State Supreme Court became the first to strike down a statewide stay-at-home order.<sup>30</sup> In contrast, Michigan’s Court of Claims upheld such an order.<sup>31</sup> Nationally, the importance of transparency and accountability in the pandemic relief efforts, such as implementing the CARES Act, has been widely stressed,<sup>32</sup> and initiatives related to this action plan are playing an important role in answering this call. The U.S. House Select Subcommittee on the Coronavirus Crisis, for instance, identified irregularities in the disbursement of over four billion dollars of Paycheck Protection Program (PPP) funds using the federal government’s System for Award Management (SAM) database.<sup>33</sup> Open government initiatives will be fundamental to ensure a transparent, accountable, and inclusive recovery.

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<sup>1</sup> Government of the United States, *The Open Government Partnership National Action Plan for the United States of America* (OGP, 20 Sept. 2011), <https://www.opengovpartnership.org/documents/united-states-first-national-action-plan-2011-2013/>.

<sup>2</sup> Government of the United States, *The Open Government Partnership Second Open Government National Action Plan for the United States of America* (OGP, 5 Dec. 2013), <https://www.opengovpartnership.org/documents/united-states-second-action-plan-2013-2015/>.

<sup>3</sup> Government of the United States, *The Open Government Partnership Third Open Government National Action Plan for the United States of America* (OGP, 27 Oct. 2015), <https://www.opengovpartnership.org/documents/united-states-action-plan-2015-2017/>.

<sup>4</sup> Pres. Barack Obama, “Transparency and Open Government Memorandum for the Heads of Executive Department and Agencies” (White House, 21 Jan. 2009) <https://obamawhitehouse.archives.gov/the-press-office/transparency-and-open-government>.

<sup>5</sup> See Global Freedom Scores. Freedom House, “Countries and Territories” citing *Freedom in the World* (2020), <https://freedomhouse.org/countries/freedom-world/scores>.

<sup>6</sup> Daniel Kaufmann and Aart Kraay, “Interactive Data Access” in *Worldwide Governance Indicators* (World Bank, 2019), <http://info.worldbank.org/governance/wgi/Home/Reports>. (Assessment derives from the “Table View” of data for the United States.)

<sup>7</sup> Sarah Repucci, *Freedom and the Media 2019: A Downward Spiral* (Freedom House, Jun. 2019), 3, [https://freedomhouse.org/sites/default/files/2020-02/FINAL07162019\\_Freedom\\_And\\_The\\_Media\\_2019\\_Report.pdf](https://freedomhouse.org/sites/default/files/2020-02/FINAL07162019_Freedom_And_The_Media_2019_Report.pdf).

<sup>8</sup> Transparency International, *Corruption Perceptions Index 2019* (2019), <https://www.transparency.org/cpi2019>.

<sup>9</sup> International Budget Partnership, *Open Budget Survey 2017* (2017), <https://www.internationalbudget.org/wp-content/uploads/open-budget-survey-2017-report-english.pdf>. See also Robert Keith, “United States” in *Open Budget Survey 2017* (International Budget Partnership, 2017), <https://www.internationalbudget.org/wp-content/uploads/united-states-open-budget-survey-2017-summary.pdf>.

<sup>10</sup> Open Government Partnership, *Open Government Partnership Global Report: Democracy Beyond the Ballot Box Vol.2* (2019), 259, [https://www.opengovpartnership.org/wp-content/uploads/2019/06/Global-Report\\_Volume-2.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/06/Global-Report_Volume-2.pdf).



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- <sup>11</sup> Freedom House, *Freedom in the World 2019: Democracy in Retreat* (2019), <https://freedomhouse.org/report/freedom-world/2019/democracy-retreat>.
- <sup>12</sup> *Id.*
- <sup>13</sup> Freedom House, "Freedom in the World 2020, United States" (2020), <https://freedomhouse.org/country/united-states/freedom-world/2020>.
- <sup>14</sup> Noah Buyon, Isabel Linzer, Tyler Roylance, and Amy Slipowitz, *Freedom in the World 2020: A Leaderless Struggle for Democracy* (Freedom House, 2020), 8, [https://freedomhouse.org/sites/default/files/2020-02/FIW\\_2020\\_REPORT\\_BOOKLET\\_Final.pdf](https://freedomhouse.org/sites/default/files/2020-02/FIW_2020_REPORT_BOOKLET_Final.pdf).
- <sup>15</sup> *Id.*
- <sup>16</sup> Transparency International, "Corruption Perceptions Index" (accessed 2020), <https://www.transparency.org/research/cpi/overview>. See data for respective years for corresponding scores, all accessible via the above link.
- <sup>17</sup> Civicus, "Monitor" (accessed 10 Mar. 2020), <https://monitor.civicus.org/>.
- <sup>18</sup> IRM staff, *Independent Reporting Mechanism (IRM): United States Progress Report 2015–2016* (OGP, 23 Jan. 2018), <https://www.opengovpartnership.org/documents/united-states-mid-term-report-2015-2017/>.
- <sup>19</sup> Juan Lozano and Nomaan Merchant, "Thousands mourn George Floyd in Texas amid calls for reform" (The Associated Press, 8 Jun. 2020), [https://apnews.com/9aeae005bdb193b6d039bb36309ea053#:~:text=HOUSTON%20\(AP\)%20%E2%80%94%20The%20last,use%20of%20police%20choke%20holds](https://apnews.com/9aeae005bdb193b6d039bb36309ea053#:~:text=HOUSTON%20(AP)%20%E2%80%94%20The%20last,use%20of%20police%20choke%20holds).
- <sup>20</sup> United Nations Human Rights Office of the High Commissioner, "Human Rights Council adopts 14 resolutions, including on excessive use of force by law enforcement officers against Africans and people of African descent" (accessed Sept. 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25981>.
- <sup>21</sup> Reporters Without Borders, "United States: Trump-era hostility toward press persists" (accessed 10 Mar. 2020), <https://rsf.org/en/united-states>.
- <sup>22</sup> Saskia Brechenmacher, *Opening Government, Closing Civic Space: Resolving the Paradox* (Carnegie Endowment for International Peace, Jun. 2019), 3, [https://carnegieendowment.org/files/6-13-19\\_Brechenmacher\\_OGP.pdf](https://carnegieendowment.org/files/6-13-19_Brechenmacher_OGP.pdf).
- <sup>23</sup> Center for Systems Science and Engineering at Johns Hopkins Univ., "COVID-19 Dashboard" (Johns Hopkins Univ. of Medicine, Aug. 2020), <https://coronavirus.jhu.edu/map.html>.
- <sup>24</sup> International Monetary Fund, "Policy Responses to COVID-19" (accessed Oct. 2020), <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#U>.
- <sup>25</sup> Pres. Donald Trump, "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak" (White House, 13 Mar. 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.
- <sup>26</sup> Claudia Grisales, Kelsey Snell, Susan Davis, and Barbara Sprunt, "President Trump Signs \$2 Trillion Coronavirus Rescue Package Into Law" (NPR, 27 Mar. 2020), <https://www.npr.org/2020/03/27/822062909/house-aims-to-send-2-trillion-rescue-package-to-president-to-stem-coronavirus-cr>.
- <sup>27</sup> International Monetary Fund, "Policy Responses to COVID-19."
- <sup>28</sup> Kathleen Marchsteiner and Meghan Stuessy, *Freedom of Information Act (FOIA) Processing Changes Due to COVID-19: In Brief* (Congressional Research Service, 27 Mar. 2020), <https://crsreports.congress.gov/product/pdf/R/R46292>.
- <sup>29</sup> Reporters Committee for Freedom of the Press, "Public Records and Open Meetings Measures related to COVID-19" (accessed Oct. 2020), <https://docs.google.com/spreadsheets/d/e/2PACX-1vTyXoIXI2whyI9akO7WT5tL9dzUdwOfFJZC9K-DHu1C7Jhmd-R5QM4EMe2k9gmBrY5c3-P08qhs8ijW/pubhtml#>.
- <sup>30</sup> Leandra Bernstein, "These states are being challenged on constitutionality of stay-at-home orders" (WJLA, 28 May 2020), <https://wjla.com/news/nation-world/these-states-are-being-challenged-on-constitutionality-of-stay-at-home-orders>.
- <sup>31</sup> *Id.*
- <sup>32</sup> Peter Whoriskey and Heather Long, "Who's getting these hundreds of billions in government aid? For now, the public may be in the dark." (*The Washington Post*, 13 Apr. 2020), <https://www.washingtonpost.com/business/2020/04/13/whos-getting-these-hundreds-billions-government-aid-now-public-may-be-dark/>; Ailsa Chang (NPR) and Bharat Ramamurti (Congressional Oversight Commission), "CARES Act Oversight: How It Works And Why It Is Necessary" (NPR, 7 May 2020), <https://www.npr.org/2020/05/07/852319544/cares-act-oversight-how-it-works-and-why-it-is-necessary>.
- <sup>33</sup> Dan Ennis, "Brief: \$4B in PPP loans were duplicates or had mismatched data, analysis finds" (BankingDive, 2 Sept. 2020), <https://www.bankingdive.com/news/paycheck-protection-program-mismatched-data-SBA/584578/>.

### III. Leadership and Multistakeholder Process

Multiple White House offices were involved in the development of the fourth U.S. NAP, alongside the OpenGov Interagency and Civil Society Working Group, which comprised the government's multistakeholder forum. The multistakeholder forum was responsible for soliciting civil society input and the White House was responsible for selecting the final commitments and publishing NAP4. Regular meetings with the Interagency and Civil Society Working Group, plus a few standalone events, comprised the core opportunities for civil society engagement in designing NAP4.

#### 3.1 Leadership

This subsection describes the OGP leadership and institutional context for OGP in the United States.

Between 2017 and 2019 multiple White House offices were involved in the development of the fourth U.S. national action plan (NAP4). At various times these offices included the Office of Science and Technology Policy (OSTP), the Office of Management and Budget (OMB), the National Security Council (NSC), and the Office of American Innovation (OAI).<sup>1</sup> Following the plan's creation, the government designated the United States' General Services Administration (GSA) and State Department as the primary agency-level representatives for NAP4. Their respective contributions to designing NAP4 is unclear based on publicly available information and interviews.

Submission of NAP4 had various setbacks that coincided with the change in national administration in January 2017. The initial deadline to submit NAP4, per the OGP Articles of Governance, was 30 June 2017. However, the U.S. government failed to meet that deadline,<sup>2</sup> and subsequent ones in the following year.<sup>3</sup> Thus, the U.S. government acted contrary to the OGP process during two consecutive action plan cycles and faced Procedural Review by the Criteria and Standards Subcommittee, in accordance with the Procedural Review guidelines.<sup>4</sup> The government finally published NAP4 on open.USA.gov on 21 February 2019,<sup>5</sup> and was removed from Procedural Review, in accordance with the same guidelines.<sup>6</sup>

The resulting action plan includes a relatively high number of low-potential-impact commitments, reflecting a missed opportunity to leverage the White House to design a plan with meaningful impact.

Interviews conducted by the IRM researcher (anonymity was explicitly requested by interviewees)<sup>7</sup> alluded to various challenges internal to the current administration as the underlying cause of including commitments with low potential impact. Challenges included uncertainty surrounding which agency would ultimately assume responsibility for the action plan's development and its desired scope of co-creation efforts. Multiple interviewees highlighted career civil servants' desires to ensure that the administration ultimately released an action plan and continued to participate in the OGP, at the potential cost of limiting the action plan to a "thin but viable" set of commitments. In the interviewees' view, this contributed to the plan's limited scope and commitments, many of which derive verbatim from existing administration initiatives that were already underway. Efforts to realize the action plan were similarly hindered by lingering uncertainty surrounding agencies' ownership of the plan (see endnote 1 for an extended discussion).

#### 3.2 Action plan co-creation process

The action plan's co-creation occurred primarily via quarterly meetings of the OpenGov Interagency and Civil Society Working Group (formerly, the government's multistakeholder forum)<sup>8</sup> and standalone events organized by various government agencies. For both the quarterly meetings and the standalone events, multiple interviewees with knowledge of the process affirmed 30–40 attendees, including 15–20 government officials, representing roughly even participation between government and civil society. Interviewees were

unable to recall whether the government actively solicited participation by nongovernment stakeholders, describing the process as a “nebulous process with little iterative co-creation.” While no in-person co-creation events were held beyond Washington, DC, some-to-all meetings were open to remote public participation via teleconference.<sup>9</sup>

### Initial phase of the co-creation process

To facilitate public participation in the co-creation process, the U.S. government first posted an announcement on USA.gov<sup>10</sup> on 6 September 2017, soliciting public comments on government-proposed commitments and submissions of new commitments. Comments were accepted via GitHub and email.<sup>11</sup> The announcement also included links to upcoming co-creation events (e.g., a NAP4 working session hosted by the U.S. Office of Management and Budget and held at the U.S. General Services Administration (GSA))<sup>12</sup> and a signup link for a related public mailing list. The announcement listed the following timeline of public-participation opportunities:

- (1) an open government interagency and civil society quarterly meeting on 6 September 2017;
- (2) a NAP4 co-creation event at GSA on 8 September 2017;
- (3) an iteration period involving civil society and federal agencies from 15 September through 13 October 2017;
- (4) a “National Day of Civic Hacking in DC” for NAP4 co-creation on 23 September 2017 at Johns Hopkins Sibley Innovation Hub; and
- (5) a co-creation workshop at National Archives and Records Administration Innovation Hub on 29 September 2017.<sup>13</sup>

Anonymous interviews confirmed that the above list represents the core set of co-creation events for NAP4 in 2017.<sup>14</sup>

This phase of the co-creation process faced increased discontent from civil society. An October 2017 article from FedScoop, a prominent outlet for online reporting of federal news, noted that “this year’s [action] plan is being created in the context of a presidency that isn’t often perceived to value openness, accountability, or responsiveness,” raising the question of how much the current administration was promoting an open government agenda.<sup>15</sup> This distrust affected NAP4’s co-creation process among segments of civil society who expressed broad concern about a perceived lack of government transparency under the Trump administration, compounded by President Trump’s decision to flout political tradition and not release his personal tax returns.<sup>16</sup> These concerns led Demand Progress,<sup>17</sup> a nonprofit focused on maintaining a democratic internet, to decline participation in NAP4’s co-creation process, citing the Trump administration’s “authoritarian policies.”<sup>18</sup>

Other members of civil society similarly couched their perceptions of declining transparency under the Trump administration and the action plan’s substantially delayed release (see Section 3.1). For example, Lisa Rosenberg, Executive Director of *Open The Government*, a nonprofit and nonpartisan coalition advocating for open government, notes that “in its first nine months in office, the Trump Administration has shown its antipathy to open government and international agreements. Therefore, it comes as no surprise that the administration has delayed releasing a ‘National Action Plan’ (NAP) to articulate goals for increasing government transparency and accountability.”<sup>19</sup>

Despite these concerns, some segments of civil society supported open government efforts. Howard and Wonderlich (Sunlight Foundation) pointedly criticized the current administration’s legitimacy in open governance and the action plan. Yet, they noted there’s still “value in the United States continu[ing] to commit to such an important, fundamental value in a public way”—specifically in allowing senior officials to advance their work on open government—“at a time when other countries’ commitments are wavering.”<sup>20</sup>

The United States’ government itself appeared to be aware of these concerns and broader civil society discontent with the current administration. An anonymous White House official

with knowledge of the action plan's development noted that "this is not about the White House or the administration;" it's about "good government."<sup>21</sup> Given the United States' increasingly polarized political climate, the government's efforts to move forward with an action plan emphasizing "good government" is therefore laudable.

American civil society's distrust of the current administration's commitment to open government was the predominant concern underlying the development of NAP4, and pervaded the whole NAP4 co-creation process.

### Final phases of the co-creation process and eventual NAP4

The U.S. government reported their initial delay in creating NAP4 on 31 October 2017 (see Section 3.1). The U.S. government restarted the plan's co-creation process in mid-2018 via reconvening the OpenGov Interagency and Civil Society Working Group<sup>22</sup> on 29 May 2018; reopening Open.U.S.A.gov for public comments on 6 June; and two co-creation events on 14 June and 21 June, both hosted by GSA.<sup>23</sup> Per the announcement, "further consultations and collaborative commitment drafting" were held from July–August 2018, targeting a NAP4 submission deadline of 31 August 2018.<sup>24</sup> The government missed this deadline, and formally released NAP4 in February 2019 (see Section 3.1).

Per the corresponding NAP4 GitHub page, initial public consultations on NAP4 (in 2017) led to 139 commitments submissions, with varying degrees of specificity.<sup>25</sup> Of the eight final commitments, four (Commitments 2–4 and 6) stem this first round of consultations, spread across five separate GitHub comments. These include:

- (1) Comment #73, "Fully implement the DATA Act to provide financial transparency and accountability through open data,"<sup>26</sup> specifically with reference to the federal Assistance Listings,<sup>27</sup> and corresponding to Commitment 2 in NAP4.
- (2) Comment #74, "Standardize reporting data for federal grants to help make that data more accessible and useful,"<sup>28</sup> corresponding to Commitment 2 in NAP4.
- (3) Comment #76, "Standardize and update the government's public data on occupations and required skills to help Americans find jobs,"<sup>29</sup> corresponding to Commitment 4 in NAP4.
- (4) Comment #77, "Help communities address opioid addiction by opening up data on drug treatment facilities,"<sup>30</sup> corresponding to Commitment 6 in NAP4.
- (5) Comment #80, "Open Up Federally Funded Scientific Research Data," corresponding to Commitment 3 in NAP4.<sup>31</sup>

The remaining final four commitments of NAP4 are not clearly represented in the public comments received on the action plan's GitHub page, suggesting they were generated by the U.S. government. Persons knowledgeable about this process affirmed this interpretation, noting that as the plan's release drew closer, government officials attempted to ensure that NAP4 would be well-aligned with existing administration initiatives by prioritizing commitments that were conceptualized previously in other government documents (e.g., the President's Management Agenda, see below), sometimes quoting verbatim from those documents.<sup>32</sup>

Indeed, FedScoop noted several commitments that appear to be recycled from existing government plans.<sup>33</sup> These included Commitment 1 (drawn from the President's Management Agenda from March 2018) and Commitment 5 (mandated under the OPEN Government Data Act).<sup>34</sup> Alex Howard, Director of the Digital Democracy Project at the Demand Progress Education Fund<sup>35</sup> and creator of E Pluribus Unum,<sup>36</sup> a leading blog on government information technology, raises similar concerns about Commitments 1 and 7. Howard notes that federal efforts to develop a whole-of-government data strategy were ongoing for months prior to the action plan's release, and while working toward greater intelligence community transparency "would indeed be valuable... [it] has been ongoing for years, with a big push from the last administration and whistleblowers within in it."<sup>37</sup> Jesse Bur, in an article on *Federal Times*, a news platform for federal managers, echoes this sentiment, noting that "many of the policies reiterate... strategies outlined in legislation and

prior policy.” The article’s title, “New Open Government Plan Doubles Down on Old Priorities,” highlights the policy reuse.<sup>38</sup> While including pre-existing initiatives can sometimes be viewed as evidence that open governance is becoming mainstreamed, the sources cited above express a somewhat more negative interpretation.

An interview with an anonymous White House official involved in the NAP4 creation (as described by FedScoop) offers the U.S. government’s perspective on the above critique, noting that “the plan doesn’t hide the fact that it chooses to put the spotlight on ongoing work instead of setting new goals.” The interview notes that NAP4 was intended to be more “streamlined,” with a concentrated “focus on five to ten high-profile, high-impact projects.”<sup>39</sup> These comments generally align with statements by anonymous interviewees regarding the action plan’s creation process.<sup>40</sup> FedScoop’s ultimate take on the action plan is nevertheless less sanguine, noting that the plan is “lighter on content than its predecessors” and “between six and seventeen months late.”<sup>41</sup>

Alex Howard expressed parallel concerns about the limited opportunities for stakeholder participation in the plan’s development. “Two government-hosted events in DC and a Github forum...are not going to meet the more robust standards for public participation and co-creation that OGP has promulgated after years of weak consultations. The U.S. government can and must do better for this to be taken seriously by the public, press and politicians.”<sup>42</sup> While the government held a somewhat larger range of events for civil society participation (see list on page 11), interviewees generally affirmed that opportunities were limited, highlighting the relatively small number of co-creation events, the non-iterative nature of the co-creation process following the 8 September 2017 event at GSA, and intra-government disagreement over the scope of public engagement with NAP4. Interviewees further affirmed that some civil society members declined to participate in the NAP4 co-creation due to concerns surrounding the administration’s commitment to public accountability, and worried that participating in the co-creation process would convey tacit support for the administration’s opacity.<sup>43</sup>

The above civil society viewpoints suggest that while half of NAP4’s commitments clearly reflect stakeholders’ input, civil society assessed the overall action plan as somewhat underwhelming and lacking ambition toward opening government beyond existing initiatives. They viewed the range of participation opportunities as limited.

### **Table 3.2: Level of public influence**

The IRM has adapted the International Association for Public Participation (IAP2) “Spectrum of Participation” to apply to OGP.<sup>44</sup> This spectrum shows the potential level of public influence on the contents of the action plan. In the spirit of OGP, most countries should aspire for “collaborate.”



Level of public influence		During development of action plan
<b>Empower</b>	The government handed decision-making power to members of the public.	
<b>Collaborate</b>	There was iterative dialogue AND the public helped set the agenda.	
<b>Involve<sup>45</sup></b>	The government gave feedback on how public input were considered.	
<b>Consult</b>	The public could give inputs.	✓
<b>Inform</b>	The government provided the public with information on the action plan.	
<b>No Consultation</b>	No consultation	

### OGP participation and co-creation standards

In 2017, OGP adopted the OGP Participation and Co-Creation Standards intended to support participation and co-creation by civil society at all stages of the OGP cycle. All OGP-participating countries are expected to meet these standards. The standards aim to raise ambition and quality of participation during development, implementation, and review of OGP action plans.

The following table provides an overview of the United States' performance implementing the Co-Creation and Participation Standards throughout the action plan development.

Key:

Green = Meets standard

Yellow = In progress (steps have been taken to meet this standard, but standard is not met)

Red = No evidence of action

Multistakeholder Forum	Status
<b>1a. Forum established: The Interagency Open Government Community of Practice is the U.S. government's multistakeholder forum.</b>	Green
1b. Regularity: The MSF met monthly during the action plan co-creation process, with one meeting per quarter open to civil society.	Yellow
1c. Collaborative mandate development: Civil society stakeholders who participated in the quarterly meetings of the MSF could contribute ideas for potential commitments, but could not develop the MSF's remit, membership, or governance structure.	Red
1d. Mandate public: Information on the forum's remit, governance, and membership structure is publicly available on digital.gov. <sup>46</sup>	Green
<b>2a. Multistakeholder: The forum includes government representatives but is open to participation from civil society on a quarterly basis.</b>	Yellow

2b. Parity: The forum includes government representatives but is open to participation from civil society on a quarterly basis.	Yellow
<b>2c. Transparent selection: Nongovernment members of the MSF could voluntarily choose to participate in quarterly meetings that were open to civil society stakeholders, and were not pre-selected by the government or subject to any screening or application process.</b>	Green
2d. High-level government representation: While the MSF was broadly open to interagency participation, the extent of high-level government representation was unclear.	Yellow
<b>3a. Openness: The forum includes government representatives but is open to civil society on a quarterly basis, with discussion covering NAP commitments.</b>	Green
3b. Remote participation: Participation in the MSF's quarterly meetings was open to remote civil society stakeholders via teleconference.	Green
3c. Minutes: The forum previously maintained a public Google group to facilitate collaboration and discussion with civil society, but the government-provided link is no longer active at the time of writing. <sup>47</sup>	Yellow

Action Plan Development	
4a. Process transparency: The government maintains Open.USA.gov as the main landing page for U.S. open government initiatives, but the page contains no information beyond U.S. national action plans and several examples of past commitments.	Yellow
4b. Documentation in advance: The government shared information regarding action plan co-creation meetings and requests for commitment suggestions via open.USA.gov and on a NAP4 GitHub page.	Green
4c. Awareness-raising: The forum previously maintained a public Google group to facilitate collaboration and discussion with civil society, but the government-provided link is no longer active at the time of writing. <sup>48</sup>	Yellow
4d. Communication channels: The forum previously maintained a public Google group to facilitate collaboration and discussion with civil society and solicited action plan commitment inputs via a public GitHub page, but the government-provided link is no longer active at the time of writing. <sup>49</sup>	Yellow
<b>4e. Reasoned response: Neither the MSF nor the government published its reasoning behind NAP4 decisions or systematically responded to major categories of public comment.</b>	Red
<b>5a. Repository: The government maintained a public GitHub repository of public submissions of potential commitments, but did not publicly release related documents more broadly, such as</b>	Yellow



**documents explaining whether and to what degree nongovernment stakeholders' feedback surrounding the action plan (as submitted during the co-creation process) was ultimately taken into account.<sup>50</sup>**

<sup>1</sup> Federal responsibility for NAP4 ultimately fell to the Office of American Innovation partway through the action plan's creation, with other agencies—notably the State Department and GSA—contributing to the NAP's design and realization. The IRM researcher couldn't determine each agency's contributions from public information and interviews. NAP4's ownership within the government remained largely fluid (with several interviewees making "pass the football" analogies) until OAI ultimately assumed responsibility following its establishment in March 2017. The IRM researcher was unable to determine the exact timeframe surrounding OAI's designation as the lead agency responsible for NAP4. One interviewee further noted that the White House Office of Management and Budget (OMB) supported the plan's development, but couldn't delineate its responsibilities relative to OAI. Anonymous, interviews by IRM researcher, May 2020.

<sup>2</sup> The U.S. government faced an initial deadline of 30 June 2017 to submit NAP4 to the OGP per OGP Articles of Governance. On 31 October 2017, the then Acting Federal Chief Information Officer of OMB informed the OGP that NAP4's publication would be delayed until early 2018 to "fine tune a strong and quality action plan reflective of national priorities." OGP informed the U.S. government on 5 December 2017 that it had "acted contrary to the OGP process" for the NAP4 development cycle. Dr. Sanjay Pradhan (OGP's Chief Executive Officer), letter to Margie Graves (Acting Federal Chief Information Office, OMB), 5 Dec. 2017, [https://www.opengovpartnership.org/wp-content/uploads/2019/06/OGP\\_Letter\\_USA\\_December2017.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/06/OGP_Letter_USA_December2017.pdf). See also Margie Graves, letter to Dr. Sanjay Pradhan, 31 Oct. 2017, [https://www.opengovpartnership.org/wp-content/uploads/2017/11/United-States\\_NAP4\\_Delay-Letter.pdf](https://www.opengovpartnership.org/wp-content/uploads/2017/11/United-States_NAP4_Delay-Letter.pdf).

<sup>3</sup> OGP informed the U.S. government that in accordance with OGP's *Government Point of Contact Manual*, the U.S. would shift from an "odd year grouping to the even year grouping," thus extending the deadline from a grace-period date of 31 Dec. 2017 to 31 Aug. 2018. However, the U.S. government failed to meet both the Aug. 2018 deadline, and an extended deadline of 31 December 2018. Dr. Sanjay Pradhan (OGP), letter to Margie Graves (OMB), 19 Jan. 2018, [https://www.opengovpartnership.org/wp-content/uploads/2019/06/United-States\\_Cohort-Shift-Letter\\_January2018.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/06/United-States_Cohort-Shift-Letter_January2018.pdf).

<sup>4</sup> On 15 January 2019, OGP formally notified the U.S. government that it had been returned to the "odd year" cohort, resulting in a new action plan submission deadline of 31 August 2019. The notice also informed the U.S. that it had "acted contrary to OGP process for two consecutive action plan cycles" and would "be placed under review by the OGP Criteria & Standards Subcommittee...to resolve the issues that have caused the delays in submitting the Action Plan." Dr. Sanjay Pradhan (OGP), letter to Margie Graves (OMB), 19 Jan. 2018, [https://www.opengovpartnership.org/wp-content/uploads/2019/06/United-States\\_Cohort-Shift-Letter\\_January2018.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/06/United-States_Cohort-Shift-Letter_January2018.pdf).

<sup>5</sup> Government of the United States, *The Open Government Partnership: Fourth Open Government National Action Plan for the United States of America* (OGP, Feb. 2019), <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>. For confirmation of date of publication, see Jory Heckman, "White House Hints at Federal Data Strategy, OPEN Govt Data Act, In open-government strategy" (*Federal News Network*, 22 Feb. 2019), <https://federalnewsnetwork.com/digital-government/2019/02/white-house-hints-at-federal-data-strategy-open-govt-data-act-in-open-government-strategy/>.

<sup>6</sup> OGP, "Country Support Updates" in *OGP Gazette* (Feb. 2019), <https://us3.campaign-archive.com/?u=b25f647af089f5f52485a663d&id=03db2be581>.

<sup>7</sup> Anonymous, interviews by IRM researcher, May 2020.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* Interviewees were unable to definitively recall whether participation was available via videoconference. For example, while one interviewee noted that some co-creation events were livestreamed, another indicated that video livestreaming was unlikely to have occurred due to government security protocols.

<sup>10</sup> USA.gov, "Help Create the 4<sup>th</sup> U.S. National Action Plan for Open Government" (accessed Oct. 2020), <https://open.usa.gov/national-action-plan/4/>. The IRM researcher could not ascertain which government body was responsible for posting the initial call for feedback.

<sup>11</sup> *Id.*

<sup>12</sup> The formal invitation can be found via EventBrite. OMB, "NAP 4 Working Session" (accessed 10 Mar. 2020), <https://www.eventbrite.com/e/nap-4-working-session-registration-46585789350#>.

<sup>13</sup> USA.gov, "Help Create the 4<sup>th</sup> U.S. National Action Plan for Open Government."

<sup>14</sup> Interviews by IRM researcher, May 2020.

<sup>15</sup> Tajha Chappellet-Lanier, "The Fourth National Action Plan for Open Government is Coming. But What Will Transparency Look Like Under Trump?" (*FedScoop*, 5 Oct. 2017), <https://www.fedscoop.com/national-action-plan-open-government-2017/>.

<sup>16</sup> *Id.*

<sup>17</sup> DemandProgress, "Our Mission" (accessed 10 Mar. 2020), <https://demandprogress.org/about/>.

<sup>18</sup> Chappellet-Lanier, “The Fourth National Action Plan for Open Government is Coming;” Alex Howard (former Dep. Dir. of the Sunlight Foundation) and John Wonderlich (Exec. Dir. of the Sunlight Foundation, a prominent nonprofit focused on increasing government transparency and accountability), echoed this sentiment. The pair note that as of 2017, “the substance of the [action plan co-creation] framework and the Trump administration’s clouded record on open government both call into serious question the legitimacy not only of the process, which is generally led by mid-level government officials, but also participation in the Open Government Partnership by the United States.” Alex Howard and John Wonderlich, “Trump Administration Commits to Participating in Open Government Partnership” (Sunlight Foundation, 8 Sept. 2017), <https://sunlightfoundation.com/2017/09/08/trump-administration-commits-to-participating-in-open-government-partnership/>; “In the Trump era, until we start seeing federal agencies, Cabinet members, and the White House itself using social media, mobile devices, radio, and TV appearances to not only inform and engage the public but to incorporate public feedback into meaningful government reform proposals - including sitting down with journalists for interviews about the effort and its goals - unfortunately there’s little reason to trust that this... commitment to open government is serious.” Alex Howard, “USA to pursue co-creation of new national action plan on open government during Trump era” (E Pluribus Unum, 31 May 2018), <https://e-pluribusunum.org/2018/05/31/usa-to-pursue-co-creation-of-new-national-action-plan-on-open-government-during-trump-era/>.

<sup>19</sup> Lisa Rosenberg and Jesse Franzblau, “Delay in U.S. Government’s Open Government Partnership Plan: A Harbinger of Things to Come?” (Open the Government, 1 Nov. 2017), <https://www.openthegovernment.org/delay-in-u-s-governments-open-government-partnership-plan-a-harbinger-of-things-to-come/>.

<sup>20</sup> Howard and Wonderlich, “Trump Administration Commits to Participating in Open Government Partnership.” Hudson Hollister, founder of the Data Coalition, a nonprofit advocating for responsible and open government data policies, has a similar opinion on continuing the NAP process; he’d “prefer the Trump administration to keep doing it” and allow for civil society to subsequently hold the government accountable for the plan’s contents, but nevertheless has reservations about the plan’s focus on e-governance instead of transparency. Chappellet-Lanier, “The Fourth National Action Plan for Open Government is Coming.”

<sup>21</sup> Chappellet-Lanier, “The Fourth National Action Plan for Open Government is Coming.”

<sup>22</sup> The Interagency Open Government Working Group was established in 2010 as a “forum for open government professionals across agencies to share best practices to promote transparency, participation, and collaboration.” While group members meet monthly, meetings are opened to civil society on a quarterly basis. Digital.gov, “OpenGov Community” (accessed 10 Mar. 2020), <https://digital.gov/communities/open-gov/>.

<sup>23</sup> For confirmation of GSA hosting, see Howard, “USA to pursue co-creation of new national action plan on open government during Trump era.”

<sup>24</sup> USA.gov, “Help Create the 4<sup>th</sup> U.S. National Action Plan for Open Government.”

<sup>25</sup> GitHub, “GSA/participate-nap4” (accessed 10 Mar. 2020), <https://github.com/GSA/participate-nap4/issues?q=is%3Aopen+is%3Aissue+label%3A2017>.

<sup>26</sup> GitHub, (accessed 10 Mar. 2020), <https://github.com/GSA/participate-nap4/issues/73>.

<sup>27</sup> Related comments include #63 “Open Procurement” (<https://github.com/GSA/participate-nap4/issues/63>) and #62 “Implement Open Contracting Data Standard to link information across the contracting chain and increase competition for public contracts” (<https://github.com/GSA/participate-nap4/issues/62>). Comment #120 “Focus on improvement meta data quality at agencies” is somewhat related (<https://github.com/GSA/participate-nap4/issues/120>). All accessed 10 Mar. 2020.

<sup>28</sup> GitHub, (accessed 10 Mar. 2020), <https://github.com/GSA/participate-nap4/issues/74>.

<sup>29</sup> GitHub, (accessed 10 Mar. 2020), <https://github.com/GSA/participate-nap4/issues/76>.

<sup>30</sup> GitHub, (accessed 10 Mar. 2020), <https://github.com/GSA/participate-nap4/issues/77>.

<sup>31</sup> GitHub, (accessed 10 Mar. 2020), <https://github.com/GSA/participate-nap4/issues/80>. Comment #64, “Develop Guidelines for Storing Federal-Funded Research,” is closely related. (<https://github.com/GSA/participate-nap4/issues/64>.) Comment #152, “Expand the effort to make federally funded scientific research and it’s [sic] associated data publicly available,” is tangentially related based on the content of the comment. (<https://github.com/GSA/participate-nap4/issues/152>.) All accessed 10 Mar. 2020.

The most detailed comments, which are reflected in final NAP4 commitments, were submitted by Audrey Ariss, then Director of Research and Design at the Center for Open Data Enterprise. Ariss’ GitHub username is “audrey-a.” See GitHub, “Audrey-a” (accessed 10 Mar. 2020), <https://github.com/audrey-a>.

<sup>32</sup> Anonymous, interviews by IRM researcher, May 2020.

<sup>33</sup> Tajha Chappellet-Lanier, “U.S. Finally Submits Fourth National Action Plan for Open Government” (FedScoop, 22 Feb. 2019), <https://www.fedscoop.com/national-action-plan-open-government-2019/>.

<sup>34</sup> The Act was formally signed into law on 14 January 2019 as Title II of “H.R.4174: Foundations for Evidence-Based Policymaking Act of 2018.” 115<sup>th</sup> Congress of the United States, “H.R.4174 - Foundations for Evidence-Based Policymaking Act of 2018” (Congress.gov, 14 Jan. 2019), <https://www.congress.gov/bill/115th-congress/house-bill/4174/actions?KWICView=false>. For complete text, see 115<sup>th</sup> Congress of the United States, “Public Law 115–435, 132 Stat. 5529” (GPO, 14 Jan. 2019), <https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf>.

<sup>35</sup> Demand Progress, “Demand Progress Education Fund” (accessed 10 Mar. 2020).

<sup>36</sup> E Pluribus Unum (accessed 10 Mar. 2020), <https://e-pluribusunum.org/>.

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<sup>37</sup> Alex Howard, “After Years of Delays and Democratic Regression, USA Releases Weak Open Government Plan” (E Pluribus Unum, 22 Feb. 2019), <https://e-pluribusunum.org/2019/02/22/after-years-of-delays-and-democratic-regression-usa-releases-weak-open-government-plan/>.

<sup>38</sup> Jessie Bur (Federal Times, 25 Feb. 2019), <https://www.federaltimes.com/management/2019/02/25/new-open-government-plan-doubles-down-on-old-priorities/>.

<sup>39</sup> Tajha Chappellet-Lanier, “U.S. Finally Submits Fourth National Action Plan for Open Government” (FedScoop, 22 Feb. 2019), <https://www.fedscoop.com/national-action-plan-open-government-2019/>.

<sup>40</sup> Anonymous, interviews by IRM researcher, May 2020.

<sup>41</sup> *Id.*

<sup>42</sup> Howard, “USA to pursue co-creation of new national action plan on open government during Trump era.” Elsewhere, Howard notes that the action plan’s eighth commitment, “which is aimed at improving ‘Public Participation in Developing Future U.S. National Action Plans,’ is painfully ironic, given how little effort at public engagement the Trump White House and federal agencies made over the past two years.” Howard, “After Years of Delays and Democratic Regression, USA Releases Weak Open Government Plan.”

<sup>43</sup> Anonymous, interviews by IRM researcher, May 2020.

<sup>44</sup> IAP2, “IAP2 Spectrum” (accessed Oct. 2020), [http://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/foundations\\_course/IAP2\\_P2\\_Spectrum\\_FINAL.pdf](http://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/foundations_course/IAP2_P2_Spectrum_FINAL.pdf).

<sup>45</sup> OGP’s Articles of Governance also establish participation and co-creation requirements a country must meet in their action plan development and implementation to act according to OGP process. Based on these requirements, the United States acted contrary to OGP process twice during the development of NAP4

<sup>46</sup> Digital.gov, “OpenGov Community.”

<sup>47</sup> The government-provided link is: <https://groups.google.com/forum/#!forum/us-open-government>. See Digital.gov, “OpenGov Community.”

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Anonymous interviews with individuals knowledgeable about the NAP4 co-creation process indicated that the aforementioned Google Group was the repository for announcements of NAP4 activities. However, the Google Group is no longer actively maintained as of the time of writing and its contents are therefore unavailable to the IRM researcher. Interviews conducted in May 2020.

## IV. Commitments

All OGP-participating governments develop OGP action plans that include concrete commitments over a two-year period. Governments begin their OGP action plans by sharing existing efforts related to open government, including specific strategies and ongoing programs.

Commitments should be appropriate to each country's unique circumstances and challenges. OGP commitments should also be relevant to OGP values laid out in the OGP Articles of Governance and Open Government Declaration signed by all OGP-participating countries.<sup>1</sup> The indicators and method used in the IRM research can be found in the IRM Procedures Manual.<sup>2</sup> A summary of key indicators the IRM assesses can be found in the Annex of this report.

### General overview of the commitments

The action plan contains eight commitments. Four are directly aligned with submissions from interested stakeholders during the co-creation process. The action plan broadly centers on transparency, including commitments that leverage data to reduce the ongoing opioid crisis and improve transparency within the intelligence community. Previous plans included a larger amount of commitments, thereby covering a wider range of areas. The 2013–2015 action plan stood out for its commitments on transparency in the extractive industries, fiscal transparency, government integrity, and justice and law enforcement, while the 2015–2017 focused on climate data, open health, and police data.

The current action plan includes one commitment with a transformative potential impact (Commitment #2), but is less ambitious than the previous action plans regarding the number of starred commitments. The current plan has one starred commitment compared to four in the prior plan. Given the smaller number of commitments (8 compared to the prior plan's 52), the current plan also has a more limited range of substantive issues.

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<sup>1</sup> OGP, "Articles of Governance" (17 Jun. 2019), <https://www.opengovpartnership.org/articles-of-governance/>.

<sup>2</sup> OGP, "IRM Procedures Manual" (16 Sept. 2017), <https://www.opengovpartnership.org/documents/irm-procedures-manual>.

# 1. Leverage Data as a Strategic Asset: Publish a Comprehensive Federal Data Strategy

## Main Objective

*“To deliver a comprehensive Federal Data Strategy that encompasses Federal and Federally-sponsored program, statistical, and mission-support data.”*

## Milestones

None provided.

**Editorial Note:** For the complete text of this commitment, please see the United States’ action plan at: <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.

IRM Design Report Assessment	
<b>Verifiable:</b>	Yes
<b>Relevant:</b>	Yes Access to information; technology and innovation for transparency and accountability
<b>Potential impact:</b>	Minor

## Commitment analysis

This commitment will develop a comprehensive Federal Data Strategy covering federal and federally-sponsored program, statistical, and mission-support data. The strategy will enable the government to leverage data while executing government missions in an accountable and efficient manner, foster economic growth, and improve citizens’ quality of life. Per the official U.S. Federal Data Strategy website,<sup>1</sup> the strategy will “fully leverage the value of federal data for missions, service, and the public good by guiding the government in practicing ethical governance, conscious design, and a learning culture.”<sup>2</sup>

The commitment comes from the President’s Management Agenda of March 2018, roughly a year prior to NAP4.<sup>3</sup> One of the agenda’s goals is “Leveraging Data as a Strategic Asset,” which would develop a Federal Data Strategy.<sup>4</sup> This goal’s action plan includes four sub-goals:<sup>5</sup>

1. Enterprise Data Governance (“managing government data as a strategic asset”);<sup>6</sup>
2. Access, Use, and Augmentation (facilitating better access to and use of federally held data);
3. Decision-Making and Accountability (facilitating the use of data to support decision-making both internal and external to government); and
4. Commercialization, Innovation and Public Use (facilitating data usage by public and commercial ventures).



The value and scope of leveraging federally-held data is not trivial. Nick Hart, CEO of the Data Coalition (a U.S. data trade association) and former director of policy and research for the U.S. Commission on Evidence-Based Policymaking, estimated the value of data provided by the public to the U.S. government at \$143 billion annually.<sup>7</sup> William Brantley, Training Administrator for the U.S. Patent and Trademark Office's Global Intellectual Property Academy notes that the U.S. federal government is perhaps the largest data producer worldwide, and federally-held data is a "a major driver of the American economy as businesses use the data to make decisions or blend the government data into products and services sold to consumers."<sup>8</sup> The commitment's value regarding both the scope of federally-held data and that data's commercial value is evident.

The commitment is relevant to the OGP values of access to information (as it will provide access to federal data, presumed by the IRM researcher to imply *public* access), and technology and innovation for transparency and accountability (as it will leverage data for government activities and better citizen outcomes, i.e., economic growth and quality of life). Prior to the aforementioned President's Management Agenda, which informs this commitment, the U.S. government did not have a formal federal data strategy. This therefore represents an opening of government relative to the status quo, with particular emphasis on the four sub-goals listed above.

Regarding potential impact, 80 government and nongovernment participants met in May 2018 to discuss the President's "Leveraging Data" goal from his agenda. They identified four broad challenges the proposed strategy would address: (1) barriers to interagency collaboration such as complex data-sharing agreements and uncertainty surrounding data ownership; (2) restrictions on data use due to no national standard on redacting personally identifying information (PII) and other legal concerns; (3) confusion surrounding the broader legal framework for using federal data; and (4) a lack of interoperability and data standards, specifically surrounding metadata and sensitive information.<sup>9</sup> These challenges obstruct efficient, broad, and accountable use of federal data.

However, neither this commitment, nor its presidential counterpart, clearly specify what data is covered or state whether it applies to all federal data or just a portion. Neither do they specify *how* the government will leverage federal data to improve quality of life or make federal data more efficient and accountable. Therefore, the commitment's potential impact on access to information cannot be assessed as more than minor. On these grounds, the IRM researcher similarly assessed the commitment's potential impact on technology and innovation for transparency and accountability.

Given the four challenges identified in May 2018, the commitment's ability to address them, and the potential monetary value of the data at stake, the IRM researcher assesses that the commitment has a minor potential impact on opening government. The commitment would have a potentially moderate or transformative impact if it provided clearer metrics surrounding its scope, how data will be leveraged, and the range of data covered by the strategy.

If this commitment is carried over to the next action plan, the IRM researcher advises greater emphasis on well-defined, measurable outputs.

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<sup>1</sup> The Federal Data Strategy website is managed by GSA Technology Transformation Services and is led by the Federal Data Strategy Development Team, comprised of representatives from OMB (Executive Office of President Co-Lead), the Office of Science and Technology Policy (Executive Office of President Co-Lead), the Dept. of Commerce (Agency Co-Lead), and the Small Business Admin. (Agency Co-Lead). Federal Data Strategy, "About: Team" (GSA Technology Transformation Services, accessed 8 Mar. 2020), <https://strategy.data.gov/team/>. See also Performance.gov, "Leveraging Data as a Strategic Asset" (accessed 8 Mar. 2020), [https://www.performance.gov/CAP/action\\_plans/FY2018\\_Q1\\_Data\\_Accountability\\_Transparency.pdf](https://www.performance.gov/CAP/action_plans/FY2018_Q1_Data_Accountability_Transparency.pdf).

<sup>2</sup> Federal Data Strategy, "About: Background" (GSA Technology Transformation Services, accessed 8 Mar. 2020), <https://strategy.data.gov/background/>.

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<sup>3</sup> NAP4 is dated February 2019. Government of the United States, *The Open Government Partnership: Fourth Open Government National Action Plan for the United States of America* (OGP, Feb. 2019), <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>. The President's Management Agenda is a long-term vision for modernizing and improving the federal government. The Agenda uses Cross-Agency Priority (CAP) Goals to coordinate and publicly track implementation across Federal agencies. See Executive Office of the President, "President's Management Agenda" (GSA and OMB, accessed 8 Mar. 2020), <https://www.performance.gov/PMA/PMA.html>.

<sup>4</sup> Virtually identical to NAP4's Commitment 1, this goal will "leverage data as a strategic asset to grow the economy, increase the effectiveness of the Federal Government, facilitate oversight, and promote transparency." Performance.gov, "Leveraging Data as a Strategic Asset" (accessed 8 Mar. 2020), 2, [https://www.performance.gov/CAP/action\\_plans/FY2018\\_Q1\\_Data\\_Accountability\\_Transparency.pdf](https://www.performance.gov/CAP/action_plans/FY2018_Q1_Data_Accountability_Transparency.pdf).

<sup>5</sup> *Id.* See also Performance.gov, "CAP Goal Overview: Leveraging Data as a Strategic Asset" (GSA and OMB, accessed 8 Mar. 2020), <https://www.performance.gov/CAP/leveragingdata/>.

<sup>6</sup> Performance.gov, "Leveraging Data as a Strategic Asset" at 7.

<sup>7</sup> Nick Hart, "The Federal Data Strategy is a Trump Plan We Should All Support" (NextGov, 2 Jul. 2019), <https://www.nextgov.com/ideas/2019/07/federal-data-strategy-trump-plan-we-should-all-support/158153/>.

<sup>8</sup> William Brantley, "The Value of Federal Government Data" (Digital.gov, 14 Mar.2018), <https://digital.gov/2018/03/14/data-briefing-value-federal-government-data/>.

<sup>9</sup> The Center for Open Data Enterprise, "Roundtable on Leveraging Data as a Strategic Asset: Key Takeaways" (May 2018), 3 <http://reports.opendataenterprise.org/OMB-Key-Takeaways-Report.pdf>.



## 2. Ensure Accountability for Grants

### Main Objective

*“Pursue Results-Orientated Accountability for Grants by improving the transparency of the Federal grant-making process to the American public. The System for Award Managements<sup>1</sup> (SAM) will become the central repository for common government-wide certifications and representations required of Federal grant recipients.*

### Milestones

*“Review data standards when they are published to ensure completeness and accuracy, and inclusion of critical distinctions in types of grants and recipients.”*

*“Align agency grant-related reform initiatives to the President’s Management Agenda.”*

*“Modify existing, or design new, grant systems to use government-wide data standards.”*

**Editorial Note:** For the complete text of this commitment, please see the United States’ action plan at: <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.

IRM Design Report Assessment	
<b>Verifiable:</b>	Yes
<b>Relevant:</b>	Yes Access to information; technology and innovation for transparency and accountability
<b>Potential impact:</b>	Transformative

### Commitment analysis

This commitment facilitates results-oriented accountability for federal grants by “improving the transparency of the federal grant-making process,”<sup>2</sup> specifically surrounding assistance listings, defined as “assistance to the American public in the form of projects, services, activities.”<sup>3</sup> The commitment will make the System for Award Management (SAM)<sup>4</sup> the “central repository for common government-wide certifications and representations required of Federal grant recipients,”<sup>5</sup> thereby enabling entities seeking federal assistance<sup>6</sup> to conduct a centralized search for assistance and submit required certifications and representations at a centralized repository.<sup>7</sup> “Representations and certifications” refer to information that is required when applying for federal assistance, and annually updated per the Federal Acquisition Regulation (FAR), which governs federal procurements.<sup>8</sup> The representations and certifications are comprehensive, covering issues from unpaid federal tax liability and criminal history to compliance with Equal Employment Opportunity regulations.

Under the government’s efforts to position SAM as the government repository for certifications and representations for assistance, the commitment envisions a range of activities for federal agencies: (1) reviewing assistance listings’ data standards at the time of publication to ensure completeness and accuracy, as well as to ensure the inclusion of distinctions in grant types and recipients; (2) aligning agency grant reforms to the President’s Management Agenda; and (3) modifying existing or designing new grant systems to use government-wide data standards. These activities are treated as milestones for the purpose of evaluating the commitment.

The three milestones are almost verbatim copies of actions mandated by a 2018 Office of Management and Budget (OMB) memorandum on “Strategies to Reduce Grant Recipient Reporting Burden.”<sup>9</sup> The majority of the commitment text is similarly copied.

Per the memo, the impetus for these milestones—and thus the commitment itself—derives from the Digital Accountability and Transparency Act (DATA) of 2014, which requires OMB to administer a grants pilot to identify new common data standards, to enable efficient reporting, and to provide new solutions that reduce administrative burden on awardees and the government workforce, and subsequently issue guidance to federal agencies on their implementation.<sup>10</sup> This memo fulfilled the ‘issue guidance’ requirement.

The grants pilot was conducted by OMB in conjunction with the Department of Health and Human Services (HHS).<sup>11</sup> HHS was designated as the executing agent of a sub-DATA pilot focused on assistance listings due to its role as the largest grant-issuing entity and managing partner of Grants.gov.<sup>12</sup> The assistance listings pilot was carried out from November 2014–May 2017.<sup>13</sup>

Conceptually, the goal of the DATA pilot program was to “identify common reporting elements” required of federal grantees, contractors, and other parties, “as well as [to identify] unnecessarily duplicative or burdensome financial reporting requirements for recipients of Federal awards.”<sup>14</sup> The pilot sought to develop a viable online tool that would “centralize collection of all reporting requirements under the Federal Acquisition Regulation (FAR), rather than require contractors to submit reports to multiple locations and in multiple formats,” and create government-wide data standards that would “increase opportunities for streamlined reporting,” covering data elements, conditions, attributes, and other information required of federal assistance seekers.<sup>15</sup>

OMB’s resulting *Report to Congress: Data Act Pilot Program* advised establishing a central, open repository for defining and collecting both assistance listings data, as well as the representations and certifications required of assistance seekers.

In the abovementioned memo, OMB gave deadlines for transitioning representations and certifications to SAM, and for using government-wide federal data standards for assistance listings, including: (1) 30 September 2018 for finalizing government-wide core grants management data standards; (2) 30 April 2019 for agencies to submit a plan to OMB that describes their strategy for integrating the new data standards into current and/or future grant systems; and (3) 1 January 2020 for SAM to become the central government-wide repository for representations and certifications.<sup>16</sup>

These activities closely resemble those described in the President’s Management Agenda (PMA)<sup>17</sup> as referenced in the commitment text. The PMA includes a Cross-Agency Priority (CAP) that focuses on “Results-Oriented Data for Grants,” and represents the broader framework for the commitment’s proposed activities. In line with the commitment’s objectives, the PMA will “rebalance compliance efforts,” “standardize grant reporting data and improve data collection in ways that will increase efficiency, promote evaluation, reduce reporting burden, and benefit the American taxpayer.”

Though the commitment describes activities that are largely internal to government functions, the IRM researcher assesses the commitment as relevant for the OGP value of access to information by nature of its efforts to streamline assistance seekers’ ability to access information on—and submit—the required representations and certifications. The commitment is further relevant to the OGP value of technology and innovation for access to information due to its use of SAM as a digital repository and interface for submission of representations and certifications.

As described in the commitment text and in the corresponding section of the 2018 PMA, the commitment’s activities are materially and substantively important given the \$700 billion that the U.S. government spends on grants and cooperative agreements, covering roughly 40,000 grant recipients annually, ranging from state and local governments to

universities and small businesses.<sup>18</sup> Funding assistance listings comprises roughly 20% of the entire federal budget.<sup>19</sup> Furthermore, federal and nongovernment grant managers spend roughly 40% of their time managing compliance with federal grant requirements, illustrating the burdensome compliance process that impedes grantees' focus on delivering and measuring results obtained using federally-funded assistance.<sup>20</sup> Moreover, SAM (as of 2017) had roughly one million registered contractors, grantees, and federal officials, published 250,000 procurement opportunities, award notices, and engagement events on a daily basis, and used 200+ standard data elements across 2.2 million contracts awarded annually.<sup>21</sup> Though encompassing a broader range of contracts than assistance listings, this immense scope of SAM representation and certification activities highlights the potential for efficiency gains. Potential efficiency gains are particularly sizeable for assistance listings for states and universities, for whom "federal financial assistance accounts for approximately a quarter and a third of their state and university budgets respectively."<sup>22</sup>

OMB's *Data Pilot Program* report speaks further to the magnitude of the potential time saved by centralizing representation and certification requirements via SAM. A 2014 OMB review found that among 100 FAR reporting requirements, roughly 40% were required to be submitted to "multiple federal contracting officers across the Federal government, in multiple formats, and to multiple agencies."<sup>23</sup> In a 2014 national open dialogue with 553 stakeholders, participants broadly supported federal efforts to streamline and centralize submission of certifications and representations.<sup>24</sup> A broader pool of 2,039 respondents was invited to vote on dialogue-generated ideas; 30% supported efforts to reduce federal reporting and compliance burdens, and "reduc[ing] duplication in reporting and data collection" received the largest number of votes.<sup>25</sup>

The commitment has a transformative potential impact given the magnitude of compliance burdens currently faced by federal assistance seekers and grantors; the magnitude of the funding and assistance listings affected by the commitment; and the commitment's potential to substantially reduce compliance burdens by centralizing representations and certifications. The IRM researcher nevertheless notes that a transformative impact may be impeded by the lack of specificity in the commitments' three activities. Specificity is needed regarding the scope—i.e., which agencies will be covered by these efforts, which grant-making systems will be subject to revised data standards, and which distinctions in types of grants and recipients are currently lacking under existing data standards. Specificity is also needed regarding the activities, such as which data standards are currently *not* subject to review at their time of publication, and what efforts agencies will take to align their grant reforms with the PMA. Despite these shortcomings, the IRM researcher nevertheless assesses the commitment as having a transformative potential impact based on the potential large-scale gains in compliance efficiency.

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<sup>1</sup> SAM is officially defined as the "System for Award Management;" "managements" is an error in NAP4.

<sup>2</sup> Government of the United States, *The Open Government Partnership: Fourth Open Government National Action Plan for the United States of America* (OGP, Feb. 2019), 2, <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.

<sup>3</sup> System for Award Management, "Learning Center: Assistance Listings" (accessed 8 Mar. 2020), <https://beta.sam.gov/help/assistance-listing>. Beyond grants, federal assistance also covers loans, scholarships, and insurance. *Id.*

<sup>4</sup> SAM is located at <https://www.sam.gov/>. Assistance listings are currently housed in a beta version of SAM available at <https://beta.sam.gov/>. Prior to SAM's creation in the fourth quarter of fiscal year 2017, federal domestic assistance listings were maintained via the Catalog of Federal Domestic Assistance (CFDA) ([www.cfda.gov](http://www.cfda.gov)). As of 25 May 2018, the CFDA website was retired, renamed "Assistance Listings," and officially moved to the SAM platform, which currently remains in beta mode. For additional details, see U.S. Dept. of Energy, "PF 2018-32 Catalog of Federal Domestic Assistance (CFDA.gov)" (18 Jun. 2018), <https://www.energy.gov/management/downloads/pf-2018-32-catalog-federal-domestic-assistance-cfdagov>. See also System for Awards Management, "Catalog of Federal Domestic Assistance Transition Frequently Asked Questions" (GSA, May 2018), [https://www.nasact.org/Files/2018\\_05\\_CFDA\\_Transition\\_FAQ.pdf](https://www.nasact.org/Files/2018_05_CFDA_Transition_FAQ.pdf).

<sup>5</sup> Government of the United States, *Fourth Open Government National Action Plan* at 2.

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<sup>6</sup> “Entities” include state and local governments, universities, nonprofits, tribes, and small businesses. Office of Management and Budget, “Memorandum for Heads of Executive Departments and Agencies” M-18-24 (White House, 5 Sept. 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/09/M-18-24.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> System for Awards Management, *System for Award Management Federal User Guide – v.2.5* (25 Jan. 2020), [https://sam.gov/SAM/transcript/SAM\\_Federal\\_User\\_Guide.pdf](https://sam.gov/SAM/transcript/SAM_Federal_User_Guide.pdf). See also Federal Service Desk, “What are Representations and Certifications?” (12 Oct. 2013), [https://www.fsd.gov/fsd-gov/answer.do?sysparm\\_kbid=46d02a7e6f585100211956532e3ee416&sysparm\\_search=](https://www.fsd.gov/fsd-gov/answer.do?sysparm_kbid=46d02a7e6f585100211956532e3ee416&sysparm_search=). See §14.2 for the full SAM representations and certifications questionnaire required of those seeking federal assistance. For the complete FAR, see Acquisitions.gov, “Full FAR Download in Various Formats” (accessed 9 Mar. 2020), <https://www.acquisition.gov/browse/index/far>.

<sup>9</sup> The OMB memo’s first three actions are:

- Review data standards when they are published to ensure completeness and accuracy, and inclusion of critical distinctions in types of grants and recipients;
- Align all agency grant-related reform initiatives to the modernization vision outlined in the PMA, and fully participate in applicable CAP working groups; [and]
- Use government-wide data standards to modify existing or design new grant systems.

Office of Management and Budget, “Memorandum” at 2.

<sup>10</sup> 113<sup>th</sup> Congress of the United States, “Public Law 113-101: Digital Accountability and Transparency Act of 2014” (GPO, 9 May 2014), <https://www.congress.gov/113/plaws/publ101/PLAW-113publ101.pdf>.

<sup>11</sup> OMB, *Report to Congress: Data Act Pilot Program* (White House, 10 Aug. 2017), [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/sequestration\\_reports/2017\\_data\\_act\\_section5\\_report.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/sequestration_reports/2017_data_act_section5_report.pdf).

<sup>12</sup> *Id.* at 32. See 36–37 for a progress-tracking timeline of the pilot.

<sup>13</sup> *Id.* at 36.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> Office of Management and Budget, “Memorandum for Heads of Executive Departments and Agencies” M-18-24 (White House, 5 Sept. 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/09/M-18-24.pdf>.

<sup>17</sup> Executive Office of the President, “President’s Management Agenda” (GSA and OMB, 2018), 38, [https://www.performance.gov/PMA/Presidents\\_Management\\_Agenda.pdf](https://www.performance.gov/PMA/Presidents_Management_Agenda.pdf).

<sup>18</sup> *Id.*

<sup>19</sup> Office of Management and Budget, *Report to Congress* at 32.

<sup>20</sup> *Id.* at 38.

<sup>21</sup> *Id.* at 19.

<sup>22</sup> *Id.* at 32.

<sup>23</sup> *Id.* at 16.

<sup>24</sup> *Id.* at 18, 20.

<sup>25</sup> *Id.*

### 3. Provide Public Access to Federally-Funded Research

#### Main Objective

*“Develop a report that provides recommendations for improvements to existing Federal open access policies and continued collaboration between agencies on achieving open access objectives.”*

#### Milestones

None provided.

**Editorial Note:** For the complete text of this commitment, please see the United States’ action plan at: <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.

IRM Design Report Assessment	
Verifiable:	Yes
Relevant:	Yes Access to information
Potential impact:	Minor

#### Commitment analysis

This commitment directs the U.S. National Science and Technology Council (Office of Science and Technology Policy) to broaden public access to federally-funded research, specifically by having the Sub-Committee on Open Science produce a report on “recommendations for improvements to existing Federal open access policies and continued collaboration between agencies on achieving open access objectives.”

The commitment follows directly from Commitment 20 of the U.S.’ third NAP on “Open Science,” of which the first milestone was “increase public access to results of federally-funded scientific research,” led by the U.S. Office of Science and Technology Policy.<sup>1</sup> More specifically, that milestone aimed to ensure that “all Federal agencies that spend more than \$100 million per year on research and development finalize plans and implement policies and programs to make scientific publications and digital data resulting from Federally funded research accessible to and usable by scientists, entrepreneurs, educators, students, and the general public.”<sup>2</sup> By the end of the reporting cycle for NAP3, all 16 federal agencies subject to the commitment had released public access plans, 11 of 16 agencies had implemented data management plans, and digital repositories for federally-funded research existed for all agencies with active public access plans. The report envisioned under this commitment will provide recommendations for further improvements to these efforts.

The commitment is relevant to the OGP value of access to information by nature of its emphasis on making federally-funded research available to the public.

The magnitude of federally-funded research is substantial. The National Science Foundation reports that federal research and development obligations reached roughly \$129.5 billion in fiscal year 2018, an increase of 8.8% over the previous fiscal year,<sup>3</sup> and far exceeding an increase of 2.7% from FY2016–2017. Preliminary data for FY2019 puts the figure at 9.6% relative to FY18, marking a third consecutive year-on-year increase.<sup>4</sup>

However, the IRM researcher assesses the commitment as having a minor potential impact. This is particularly evident when its limited output of a single recommendations report is evaluated against the more substantial work of the previous action plan, which developed and implemented policies facilitating open access to federally-funded research.

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<sup>1</sup> IRM, “Open Science Through Open Data (US0072)” (OGP, accessed 9 Mar. 2020), <https://www.opengovpartnership.org/members/united-states/commitments/US0072/>. Those efforts in turn stemmed from the 2013 memorandum on Increasing Access to the Results of Federally Funded Scientific Research. Office of Science and Technology Policy, “Memorandum for the Heads of Executive Departments and Agencies: Increasing Access to the Results of Federally Funded Scientific Research” (White House, 22 Feb. 2013), [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp\\_public\\_access\\_memo\\_2013.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> Christopher Pece, “Federal R&D Obligations Increase 8.8% in FY 2018; Preliminary FY 2019 R&D Obligations Increase 9.3% Over FY 2018” (National Science Foundation, 30 Jan. 2020), <https://www.nsf.gov/statistics/2020/nsf20308/>.

<sup>4</sup> *Id.*

## 4. Foster the Expansion of Workforce Data Standards

### Main Objective

*“The National Council for the American Worker (NCAW) [will] develop [sic] strategies to leverage data in three fundamental areas: create increased transparency around educational outcomes; provide increased transparency over job posting data; ensure transparency over data for skills/credentials leading to family-sustaining job outcomes.”*

### Milestones

None provided.

**Editorial Note:** For the complete text of this commitment, please see the United States’ action plan at: <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.

IRM Design Report Assessment	
<b>Verifiable:</b>	Yes
<b>Relevant:</b>	Yes Access to information; technology and innovation for transparency and accountability
<b>Potential impact:</b>	Minor

### Commitment analysis

This commitment fosters expanding workforce data standards in an economy of emerging technologies and the increasing role of data in assessing those technologies’ impacts. The National Council for the American Worker will leverage data to (1) increase transparency around educational outcomes, (2) increase transparency in job posts, and (3) ensure transparency in data for credentials leading to family-sustaining jobs. This commitment is a partial continuation of Commitment 9 of the U.S.’ third NAP,<sup>1</sup> which aimed to increase access to workforce data by developing the Occupational Information Network to include an “internet-wide inter-operability scheme covering training, skills, job, and wage listings.”

The National Council for the American Worker was established via a 2018 Executive Order (E.O.).<sup>2</sup> The Council must develop “a national strategy to ensure that America’s students and workers have access to affordable, relevant, and innovative education and job training that will equip them to compete and win in the global economy.”<sup>3</sup> The Council’s underlying impetus—and thus that of the commitment—was twofold: (1) the large number of unfilled jobs in the U.S., estimated at 6.7 million, and (2) the disruptive impact of new technology, including artificial intelligence, on the job market, and the necessity of training workers for new jobs with new technologies.<sup>4</sup> Beyond the NAP4 commitment, the Council develops recommendations for a national strategy to empower American workers and coordinates cooperative and information-sharing activities between federal, nonprofit, and private sector employers and stakeholders on training the American workforce.<sup>5</sup>

Per E.O. section 7(e), the Council had 180 days to (1) “recommend a specific course of action for increasing transparency related to education and job-training program options, including those offered at 4-year institutions and community colleges;” (2) “propose ways to increase access to available job data, including data on industries and geographic locations with the greatest numbers of open jobs and projected future opportunities, as well as the underlying skills required to fill open job;” and (3) “propose strategies for how best to use existing data tools to support informed decision making for American students



and workers.”<sup>6</sup> These actions are similar to those in Commitment 4, albeit without direct mention of “family-sustaining jobs.” The last action, by contrast, falls more under the purview of the American Workforce Policy Advisory Board, established in the same E.O. and mandated to “to offer diverse perspectives on how the Federal Government can improve education, training, and re-training for American workers.”<sup>7</sup> A federal “Pledge to America’s Workers” invites companies and trade groups to “expand programs that educate, train, and reskill American workers from high-school age to near-retirement.”<sup>8</sup> More than 300 companies had signed the pledge at the time of writing, resulting in 12 million training opportunities envisioned through 2023–2024.<sup>9</sup>

Regarding the commitment’s first activity, the National Skills Coalition notes that students and employers lack clear data on employment and earning prospects for postsecondary programs.<sup>10</sup> Many existing programs, including the Department of Education’s surveys of postsecondary students, omit employment and earnings information.<sup>11</sup> While the well-known College Scorecard does include earnings data from the Department of the Treasury, it only tracks students receiving federal education assistance and reports outcomes by institution versus by program.<sup>12</sup> More transparency surrounding educational outcomes is warranted.

Regarding the second proposed activity, the E.O. defines greater transparency in job postings as greater access to job posting data, “including data on industries and geographic locations with the greatest number of open jobs and projected future opportunities, as well as the underlying skills required to fill open jobs, so that American students and workers can make...informed decisions...regarding their education, job selection, and career paths.”<sup>13</sup> The proposed activity stems directly from the growing gap in job skills, as the number of unfilled jobs in America continues to hover near record highs.<sup>14</sup> Though the skills gap has myriad underlying causes, the rationale underlying this second activity is that greater transparency surrounding the professional and educational qualities sought by employers will close the gap, and is therefore of material benefit to both American workers and employers (by reducing their labor search costs).

Regarding the third proposed activity, “family-sustaining jobs” are jobs that generate sufficient income to sustain a family as opposed to an individual. Forty-four percent of all American workers aged 18–64 have low-wage jobs resulting in median annual earnings of \$17,950 and corresponding to median hourly wages of \$10.22.<sup>15</sup> MIT’s living wage calculator calculates the minimum wage necessary for a family’s basic needs<sup>16</sup> and found the living hourly wage for a family of four (including two children) was \$16.07 in 2016–2017.<sup>17</sup> It follows that a near-majority of all American workers fail to earn a family-sustaining wage. The commitment’s goal of ensuring access to data on credentials for family-sustaining jobs would help individuals better assess the required skills and credentials.

The commitment is relevant to the OGP value of access to information due to its emphasis on increasing public transparency surrounding job data. Transparency, as referenced in the commitment, refers to access to information on workforce data versus actual transparency in the data. The commitment is also relevant to technology and innovation given the emphasis on the availability of data.

The commitment has a minor potential impact owing to the lack of specificity surrounding the scope of data targeted on educational outcomes, job postings, and skills for family-sustaining jobs. Furthermore, the commitment is vague on how exactly data would be leveraged to close the skills gap and facilitate greater public access to family-sustaining jobs, particularly regarding how the resulting data will be distributed to both workers and firms (e.g., via an online database similar to the College Scorecard). Barring further clarity on these issues, the IRM researcher assesses that the commitment is unlikely to have a substantial impact on workforce outcomes.

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- <sup>1</sup> IRM, “Access to Workforce Data (US0061)” (OGP, accessed 8 Mar. 2020), <https://www.opengovpartnership.org/members/united-states/commitments/US0061/>.
- <sup>2</sup> Pres. Donald Trump, “Executive Order Establishing the President’s National Council for the American Worker” (White House, 19 Jul. 2018), <https://www.whitehouse.gov/presidential-actions/executive-order-establishing-presidents-national-council-american-worker/>.
- <sup>3</sup> *Id.*
- <sup>4</sup> *Id.*
- <sup>5</sup> *Id.*
- <sup>6</sup> *Id.*
- <sup>7</sup> *Id.*
- <sup>8</sup> White House, “Pledge to America’s Workers” (accessed 8 Mar. 2020), <https://www.whitehouse.gov/pledge-to-americas-workers/>.
- <sup>9</sup> *Id.* Early signs have been promising. For a summary, see Sibile Marcellus, “Here’s the Truth About Trump’s Pledge to America’s Workers” (yahoo!finance, 7 Aug. 2019), <https://finance.yahoo.com/news/heres-the-truth-about-trumps-pledge-to-americas-workers-200744506.html>.
- <sup>10</sup> Christina Peña, *Workforce Success Relies on Transparent Postsecondary Data* (National Skills Coalition, Aug. 2018), [https://www.nationalskillscoalition.org/resources/publications/file/Workforce-success-relies-on-transparent-postsecondary-data\\_web.pdf](https://www.nationalskillscoalition.org/resources/publications/file/Workforce-success-relies-on-transparent-postsecondary-data_web.pdf).
- <sup>11</sup> *Id.* The postsecondary surveys are part of the Dept. of Education’s Integrated Postsecondary Education Data Systems (IPEDS).
- <sup>12</sup> U.S. Dept. of Education, “College Scorecard” (accessed 8 Mar. 2020), <https://collegescorecard.ed.gov/>.
- <sup>13</sup> Trump, “Executive Order Establishing the President’s National Council for the American Worker.”
- <sup>14</sup> Ryan Craig, “America’s Skill Gap: Why It’s Real, And Why it Matters” (Progressive Policy Institute, March 2019), <https://www.progressivepolicy.org/wp-content/uploads/2019/03/SkillsGapFinal.pdf>. The Progressive Policy Institute is a civil society organization dedicated to “moving America beyond ideological and partisan deadlock” with a particular focus on supporting U.S. economic innovation and growth. Progressive Policy Institute, “About” (accessed 8 Mar. 2020), <https://www.progressivepolicy.org/about/>.
- <sup>15</sup> Metropolitan Policy Program, “53 million U.S. Workers are Making Low Wages, Despite Low National Unemployment” (Brookings Institution, 7 Nov. 2019), [https://www.brookings.edu/wp-content/uploads/2019/11/201911\\_Brookings-Metro\\_Pressrelease\\_lowwageworkforce.pdf](https://www.brookings.edu/wp-content/uploads/2019/11/201911_Brookings-Metro_Pressrelease_lowwageworkforce.pdf).
- <sup>16</sup> Dr. Amy K. Glasmeier, “About the Living Wage Calculator” (MIT, accessed 8 Mar. 2020), <https://livingwage.mit.edu/pages/about>.
- <sup>17</sup> Carey Anne Nadeau and Dr. Amy K Glasmeier, “Bare Facts About the Living Wage in America 2017-2018” (MIT, 30 Aug. 2018), <https://livingwage.mit.edu/articles/31-bare-facts-about-the-living-wage-in-america-2017-2018>.

## 5. Create Agency-level Chief Data Officers

### Main Objective

*“The Administration will prioritize the appointment of a Chief Data Officer (CDO) at each CFO-Act agency.”*

### Milestones

None provided.

**Editorial Note:** For the complete text of this commitment, please see the United States’ action plan at: <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.

IRM Design Report Assessment	
<b>Verifiable:</b>	Yes
<b>Relevant:</b>	No
<b>Potential impact:</b>	Moderate

### Commitment analysis

This commitment prioritizes the appointment of a Chief Data Officer (CDO) at each CFO-Act agency.

The Chief Financial Officers (CFO) Act of 1990 reforms financial management of 24 federal agencies.<sup>1</sup> The requirement for all CFO Act agencies to appoint a CDO was mandated under the Foundations for Evidence-Based Policymaking Act (H.R. 4174).<sup>2</sup> CDOs shall be nonpolitical appointees “designated on the basis of demonstrated training and experience in data management, governance (including creation, application, and maintenance of data standards), collection, analysis, protection, use, and dissemination.”<sup>3</sup> The full text of the Commitment 5 includes this language verbatim.

The need for federal agency CDOs stems from the increasing amount of data that federal agencies collect, manage, and generate. According to Jane M. Wiseman, formerly of the Department of Justice:

As agencies become increasingly data-driven, the rapid acceleration of the volume of data available has generally exceeded the pace of growth in the ability of government to manage and use that data to make decisions. Many government agencies are awash in data but struggling to analyze and make sense of it. The exception is in cases where a government agency has appointed a leader to manage the transition to a data-driven culture.<sup>4</sup>

William Brantley, of the U.S. Patent and Trademark Office, notes that the U.S. federal government is perhaps the largest data producer worldwide, with federally-held data serving as a major driver of the American economy as businesses significantly use its data for decision-making purposes and to provide products or services to their customers.<sup>5</sup>

Regarding CDOs’ material impact, a growing body of evidence suggests that leveraging federal data efficiently via creating CDO positions can result in substantial federal cost savings. This is demonstrated by several recent examples from existing CDOs’ work at the U.S. Department of Health and Human Services Office of the Inspector General (whose use of data to fight fraud has yielded a fivefold return on investment) and the U.S. Postal Service (whose use of data to reduce wasteful fund usage resulted in \$920 million in savings in 2016).<sup>6</sup> And yet, the 10 largest federal agencies had only three cabinet-level CDOs prior to the Act’s passage, highlighting the potential for expanding CDO roles at

federal agencies.<sup>7</sup> Only seven of twenty-four agencies subject to the Act's CDO requirement had a CDO prior to the evidence-based policy act's passage in January 2019.<sup>8</sup> Prioritizing the appointment of CDOs is therefore of both practical and material importance.

The commitment nevertheless has no clear relevance to OGP values. As an internal-facing government initiative, the commitment aims to better manage federal data, but does not explicitly aim to make data publicly available (thereby broadening public access to information) or facilitate public accountability. Nor will it involve the public in federal data management, thereby encouraging civic participation. The commitment also has no direct relevance to the OGP value of technology and innovation for access to information aside from the inherent use of data in the proposed CDO positions.

The commitment has a moderate potential impact given the potentially substantial cost savings the CDO positions could generate for the federal government, particularly given the current lack of CDOs at federal agencies.<sup>9</sup> There is also potential for data transparency and accountability via the creation of CDO positions, assuming better data management will make government-held data more readily accessible to the public. The commitment is nevertheless assessed as having limited relevance for open government and OGP values; its impact is therefore not assessed further.

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<sup>1</sup> U.S. General Accounting Office Accounting and Financial Management Division, "The Chief Financial Officers Act: A Mandate for Federal Financial Management Reform" GAO/AFMD-12.19.4 (Sept. 1991), <https://www.gao.gov/special.pubs/af12194.pdf>. For a full list of CFO Act agencies, see United States Chief Financial Officers Council, "About CFO.gov" (accessed 11 Oct. 2020), <https://www.cfo.gov/about-the-council/>.

<sup>2</sup> Congress.gov, "H.R.4174 – Foundations for Evidence-Based Policymaking Act of 2018" (accessed 8 Mar. 2020), <https://www.congress.gov/bills/115th-congress/house-bill/4174/text>. President Trump signed this into law on 14 January 2019. White House, "Statement and Releases: Bill Announcement" (14 Jan. 2019), <https://www.whitehouse.gov/briefings-statements/bill-announcement-18/>.

<sup>3</sup> Congress.gov, "H.R.4174 – Foundations for Evidence-Based Policymaking Act" at §3520. See *specifically id.* at 132 STAT. 5542 "Sec. 3520. Chief Data Officers."

<sup>4</sup> Jane Wiseman, *Data-Driven Government: The Role of Chief Data Officers* (Harvard Kennedy School, 19 Sept. 2018), <https://www.innovations.harvard.edu/data-driven-government-role-chief-data-officers>.

<sup>5</sup> William Brantley, "The Value of Federal Government Data" (Digital.gov, 14 Mar. 2018), <https://digital.gov/2018/03/14/data-briefing-value-federal-government-data/>. See also Wiseman, *Data-Driven Government*.

<sup>6</sup> Wiseman, *Data-Driven Government* at 10–11.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> Tajha Chappellet-Lanier, "Agencies are Now Required to Have a Chief Data Officer. Do They?" (FedScoop, 5 Aug. 2019), <https://www.fedscoop.com/federal-chief-data-officer-evidence-based-policymaking-deadline/>.

<sup>9</sup> The IRM researcher notes that the commitment merely "prioritize[s]" the appointment of CDOs, instead of committing to actually appointing CDOs. While actual appointment is assumed for assessing potential impact, the commitment's lack of clarity in this regard poses challenges for verifiability.

## 6. Using Open Data to Fuel Innovation to Improve Public Health

### Main Objective

“Leverage data to foster the next generation of healthcare innovation.”

### Milestones

“Host a series of co-creation events to discover insights from a comprehensive set of Federal, State, and private datasets related to the opioid crisis.”

“Launch a new public-private collaborative — a Lyme and Tick-Borne Disease Innovation Accelerator.”

“Launch a series of “open innovation” prize challenges to improve value-based healthcare.”

**Editorial Note:** For the complete text of this commitment, please see the United States’ action plan at: <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.

IRM Design Report Assessment	
<b>Verifiable:</b>	Yes
<b>Relevant:</b>	Yes Access to information; civic participation; technology and innovation for transparency and accountability
<b>Potential impact:</b>	Minor

### Commitment analysis

This commitment innovatively uses open data to improve public health via three milestones: hosting events to examine government- and private-sector data on the opioid crisis; launching a public-private Lyme and Tick-Borne Disease Innovation Accelerator and hosting related activities; and launching innovation challenges to improve value-based healthcare.<sup>1</sup> These will be led by the Department of Health and Human Services (HHS).

Regarding the first milestone, HHS declared a public health emergency in October 2017 to address the growing number of deaths from opioids, with more than 91 Americans dying from opioid overdoses daily; 64,000 Americans died from drug overdoses in 2016, up from 52,404 Americans who died in 2015.<sup>2</sup> The U.S. Centers for Disease Control and Prevention’s third *Annual Surveillance Report of Drug-Related Risks and Outcomes* from 2019 notes an ongoing increase in deaths through 2017, with 70,237 deaths and a marked increase in deaths involving non-methadone synthetic opioids of 42.5% from 2016 to 2017.<sup>3</sup> HHS’ declaration of a public health emergency followed the release of its five-point “Opioid Strategy”<sup>4</sup> to address the crisis, with “Point 2” committing HHS to support “more timely, specific public health data and reporting, including through accelerating CDC’s reporting of drug overdose data.”<sup>5</sup>

Lyme and tick-borne diseases have similarly been increasing. Lyme disease “is the fastest growing vector-borne disease in the United States,” infecting more than 300,000 Americans annually.<sup>6</sup> The HHS’ *Tick-Borne Disease Working Group’s 2018 Report to Congress*<sup>7</sup> notes the number of counties with high incidence of Lyme disease has increased by 300% in Northeastern states and 250% in North-Central states, entailing \$1.3 billion in direct medical costs annually, and a “potential \$50–\$100 billion problem for the United States” when broader costs are considered. The second milestone will reduce disease incidence and associated costs via the proposed accelerator.

Finally, regarding the third milestone, HHS' open innovation activities "provide the Department with expert knowledge of alternative tools available to bring opportunities to problem solvers everywhere," specifically via the HHS IDEA Lab's Open Innovation service.<sup>8</sup> Prize challenges are one such tool, with the goal of accelerating solution development and broadening the number of individuals and companies working on solutions to health-related problems and others. HHS has launched over 170 challenges and awarded \$35 million in cash prizes since 2011.<sup>9</sup> Upon taking office, HHS Secretary Alex Azar II "identified the value-based transformation of our entire healthcare system as one of the top four priorities for [HHS]"<sup>10</sup> with value-based healthcare defined as payment of medical providers based on achieved outcomes rather than services provided.<sup>11</sup> The commitment's proposed prize challenges should move the HHS in this direction.

The commitment is relevant to the OGP values of access to information due to the co-creation, data-related, and information-sharing events envisioned under the first and second milestones. The commitment is similarly relevant to civic participation on these grounds, as well as via the third milestone's open innovation challenges which are open to public participation. All milestones are broadly relevant for the OGP value of technology and innovation for access to Information.

The IRM researcher assesses the commitment as having a minor potential impact. The first milestone's co-creation workshops are relatively narrow given the broader five-point Opioid Strategy, and range of ongoing data-related activities in this area. These include the Centers for Disease Control and Prevention's awarding of millions of dollars in funding to 44 states and the District of Columbia to support data collection and usage on opioid mortality,<sup>12</sup> an HHS-led Opioid Code-a-Thon in 2017,<sup>13</sup> and the Centers for Medicare and Medicaid Services' release of opioid-prescribing mapping tools.<sup>14</sup> The commitment's proposed co-creation workshops therefore are a minor innovation.

The proposed Lyme and Tick-Borne Disease Innovation Accelerator and related activities are similarly expected to have a minor impact. The initiative, launched three months prior to NAP4, precludes it from a potential impact assessment. Initiatives with clear potential impact include: listening session activities; a 14-week tech-sprint that leverages open federal datasets to develop digital health tools focused on Lyme and tick-borne diseases; and a previously hosted Lyme Innovation Roundtable held on 4 December 2018 for "identify[ing] high-value datasets and available resources" and exploring public-private partnerships.<sup>15</sup> HHS envisions the proposed listening sessions as a means of "hear[ing] feedback from individual stakeholders," but does not specify a clear and measurable output.<sup>16</sup> The sessions' potential impact would therefore be assessed as minor, were the initiative's launch to have occurred after NAP4's publication.<sup>17</sup>

Finally, HHS' proposed prize challenges for value-based healthcare are a relatively minor component of the HHS's far broader ongoing activities with clearly identifiable outputs in value-based healthcare. These activities include HHS' proposed new rules to enhance patient access to medical information by mandating that electronic health information be provided at no cost, which is "essential to building a healthcare system that pays for value rather than procedures."<sup>18</sup> Another ongoing HHS activity is the Emergency Triage, Treat, and Transport Model which allows "qualified healthcare professionals to deliver treatment in place" and offers "alternative destination sites...to provide care for Medicare beneficiaries following a [911] medical emergency," a step forward for value-based healthcare.<sup>19</sup> Given these activities, the proposed prize challenges, with uncertain scope and value, do not have more than a substantial potential impact.

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<sup>1</sup> Government of the United States, *The Open Government Partnership: Fourth Open Government National Action Plan for the United States of America* (OGP, Feb. 2019), 4, <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.



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- <sup>2</sup> U.S. Dept. of Health and Human Services, “HHS Acting Secretary Declares Public Health Emergency to Address National Opioid Crisis” (26 Oct. 2017), <https://www.hhs.gov/about/news/2017/10/26/hhs-acting-secretary-declares-public-health-emergency-address-national-opioid-crisis.html>.
- <sup>3</sup> Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Annual Surveillance Report of Drug-Related Risks and Outcomes* (1 Nov. 2019), 7–9, <https://www.cdc.gov/drugoverdose/pdf/pubs/2019-cdc-drug-surveillance-report.pdf>.
- <sup>4</sup> U.S. Dept. of Health and Human Services, “5-Point Strategy To Combat the Opioid Crisis” (30 August 2020), <https://www.hhs.gov/opioids/about-the-epidemic/hhs-response/index.html>; U.S. Dept. of Health and Human Services, *Strategy to Combat Opioid Abuse, Misuse, and Overdose* (Nov. 2018), <https://www.hhs.gov/opioids/sites/default/files/2018-09/opioid-fivepoint-strategy-20180917-508compliant.pdf>.
- <sup>5</sup> U.S. Dept. of Health and Human Services, “Better Data” (1 Sept. 2020), <https://www.hhs.gov/opioids/about-the-epidemic/hhs-response/better-data/index.html>.
- <sup>6</sup> Government of the United States, *Fourth Open Government National Action Plan* at 4.
- <sup>7</sup> U.S. Dept. Health and Human Services, Office of the Assistant Secretary for Health, *Tick-Borne Disease Working Group: 2018 Report to Congress* (2018), 1, <https://www.hhs.gov/sites/default/files/tbdwg-report-to-congress-2018.pdf>.
- <sup>8</sup> U.S. Dept. of Health and Human Services Chief Technology Officer, “About Open Innovation” (27 Sept. 2018), <https://www.hhs.gov/cto/initiatives/open-innovation/about/index.html>.
- <sup>9</sup> *Id.*
- <sup>10</sup> Alex M. Azar II, “Value-Based Transformation of America’s Healthcare System” (U.S. Dept. of Health and Human Services, 8 Mar. 2018), <https://www.hhs.gov/about/leadership/secretary/speeches/2018-speeches/value-based-transformation-of-americas-healthcare-system.html>.
- <sup>11</sup> Assistant Secretary for Public Affairs, “Secretary Priorities” (U.S. Dept. of Health and Human Services, 23 Jul. 2018), <https://www.hhs.gov/about/leadership/secretary/priorities/index.html#value-based-healthcare>.
- <sup>12</sup> U.S. Centers for Disease Control and Prevention, “Enhanced State Opioid Overdose Surveillance” (16 Jul. 2019), <https://www.cdc.gov/drugoverdose/foa/state-opioid-mm.html>.
- <sup>13</sup> HHS Office of the Chief Technology Officer, “HHS Opioid Code-a-Thon” (3 Jul. 2018), <https://www.hhs.gov/challenges/code-a-thon/index.html>.
- <sup>14</sup> U.S. Centers for Medicare & Medicaid Services, “CMS Opioid Prescribing” (1 May 2019), <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/OpioidMap>. For a selection of related activities, see U.S. Dept. of Health and Human Services “Better Data” (1 Sept. 2020), <https://www.hhs.gov/opioids/about-the-epidemic/hhs-response/better-data/index.html>.
- <sup>15</sup> Kristen Honey and Ed Simcox (HHS Chief Technology Officer), “The HHS Office of the CTO announces a ‘Lyme Innovation’ initiative” (HHS, 20 Nov. 2018), <https://www.hhs.gov/cto/blog/2018/11/20/the-hhs-office-of-the-cto-announces-a-lyme-innovation-initiative.html>.
- <sup>16</sup> *Id.*
- <sup>17</sup> Lorraine Johnson (CEO of LymeDisease.org and Principal Investigator of MyLymeData) notes a related concern of public-private partnerships: “simply opening data may subject Lyme patients as a community to greater stigma if that data is not used in partnership with the Lyme community-think community participatory research.” She implies that broader attention is needed for the privacy challenges of leveraging public-private partnerships to facilitate Lyme disease data access and availability.
- <sup>18</sup> U.S. Dept. of Health and Human Services, “HHS Proposes New Rules to Improve the Interoperability of Electronic Health Information” (11 Feb. 2019), <https://www.hhs.gov/about/news/2019/02/11/hhs-proposes-new-rules-improve-interoperability-electronic-health-information.html>.
- <sup>19</sup> Centers for Medicare & Medical Services, “Emergency Triage, Treat, and Transport Model,” (11 Oct. 2019), <https://innovation.cms.gov/innovation-models/et3>



## 7. Implement Intelligence Community “Enterprise Objective” on Privacy, Civil Liberties, and Transparency

### Main Objective

“Implement Intelligence Community “Enterprise Objective” on Privacy, Civil Liberties, and Transparency”

### Milestones

None provided.

**Editorial Note:** For the complete text of this commitment, please see the United States’ action plan at: <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.

IRM Design Report Assessment	
Verifiable:	Yes
Relevant:	Yes Access to information
Potential impact:	Minor

### Commitment analysis

This commitment will implement the intelligence community’s (IC) “Enterprise Objective” (EO) on privacy, civil liberties, and transparency. The EO is enshrined in the 2019 *National Security Strategy of the United States of America* (NIS 2019), which “provides the [IC] with strategic direction from the Director of National Intelligence” over a four-year period.<sup>1</sup> NIS 2019 includes seven EO’s that “provide the foundation for integrated, effective, and efficient management of mission capabilities and business functions.”<sup>2</sup> The seventh EO concerns “privacy, civil liberties, and transparency” to “safeguard privacy and civil liberties and practice appropriate transparency to enhance accountability and public trust.”<sup>3</sup> This EO represents “the first time...there is a stand-alone enterprise objective in the NIS” focused on civil liberties and transparency.<sup>4</sup> Under this EO, the IC will:

1. Incorporate privacy and civil liberties requirements into IC policy and programs to ensure that national values inform the intelligence mission.
2. Engage proactively with oversight institutions and our partners to enhance public understanding and trust in the IC.
3. Practice and promote appropriate transparency in the IC to make information publicly available without jeopardizing national security.<sup>5</sup>

These activities are copied verbatim in Commitment 7, which states that they will “earn and retain public trust in the IC.”<sup>6</sup> This is also verbatim from NIS 2019.<sup>7</sup>

Including this EO in NIS 2019 is closely related to *The Principles of Intelligence Transparency for the Intelligence Community*. The *Principles* were issued by the Director of National Intelligence in 2015 to “provide general norms for the IC to follow in making information publicly available that enhances public understanding of intelligence activities while continuing to protect information when disclosure would harm national security.”<sup>8</sup> The *Principles* formed the basis of an earlier commitment in NAP3 to “Increase Transparency of the Intelligence Community,”<sup>9</sup> which had a moderate potential impact and limited completion at both the midterm and end-of-term.<sup>10</sup>

The commitment is relevant to the OGP value of access to information by virtue of its intention to provide the public with access to information on the IC.

Civil society has long demanded greater transparency from the IC. The Brennan Center for Justice, a nonprofit that works for national security transparency, notes that while “national security might sometimes require that the operational details of military or intelligence efforts be kept secret...far too much information is classified and withheld from the public.”<sup>11</sup> The government is “increasingly relying on a vast body of secret law to authorize its national security activities,” thereby “undermin[ing] the basic functions of democratic self-government,” particularly post-9/11.<sup>12</sup> The Brennan Center cites Edward Snowden’s revelation that the U.S. National Security Administration maintained records of American’s phone calls under the Obama administration as a key catalyst for civil society demands for greater transparency and respect for civil liberties within the IC.<sup>13</sup> These concerns persisted among civil society during the publication of NAP4. In June 2018, 24 CSOs, including the Electronic Frontier Foundation and the American Civil Liberties Union, called for the Director of National Intelligence to share data on the extent of phone surveillance of Americans.<sup>14</sup> Steven Aftergood, director of the Federation of American Scientists Project on Government Secrecy similarly situates demands for greater IC transparency in the context of the Snowden revelations. Aftergood notes the “CIA and other agencies are sitting on a wealth of unclassified, open source material...that could easily be shared with the public at marginal cost,” with the added potential benefit of “increasing public literacy in national security matters and enriching public debate.”<sup>15</sup> In response to a request for feedback on the commitment, Aftergood echoed these concerns and took issue with the scope of the commitment, stating that the IC Enterprise Objective:

needs to aim at a much more ambitious goal. The American public needs vastly increased access to unclassified intelligence analysis and information, and not simply for reasons of “trust” or accountability. Rather, it is because the public itself is now on the “front lines” of multiple threats to national security, including offensive cyber activity, foreign information operations and global disease [and has] a claim on the relevant insights that US intelligence has to offer....Yet intelligence support to the American public has been totally lacking.<sup>16</sup>

Recent surveys show a clear preference for greater IC transparency, with growing public support for more open information flows. Survey results from summer 2018 indicate that while 59% of Americans feel the IC “plays a vital role in protecting the country,” a bare majority of 51% feel that the IC “effectively safeguards their privacy and civil liberties while pursuing its mission,” and 65% of respondents (up from 54% in 2017) feel that the IC “could share more information with the public without compromising its effectiveness.”<sup>17</sup> Public sentiment is particularly stark among millennials (individuals born 1982–1996); only 47% believe the IC is vital in protecting the country, and 70% favor greater IC public information disclosure.<sup>18</sup> Importantly, Americans’ perceptions regarding the IC’s respect for privacy and civil liberties are roughly similar across the partisan divide for 2018, with 66% of Democrats and 54% of Republicans indicating that the IC is very or somewhat effective in this regard.<sup>19</sup> Thus, there is bipartisan demand for greater transparency and protection of privacy and civil liberties, as described in the commitment text.

While there is clear demand for greater IC transparency and public accountability, the IRM researcher assesses the commitment as having a minor potential impact owing to the relative lack of specificity surrounding what precise actions the IC will take under this commitment. Regarding the three commitment activities, the government does not specify what “privacy and civil liberties requirements” actually entail, nor does it specify which specific policies and programs will be covered. The commitment similarly neglects to specify which oversight institutions and partners will be covered by the commitment, and the frequency or scope of engagement. Finally, the commitment does not define “appropriate transparency” or specify which information would be potentially subject to greater public disclosure. Therefore, the commitment has a minor potential impact.

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<sup>1</sup> Office of the Director of National Intelligence, *National Security Strategy of the United States of America* (2019), 1, [https://www.dni.gov/files/ODNI/documents/National\\_Intelligence\\_Strategy\\_2019.pdf](https://www.dni.gov/files/ODNI/documents/National_Intelligence_Strategy_2019.pdf).

<sup>2</sup> *Id.* at 17.

<sup>3</sup> *Id.* at 24.

<sup>4</sup> Alex Joel (Chief of the Office of the Directorate of National Intelligence's Office of Civil Liberties, Privacy, and Transparency), (2019), <https://documents.pcllob.gov/prod/Documents/EventsAndPress/698fe0ea-0a65-4da7-b67a-eef324fec62d/PCLOB%20statement%20-%20Joel.pdf>

<sup>5</sup> Office of the Director of National Intelligence, *National Security Strategy* at 24.

<sup>6</sup> Government of the United States, *The Open Government Partnership: Fourth Open Government National Action Plan for the United States of America* (OGP, Feb. 2019), 5 <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.

<sup>7</sup> Office of the Director of National Intelligence, *National Security Strategy* at 24.

<sup>8</sup> *Id.* See also Alex Joel (Chief, Office of the Directorate of National Intelligence, Office of Civil Liberties, Privacy, and Transparency), "Statement delivered at the Public Forum of the Privacy and Civil Liberties Oversight Board" (8–9 Feb.), 3, <https://www.pcllob.gov/library/PCLOB%20statement%20-%20Joel.pdf>.

<sup>9</sup> IRM, "Increase Transparency of the Intelligence Community (US0071)" (OGP, accessed 8 Mar. 2020), <https://www.opengovpartnership.org/members/united-states/commitments/US0071/>.

<sup>10</sup> IRM staff, *Independent Reporting Mechanism (IRM): United States Progress Report: 2015–2016* (OGP, 2018), [https://www.opengovpartnership.org/wp-content/uploads/2018/01/United-States\\_Mid-Term\\_2015-2017.pdf](https://www.opengovpartnership.org/wp-content/uploads/2018/01/United-States_Mid-Term_2015-2017.pdf); Dr. Jason McMann, *Independent Reporting Mechanism (IRM): United States End-of-Term Report 2015–2017*, (OGP, May 2018), [https://www.opengovpartnership.org/wp-content/uploads/2019/02/United-States\\_End-of-Term\\_IRM-Report\\_2015-2017\\_0.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/02/United-States_End-of-Term_IRM-Report_2015-2017_0.pdf).

<sup>11</sup> Brennan Center for Justice, "Transparency and Oversight: Why it Matters" (accessed 8 Mar. 2020), <https://www.brennancenter.org/issues/protect-liberty-security/transparency-oversight>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> David Ruiz, "EFF and 24 Civil Liberties Organizations Demand Transparency on NSA Domestic Phone Record Surveillance," (Electronic Frontier Foundation, 1 Jun. 2018),

<https://www.eff.org/fr/deeplinks/2018/05/eff-and-x-civil-liberties-organizations-demand-transparency-nsa-domestic-phone>. For additional context linking the IC's movement toward greater transparency and the Snowden disclosures, see Steven Aftergood, "Secrecy News: Intelligence Transparency – But For What?" (Federation of American Scientists. 31 Jan. 2019), <https://fas.org/blogs/secrecy/2019/01/transparency-for-what/>.

<sup>15</sup> Steven Aftergood, "Intelligence Transparency—But for What," (Federation of American Scientists. 31 Jan. 2019), <https://fas.org/blogs/secrecy/2019/01/transparency-for-what/>.

<sup>16</sup> Steven Aftergood, Copies of email correspondence are available upon request.

<sup>17</sup> Stephen Slick, Joshua Busby, and Kingsley Burns, *Public Attitudes on US Intelligence: Annual Poll Reflects Bipartisan Confidence Despite Presidential Antagonism* (The Chicago Council on Global Affairs' Lester Crown Center on U.S. Foreign Policy and the Texas National Security Network, Jul. 2019), 1–2, [https://www.thechicagocouncil.org/sites/default/files/public\\_attitudes\\_on\\_us\\_intelligence\\_0.pdf](https://www.thechicagocouncil.org/sites/default/files/public_attitudes_on_us_intelligence_0.pdf). The exact survey question is: "How effective do you think the intelligence community is in meeting the following responsibilities? Respecting the privacy and civil liberties of Americans." See Figure 4 for 2018 responses and comparison to 2017. *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 4.

## 8. Expand Public Participation in Developing Future U.S. National Action Plans

### Main Objective

*“Expand Public Participation in Developing Future U.S. National Action Plans”*

### Milestones

*“Prioritize including a more geographically diverse and diffuse representation of citizen stakeholders in the development of the document.”*

*“Aim to conduct a series of consultation sessions, in-person meetings, and livestreamed discussions around the country to generate ideas, encourage public input, and engage in conversations with the... American public.”*

**Editorial Note:** For the complete text of this commitment, please see the United States’ action plan at: <https://open.usa.gov/assets/files/NAP4-fourth-open-government-national-action-plan.pdf>.

IRM Design Report Assessment	
<b>Verifiable:</b>	Yes
<b>Relevant:</b>	Yes Public participation
<b>Potential impact:</b>	Minor

### Commitment analysis

This commitment will expand public participation in developing future national action plans, particularly the fifth NAP (NAP5). Citizen involvement in co-creating NAPS is integral to countries’ efforts to open government. The commitment will incorporate a more geographically diverse and “diffuse” set of stakeholders into the co-creation process via consultation sessions, in-person meetings, and livestreamed discussion.

OGP’s Articles of Governance require OGP members develop NAPs “through a multistakeholder process, with the active engagement of citizens and civil society.” The *OGP Participation and Co-Creation Standards* “support participation and co-creation at all stages of the OGP cycle.”<sup>1</sup> During the NAP creation process, the *Standards* stipulate that participating governments or the responsible multistakeholder forum<sup>2</sup> should publish the process for developing the NAP, including opportunities for public involvement and the process by which the NAP is finalized; provide opportunities for stakeholders’ participation in the NAP design; and provide stakeholders with sufficient information on the NAP/OGP process to be informed participants.<sup>3</sup> “The collaboration of citizens, civil society, political and official champions and other stakeholders is essential to developing, securing and implementing lasting open government reforms.”<sup>4</sup>

The commitment is relevant to the OGP value of civic participation by nature of its emphasis on expanding public participation in the NAP co-creation process.

With respect to civil society, the commitment’s aim of expanding public participation in the NAP co-creation process broadly resonates with comments made by stakeholders during NAP4’s co-creation. Alex Howard (Demand Progress Education Fund)<sup>5</sup> notes that NAP4’s “final objective, which is aimed at improving ‘Public Participation in Developing Future U.S. National Action Plans,’ is painfully ironic, given how little effort at public engagement the Trump White House and federal agencies made over the past two years.”<sup>6</sup> Anonymous sources with knowledge about the NAP4 co-creation process broadly agreed, highlighting the relatively small number of co-creation events, the relatively non-iterative nature of the

co-creation process following the GSA event on 8 September 2017 (see Section 3.2), and disagreement over the scope of public engagement on NAP4. Interviewees further affirmed that some civil society stakeholders declined to participate in the NAP4 co-creation due to concerns about the Trump administration's commitment to public accountability, and that their participation would imply tacit support.<sup>7</sup>

The IRM researcher assesses that the commitment has a minor potential impact owing largely to the lack of specificity in the commitment text, specifically surrounding the scope of geographical expansion of the co-creation process as well as the scope of the consultation activities envisioned (i.e., number, frequency, depth of opportunities for public participation, etc.). The commitment also neglects to specify what is meant by "diffuse" representation of citizen stakeholders beyond geography. All co-creation events for NAP4 were hosted in Washington, DC (see Section 3), albeit with some opportunities for remote participation via teleconference.<sup>8</sup> While expanding geographical participation in the co-creation process is therefore laudable, the lack of sufficient specificity surrounding the proposed expansion precludes a more substantial assessment of moderate potential impact.

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<sup>1</sup> Open Government Partnership, *OGP Participation and Co-Creation Standards* (2017), [https://www.opengovpartnership.org/wp-content/uploads/2019/07/OGP\\_Participation-Cocreation-Standards20170207.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/07/OGP_Participation-Cocreation-Standards20170207.pdf).

<sup>2</sup> The multistakeholder forum is intended to "enable regular multi-stakeholder consultation on OGP implementation." Open Government Partnership, "Multistakeholder Forums" (accessed 10 Mar. 2020), <https://www.opengovpartnership.org/multistakeholder-forums/>.

<sup>3</sup> Open Government Partnership, *OGP Participation and Co-Creation Standards* at 10–11.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> Demand Progress Education Fund: <https://demandprogress.org/about/>.

<sup>6</sup> Alex Howard, "After Years of Delays and Democratic Regression, USA Releases Weak Open Government Plan" (E Pluribus Unum, 22 Feb. 2019), <https://e-pluribusunum.org/2019/02/22/after-years-of-delays-and-democratic-regression-usa-releases-weak-open-government-plan/>.

<sup>7</sup> Anonymous, interviews by IRM researcher, May 2020.

<sup>8</sup> Individuals knowledgeable of the NAP4 co-creation process recalled that remote participation by teleconference was generally available per standard government practice. However, they could not recall if remote participation was offered at every NAP4 co-creation event, nor whether remote participation via videoconference was available. One interviewee suggested the latter was unlikely due to government security protocols. *Id.*

## V. General Recommendations

This section aims to inform the development of the next action plan and guide implementation of the current action plan. It is divided into two sections: 1) IRM key recommendations to improve OGP process and action plans in the country and, 2) an assessment of how the government responded to previous IRM key recommendations.

### 5.1 IRM Five Key Recommendations

Recommendations for the next action plan's development process	
1	Adhere to the regular OGP action plan co-creation and reporting cycle via the clear designation of a responsible government agency early in the creation process.
2	Engage more fully and with a broader range of key stakeholders during the co-creation process, and systematically respond to all proposed commitments and feedback on draft commitments.

As the government begins to develop the next action plan (NAP5), the IRM researcher recommends greater adherence to the OGP action plan creation timeline and reporting cycle via early and clear designation of a responsible government agency. The government should also expand efforts to engage more fully with a broader range of civil society stakeholders during the co-creation process, and systematically respond to all proposed commitments and feedback on draft commitments.

Individuals knowledgeable about the NAP4 design process suggested that intra-government ownership of NAP4 was nebulous.<sup>1</sup> One interviewee noted that this challenge stemmed in part from the somewhat amorphous nature of the OpenGov Interagency and Civil Society Working Group—a holdover from NAP3's design—which was intended to accommodate the participation of a wide and diverse range of intra-government stakeholders in the NAP design process. However, this was hindered by the Trump Administration's initial lack of an umbrella body to shepherd the plan through the channels of government and ultimately toward its publication. The IRM researcher therefore recommends designating a clearly responsible agency earlier in the action plan design process.

Better engagement with a broader range of civil society stakeholders, and systematically responding to proposed commitments and feedback on draft commitments, is a clear and readily achievable way that the government can assuage tensions with civil society about the administration's lack of commitment to open governance and stakeholder engagement. This is particularly crucial given a recent decline in many key metrics of open government for the United States, both in absolute terms and relative to other countries. Commitment 8, which seeks to engage more fully with open government stakeholders (including the American public) is noteworthy in this regard.

Recommendations for the next action plan's design	
1	Design an action plan that makes a more concerted attempt to go beyond existing efforts, as opposed to including a large number of commitments that reflect ongoing efforts.
2	Design more ambitious commitments by improving commitment specificity (clearly identifying the public problem being addressed and the proposed solution). Consider a logic model and milestones that lead to the desired results.
3	Expand the thematic scope of future action plans to include strategic commitments related to pressing public issues.



The IRM researcher recommends that the government design more ambitious commitments that reflect a wider range of OGP values, thereby moving beyond the current focus on access to information to include a greater emphasis on public accountability and civic participation. Doing so would respond to a gap in the current plan’s distribution of OGP values covered by its commitments. This would also respond directly to civil society concerns about the government’s lack of regard for OGP values during the co-creation process and heighten the potential for the government to design transformative commitments. Moreover, future plans could expand the scope of commitments to advance issues that respond to current civil society and public concerns, such as transparency and accountability in the criminal justice system, electoral integrity, and transparent police data.<sup>2</sup>

Designing commitments with new initiatives would similarly improve relations with civil society, and raise the potential for open governance in a more transformative manner. In recommendations on the U.S.’ prior NAP with 52 commitments, the IRM researcher stressed a balance between the number of commitments and their scope. However, while the government drastically reduced the number of commitments in NAP4, the government failed to increase the number of potentially transformative commitments. This should be addressed in the next action plan.

Finally, the IRM researcher recommends that the government place greater emphasis on commitment specificity to ensure that commitments goals, and the metrics by which they are assessed, are clearly defined and measurable. The current action plan has a moderate overall level of specificity, but many commitments aim to take action, and poorly define those actions’ scope (e.g., number of meetings to be held, quantity of data to be released, range of agencies subject to activities, etc.). Similarly, framing commitments in terms of aiming to take actions allows differences of interpretation, making them challenging for assessment. The next action plan would therefore benefit from greater specificity in these particular areas.

## 5.2 Response to Previous IRM Key Recommendations

Previous IRM Report Key Recommendations		Did it inform the OGP Process?
1	Collaborate with the public during the development of the next action plan.	No
2	Focus on fewer and more transformative commitments.	Partial
3	Develop commitments on ethics reforms that address asset disclosures, conflict of interest, lobbying, and/or campaign finance.	No
4	Address priority issues such as public-service delivery and infrastructure reform.	No
5	Engage the legislative branch in the OGP process	No

The government failed to fully address any of these five recommendations in the current action plan. While the government engaged the public during the co-creation process (Recommendation 1), it engaged with a limited range of stakeholders who were concentrated in Washington, DC. The government’s limited engagement efforts are to some degree reflected in Commitment 8, which aims to broaden public participation in designing future NAPS. While NAP4 does include fewer commitments (Recommendation 2), it includes fewer potentially transformative commitments in absolute terms. The reduction in overall commitments has therefore not created a plan with substantially higher potential for transformative impact. None of the remaining recommendations (3–5) were addressed under the current action plan.

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<sup>1</sup> Anonymous, interviews by IRM researcher, May 2020.

<sup>2</sup> In 2014, in response to demonstrations following the death of Michael Brown by the police in Ferguson, Missouri, the government established the President's Task force on 21<sup>st</sup> Century Policing. The Task Force sought to make recommendations for the government to effectively address crime while building public trust, and stressed the need for proactive transparency.<sup>2</sup> Accordingly, NAP3 included a commitment expanding the U.S. Police Data Initiative, which extracted and published previously undisclosed policing datasets, and increasing collaboration between government and civil society.<sup>2</sup> By 2017, the initiative included 135 participating jurisdictions, had released 295 datasets, and created various opportunities for police collaboration with civil society. While this commitment was a small step toward answering a call for justice, it was an important building block toward greater police transparency and collaborating with the community.

## VI. Methodology and Sources

IRM reports are written in collaboration with researchers for each OGP-participating country. All IRM reports undergo a process of quality control to ensure that the highest standards of research and due diligence have been applied.

Analysis of progress on OGP action plans is a combination of interviews, desk research, observation, and feedback from nongovernmental stakeholders. The IRM report builds on the evidence available in the United States' OGP repository (or online tracker),<sup>1</sup> website, findings in the government's own self-assessment reports, and any other assessments of process and progress put out by civil society, the private sector, or international organizations.

Each IRM researcher carries out stakeholder interviews to ensure an accurate portrayal of events. Given budgetary and calendar constraints, the IRM cannot consult all interested parties or visit implementation sites. Some contexts require anonymity of interviewees and the IRM reviews the right to remove personal identifying information of these participants. Due to the necessary limitations of the method, the IRM strongly encourages commentary during the pre-publication review period of each report.

Each report undergoes a quality-control process that includes an internal review by IRM staff and the IRM's International Experts Panel (IEP). Each report also undergoes an external review where governments and civil society are invited to provide comments on the content of the draft IRM report.

This review process, including the procedure for incorporating comments received, is outlined in greater detail in Section III of the Procedures Manual.<sup>2</sup>

### Interviews and stakeholder input

The IRM researcher conducted a series of interviews with five civil society and government representatives during March and April 2020.

A first round of civil society interviewees was selected based on the IRM researcher's ability to establish their participation in the OGP co-creation process via government-organized events and submission of comments on the draft action plan via NAP4's public GitHub page. A second round of civil society interviewees were selected based on desk research to identify stakeholders who did not directly participate in the plan's co-creation but worked in areas covered by NAP4 commitments. To further expand the pool of interviewees, those contacted by the IRM researcher were asked to recommend further stakeholders to interview. The IRM researcher ultimately contacted 27 potential interviewees from 23 distinct organizations.

Civil society stakeholders identified as potential interviewees were subsequently asked to complete an online survey regarding their participation in the co-creation process and evaluate the action plan regarding commitments relevant to their work. All interviewees were offered the opportunity to share further feedback via phone. Interviewees were offered the opportunity to remain anonymous and, if so, to indicate their willingness to be identified by organization, generic issue area (e.g., a nonprofit working on the opioid crisis), and generic role within that organization (e.g., the director of a nonprofit working on the opioid crisis). Civil society interviewees wishing to remain fully anonymous are identified simply as "civil society stakeholders" throughout this report.

A complete copy of the survey sent to interviewees is available on the IRM researcher's Google Drive at <https://forms.gle/TrcopM18Wnja7sNa9>.

Government interviews were arranged via an iterative process beginning with the United States' government point-of contacts: Philip Ashlock (General Services Administration) and Alex Covington (Department of State). OGP's Independent Reporting Mechanism notified the points-of-contact that the IRM researcher would be reaching out with interview requests via an email on 10 March 2020. The IRM researcher subsequently initiated

engagement with the points-of-contact via email on 15 March 2020 to solicit information on the action plan and co-creation process, as well as to obtain contact information for agency-specific points-of-contact for each commitment's realization. One week later, on 21 March 2020, the IRM researcher provided the government points-of-contact with a list of written interview questions to facilitate further engagement.<sup>3</sup> After repeated follow-ups, the government points-of-contact responded with a list of potential government officials (former and current) with knowledge of the NAP4 design process, stating that all individuals on the list had been apprised that an interview request would be forthcoming. The IRM researcher contacted all individuals on the list. Copies of the IRM researcher's outreach requests to the government are available upon request.

The timing of the interview process coincided with the arrival of COVID-19 in the United States, which is presumed to have hindered interview engagement among civil society stakeholders, some of whom specifically cited COVID-19 as a reason for their delayed participation and non-participation. The government's points-of-contact similarly cited COVID-19 as the reason for their initial delay in responding to the interview request.

All government interviewees requested complete anonymity as a pre-condition for speaking with the IRM researcher, and are therefore attributed anonymously through this design report.

### **About the Independent Reporting Mechanism**

The Independent Reporting Mechanism (IRM) is a key means by which all stakeholders can track OGP progress in participating countries and entities. The International Experts Panel (IEP) oversees the quality control of each report. The IEP is comprised of experts in transparency, participation, accountability, and social science research methods.

The current membership of the International Experts Panel is

- César Cruz-Rubio
- Mary Francoli
- Brendan Halloran
- Jeff Lovitt
- Juanita Olaya

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

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<sup>1</sup> Open Government Partnership, "United States" (accessed 10 Mar. 2020), <https://www.opengovpartnership.org/members/united-states/>.

<sup>2</sup> IRM, *IRM Procedures Manual* (OGP, 16 Sept. 2017), <https://www.opengovpartnership.org/documents/irm-procedures-manual>.

<sup>3</sup> The complete list of questions is available on the IRM researcher's Google Drive at <https://docs.google.com/document/d/1-pg4HqQvJ9maNU3StqwVqg-quWIRxmBjF7J2xZGpl0q/edit?usp=sharing>.

## Annex I. Commitment Indicators

All OGP-participating governments develop OGP action plans that include concrete commitments over a two-year period. Governments begin their OGP action plans by sharing existing efforts related to open government, including specific strategies and ongoing programs.

Commitments should be appropriate to each country's circumstances and challenges. OGP commitments should also be relevant to OGP values laid out in the OGP Articles of Governance and Open Government Declaration signed by all OGP-participating countries.<sup>1</sup> The indicators and method used in the IRM research can be found in the IRM Procedures Manual.<sup>2</sup> A summary of key indicators the IRM assesses is below:

- **Verifiability:**
  - Not specific enough to verify: Do the written objectives and proposed actions lack sufficient clarity and specificity for their completion to be objectively verified through a subsequent assessment?
  - Specific enough to verify: Are the written objectives and proposed actions sufficiently clear and specific to allow for their completion to be objectively verified through a subsequent assessment?
- **Relevance:** This variable evaluates the commitment's relevance to OGP values. Based on a close reading of the commitment text as stated in the action plan, the guiding questions to determine relevance are:
  - Access to Information: Will the government disclose more information or improve the quality of the information disclosed to the public?
  - Civic Participation: Will the government create or improve opportunities or capabilities for the public to inform or influence decisions or policies?
  - Public Accountability: Will the government create or improve public-facing opportunities to hold officials answerable for their actions?
  - Technology & Innovation for Transparency and Accountability: Will technological innovation be used in conjunction with one of the other three OGP values to advance either transparency or accountability?
- **Potential impact:** This variable assesses the potential impact of the commitment, if completed as written. The IRM researcher uses the text from the action plan to:
  - Identify the social, economic, political, or environmental problem;
  - Establish the status quo at the outset of the action plan; and
  - Assess the degree to which the commitment, if implemented, would impact performance and tackle the problem.
- **Completion:** This variable assesses the commitment's implementation and progress. This variable is assessed at the end of the action plan cycle, in the country's IRM Implementation Report.
- **Did It Open Government?:** This variable attempts to move beyond measuring outputs and deliverables to looking at how the government practice, in areas relevant to OGP values, has changed as a result of the commitment's implementation. This variable is assessed at the end of the action plan cycle, in the country's IRM Implementation Report.

### What makes a results-oriented commitment?

A results-oriented commitment has more potential to be ambitious and be implemented. It clearly describes the:

1. **Problem:** What is the economic, social, political, or environmental problem rather than describing an administrative issue or tool? (E.g., “Misallocation of welfare funds” is more helpful than “lacking a website.”)
2. **Status quo:** What is the status quo of the policy issue at the beginning of an action plan? (E.g., “26% of judicial corruption complaints are not processed currently.”)
3. **Change:** Rather than stating intermediary outputs, what is the targeted behavior change that is expected from the commitment’s implementation? (E.g., “Doubling response rates to information requests” is a stronger goal than “publishing a protocol for response.”)

### Starred commitments

One measure, the “starred commitment” (★), deserves further explanation due to its interest to readers and usefulness for encouraging a race to the top among OGP-participating countries/entities. Starred commitments are considered exemplary OGP commitments. To receive a star, a commitment must meet several criteria.

- Potential star: the commitment’s design should be **verifiable**, **relevant** to OGP values, and have **transformative** potential impact.
- The government must make significant progress on this commitment during the action plan implementation period, receiving an assessment of **substantial** or **complete** implementation.

These variables are assessed at the end of the action plan cycle in the country’s IRM Implementation Report.

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<sup>1</sup> OGP, “Articles of Governance” (17 Jun. 2019), <https://www.opengovpartnership.org/articles-of-governance/> .

<sup>2</sup> OGP, “IRM Procedures Manual” (16 Sept. 2017), <https://www.opengovpartnership.org/documents/irm-procedures-manual>.