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# THE OBAMA ADMINISTRATION'S COMMITMENT TO OPEN GOVERNMENT: A STATUS REPORT

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## EXECUTIVE SUMMARY

President Obama has committed his Administration to work towards new levels of openness in government. For over two and a half years, the Administration has done much to make information about how government works more accessible to the public, and to solicit citizens' participation in government decision-making. Federal agencies have undertaken to disclose more information under the Freedom of Information Act. They have devised ambitious Open Government Plans designed to increase opportunities for public engagement. They have made voluminous information newly available on government websites. They have shined more light on federal spending. They have even taken steps to provide more disclosure of sensitive government information. Finally, and not least of all, agencies have used technology in many innovative ways that make information useful to citizens in their everyday lives. This *Status Report* provides a review of the progress the Administration has made towards forging a more open relationship between citizens and their government. It shows the measurable progress made so far along many dimensions of the Administration's open government initiatives. It also anticipates some of the next steps towards realizing even more fully the President's commitment to unprecedented openness.

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## INTRODUCTION

**President Obama** has made open government a high priority. Upon taking office, he pledged his Administration to work towards “an unprecedented level of openness in Government.” As a result, for more than two and a half years federal agencies have done much to make information about how government works more accessible to the public and, beyond that, to solicit citizens’ participation in government decision-making. Thus agencies have disclosed more information requested under the Freedom of Information Act. They have devised ambitious Open Government Plans designed to increase opportunities for public engagement. They have made voluminous information available on government websites. They have shined more light on federal spending. They have even undertaken to provide more disclosure of previously classified information and other types of information normally withheld from the public. Finally, agencies have also used technology in innovative ways that leverage government information to improve the lives of citizens, and have successfully encouraged those outside of government to do the same.

Yet much work remains. There is no “Open” button that can be pushed to render the federal government more open overnight. Creating a more open government instead requires, as the President has instructed, sustained commitment—by public officials and employees at all levels of government. This *Status Report* provides a review of the progress the Administration has made over the past two and a half years towards forging a more open relationship between citizens and government, and anticipates next steps towards realizing even more fully the President’s commitment to unprecedented openness.

## I. OVERVIEW

### The Purposes of Open Government

**Open government** is a means, not an end. As President Obama has made clear, greater openness “will strengthen our democracy and promote efficiency and effectiveness in Government.” These twin goals—a stronger democracy, a more effective government—have motivated the Administration’s efforts in this area.

Openness makes our democracy stronger in several ways. Where citizens can observe the workings of government, they become more invested in what government does. Government openness empowers citizens as well, as they are more able to express their views about policy decisions that affect them. Openness makes democracy stronger also by encouraging government officials to perform better, for where government is more open, they are more likely to be held accountable for their decisions, both good and bad. Similarly, a more open government makes it easier for the media and watchdog groups to expose, and therefore deter, improper or otherwise undesirable influences on policymakers. In short, openness enhances democracy by giving citizens a greater voice in what government does, and promoting government action that advances the interests of all, not just a privileged few.

Openness promotes a more efficient and effective government too. When government is more open, bad ideas more readily yield to good ideas. After all, not all expertise resides within

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government. An open government thus invites talent from outside of government, giving policymakers the benefit of other sources of expertise, as well as of popular wisdom. Openness likewise discourages waste and misuse of government resources, that is to say, of taxpayer dollars. By revealing where scarce government resources are put to poor use, open government promotes the efficient reallocation of those resources.

In turn, a more democratic and efficacious government improves the lives of its citizens. Information provided by government can help inform the electorate. Information from federal agencies can help the public make more informed choices about daily decisions, from the choice of consumer products to decisions affecting their health, housing, and transportation concerns. And this is the true test: A more democratic and effective government is one that truly improves the well-being of those whom government is supposed to serve. By making open government a high priority, the Administration has sought to improve the everyday lives of the American people—more inclusively, more effectively, and more economically.

### **The Methods of Open Government**

To that end, the Administration's open government efforts have emphasized three themes: Transparency, Participation, and Collaboration.

*Transparency.* Transparency means providing the public with information about their government's activities. It contemplates disclosure about, for example, what federal agencies have done or will do. Transparency's premise is that citizens are entitled to know what, how, and why government does what it does.

*Participation.* Citizens are entitled to more, however, than a transparent view of their government from the outside looking in. Participation emphasizes citizens' voice in public affairs, recognizing that public officials stand to benefit from the perspective of expert and non-expert knowledge that resides outside of government. Participation is fostered by expanding citizens' opportunities to express their views about policy alternatives, and in ways beyond voting in elections.

*Collaboration.* Collaboration further erodes the us-versus-them divide between citizens and government by taking participation to another level. Citizens are capable, after all, of more than simply registering their views about policy alternatives defined in advance. They can usefully help shape the government's agenda. They can also help determine even the tools and methods by which public policy goals are pursued. Where government is collaborative, citizens become true partners with government, in both the identification and pursuit of public goals.

These three mechanisms—transparency, participation, and collaboration—constitute the fundamental framework for achieving a stronger democracy and a more effective government. They also link the Administration's many open government efforts.

### **Major Open Government Activities**

The Administration has not promoted open government simply as an abstract proposition. Instead, it has taken specific steps to make the federal government more transparent, participatory, and collaborative.

*Freedom of Information.* For example, on President Obama's first full day in office, the President issued a Memorandum to all executive departments and agencies concerning the Freedom of Information Act (FOIA). The Memorandum characterized FOIA as "the most prominent expression of a profound national commitment to ensuring an open Government." Because FOIA encourages "accountability through transparency," and because "accountability is in the interest of the Government and the citizenry alike," the President's Memorandum instructed agencies to release more information under FOIA and to improve their administration of FOIA requests. This early instruction from the President set in motion efforts for making government more transparent by improving not only agencies' responsiveness to FOIA requests but also the federal government's FOIA infrastructure.

*Open Government Directive and Agency Plans.* The President's FOIA Memorandum was accompanied by a companion Memorandum to the heads of executive departments and agencies on the subject of "Transparency and Open Government," issued on the same day. Calling for greater transparency, participation, and collaboration in order "to ensure the public trust," this Memorandum too directed agency heads "to disclose information rapidly in forms that the public can readily find and use," and to do so by harnessing "new technologies" to make information about agency decisions "readily available" to the public. It thus complemented and explicitly reinforced the FOIA Memorandum. The Transparency and Open Government Memorandum instructed agencies also to "solicit public feedback" about what information is of greatest use to the public, how the government "can increase and improve opportunities for public participation," and how public participation and collaboration might be improved. It also called on the Director of the Office of Management and Budget (OMB) to instruct agencies to take specific actions to implement the principles of the Memorandum, including the formulation of agency-specific Open Government Plans.

*Data.gov and Data-Driven Innovation.* As agencies developed their Open Government Plans, they made large amounts of information available to the public, in part through a centralized government platform, Data.gov. This platform now provides the public with access to hundreds of thousands of agency data sets. These data can be downloaded and manipulated by anyone—accessible to policy advocates, academic researchers, data developers, and entrepreneurs. As a result, data available at Data.gov have been used to create useful applications for ordinary citizens. Such innovation continues.

*Spending Transparency.* The Administration's openness efforts have placed great emphasis on disclosure of federal spending decisions as well. Here, transparency becomes a tool to protect taxpayer dollars. To this end, the Administration has provided detailed information about stimulus spending, federal grant spending, and federal information-technology spending as well as spending generally. In addition, the Administration has provided new levels of transparency about financial stability, the federal government's plans for promoting stability in the financial system, and information about aid to financial institutions.

*Sensitive Government Information.* The Administration's open government efforts extend to greater disclosure of other types of government information too. President Obama's Executive Order 13526 imposes limits on the classification of government documents, and initiated the declassification of voluminous government information that should no longer be kept from the public. In a Presidential Memorandum issued on the same day concerning



implementation of that Order, the President explained that it seeks “measurable progress towards greater openness and transparency in the Government’s classification and declassification programs.” The President subsequently issued Executive Order 13556 to establish a more open and uniform system for sensitive but unclassified information, to ensure both that such information is not unduly withheld from the public, and that the creation and management of such information is more open and uniform across the government.

The Administration’s efforts to create a more open government have thus moved along several major tracks. The scope of these initiatives, as well as the progress made on them so far, is detailed shortly below.

### **Qualifications**

Open government is not unqualified or unconditional, however. While making government more open has been and remains a high priority for the Administration, that priority does not trump all others. No supporter of open government would characterize it as disclosure of everything all the time, no matter the consequences. Thus the Administration’s pursuit of open government has been, as it must be, balanced against important considerations of national security, the needs of law enforcement, governmental privileges, and the protection of personal privacy and business confidentiality, encouraging robust and candid deliberations, among other important interests—all of which also affect the welfare of our citizens. While reasonable minds may sometimes differ about exactly where the proper balance among these is struck, the point is that there is a proper balance. That fact has informed the Administration’s open government initiatives.

Accordingly, while the President has instructed agencies to create a presumption in favor of disclosure under FOIA, circumstances sometimes require agencies to withhold information sought through FOIA requests. The FOIA itself builds in several exemptions to disclosure, and sometimes withholding information is necessary not only as an exercise of prudence but as matter of law, given that Congress bars disclosure in some cases.

Similarly, according to the Administration’s directive implementing the President’s Transparency and Open Government Memorandum, agencies’ Open Government Plans must not “preclude the legitimate protection of information whose release would threaten national security, invade personal privacy, breach confidentiality, or damage other genuinely compelling interests.” Likewise, agencies that provide new data sets through Data.gov must first ensure that newly disclosed data do not contain, for example, personal information, proprietary information, or information that would jeopardize law enforcement. Standardizing processes for classifying and declassifying government documents also must balance greater public disclosure and the protection of national security interests. As the President explained upon announcing detailed reforms of the system for classifying government information, “the critical balance between openness and secrecy is a difficult but necessary part of our democratic form of government.”

In short, the Administration’s commitment to greater openness must not be misunderstood as a blind pursuit of transparency for transparency’s sake. The commitment is, rather, to promote openness in the service of a more robust democracy and more efficient government to improve our citizens’ lives, an ultimate goal that requires the protection of other, sometimes competing values and interests. That said, the Administration’s deep commitment to



creating a more open government has already begun to reorient the culture of the executive branch towards greater transparency, participation, and collaboration.

## II. FREEDOM OF INFORMATION

**The Freedom of Information Act** (FOIA) provides a crucial mechanism for making government more open by allowing the public to request information from the government, which the government is then statutorily obligated to provide, subject to specified exemptions which allow protection for discrete categories of information. FOIA is a landmark statute that has been copied or adopted by many countries around the world. Even so, the federal government's commitment to its implementation and administration has varied some over time, and waned during most of the last decade. Nor has that commitment fully kept pace with a world that has moved from paper to digital information.

President Obama's January 2009 FOIA Memorandum made this Administration's commitment to a reinvigorated FOIA clear. First, the President directed agencies to administer FOIA requests with "a clear presumption" of disclosure. He wrote: "In the face of doubt, openness prevails." The President's FOIA Memorandum also states that "agencies should take affirmative steps to make information public" rather than "wait for specific requests from the public." Further, all agencies "should use modern technology to inform citizens about what is known and done by their Government." Presume openness; disclose affirmatively; and modernize. In just a few sentences, the President's Memorandum initiated an important shift in the Administration's stance towards FOIA.

The President's directives were echoed by a Memorandum from the Attorney General in March of 2009, also instructing agencies to disclose more through FOIA, to make FOIA a priority, to employ a rebuttable presumption in favor of disclosure, and to improve agencies' FOIA architecture. As the Attorney General explained, "[o]pen government requires not just a presumption of disclosure but also an effective system for responding to FOIA requests." Reversing a presumption against disclosure, Attorney General Holder reversed that presumption back in favor of disclosure. The Attorney General also called on all agencies to employ "an effective system for responding to FOIA requests," and to "be fully accountable for [their] administration of the FOIA." These instructions were further underscored by a memorandum from the White House Counsel and the White House Chief of Staff in March of 2010, instructing agencies to review their FOIA guidelines and staffing, to ensure they were carrying out the President's and the Attorney General's instructions to promote greater disclosure through FOIA.

Of course, improving agency disclosure through FOIA cannot be accomplished in any single step, or for that matter solely through directives from the White House and the Justice Department. Federal agencies receive hundreds of thousands of FOIA requests each year (some departments receive tens of thousands), and they employ vastly different systems (including different software, varying levels and numbers of personnel, varying resources) for processing FOIA requests. Converting top-down directives into changes in the architecture of FOIA at the agency level therefore takes sustained commitment and institutional investment by the agencies

who field FOIA requests every day. That understood, the past two years have seen genuine and measurable change in agencies' responsiveness to FOIA requests, as well as greater commitment by agencies to improve how FOIA requests are handled, and not least of all greater agency effort to increase transparency by making information available to the public proactively—without requiring a formal FOIA request.

### Responding to FOIA Requests

*Increased Disclosure.* Over the last fiscal year (i.e., from October 2009 through September 2010), which is the first full year of the Administration for which such data are available, agencies increased their disclosures in response to FOIA requests. Agencies made full disclosures—i.e., un-redacted disclosure of all requested information—for nearly 56% of all FOIA requests where responsive records were processed. This constitutes more than a 6% increase over the previous year from October 2008 through September 2009. It also marks the first increase in full FOIA disclosures in the past ten years.<sup>1</sup> Full releases among all agencies with Chief Financial Officers (“CFO Act agencies”)<sup>2</sup> likewise increased significantly over the last year.

Several departments have made especially great strides. For example, the USDA increased its full releases by 90%.<sup>3</sup> HUD increased its full releases by 85%. DOJ increased its full releases by 21%. DOE increased its full releases by 21%. The Department of Defense increased its full releases by 12%. The State Department increased its full releases by over 200%.

Even where full disclosures are not possible due to the operation of one or more FOIA exemptions, the Administration has called on agencies to make partial disclosures, providing information where possible while redacting information that is properly protected under the Act's exemptions. Taking partial and full disclosures together, then, agencies made disclosures in 93-94% of all processed FOIA requests over the last fiscal year. In other words, in only 6-7% of processed cases did agencies not disclose any requested information, due to the operation of one or more FOIA exemptions. Further, more than half of the CFO Act agencies decreased their full denials over the past fiscal year. Given that some FOIA requests seek information that is properly and legitimately protected from disclosure, for reasons such as protection of personal privacy, for example, these disclosure rates show that agencies are taking steps to identify records where greater releases can be made and providing greater transparency through FOIA.

*Reduced Exemptions.* Agencies have also invoked FOIA's exemptions less often. Over the past fiscal year, the ninety-seven agencies subject to the FOIA together invoked FOIA

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<sup>1</sup> See OMB Watch, “An Assessment of Selected Data from the Annual Agency Freedom of Information Act Reports,” (Mar. 16, 2011) at 3.

<sup>2</sup> The twenty-four CFO Act agencies receive the vast majority of all FOIA requests, and for that reason are often taken together as the set of agencies most important for FOIA purposes.

<sup>3</sup> The quantitative measures here and throughout this discussion are contained in agencies' Annual FOIA Reports. Those reports are available to the public, and are now searchable at a new website maintained by DOJ's Office of Information Policy, at FOIA.Gov. Agencies' Annual FOIA Reports provide the best statistical picture of their FOIA performance.

exemptions less than in the previous year. In fact, the invocation of FOIA exemptions dropped by nearly 54,000 over the past year, more than a 10% reduction.

Of the nine exemptions contained in the Freedom of Information Act under which agencies can or must withhold requested information, Exemption 2 and Exemption 5 in particular often receive the most attention and emphasis among advocates for greater FOIA transparency. Exemption 2 allows agencies to withhold information related to the internal personnel rules and practices of the agency, while Exemption 5 allows agencies to withhold intra-agency memoranda and letters that are subject to legal privilege. Because agencies have the most discretion about whether to invoke these exemptions as a basis for withholding requested information, many view agencies' invocation of Exemption 2 and Exemption 5 as particularly indicative of the government's commitment to transparency under FOIA.

Over the past fiscal year, agency reliance on these two exemptions fell dramatically. Across the government agency reliance on Exemption 2 dropped by 19% and reliance on Exemption 5 dropped by nearly 22%. By this measure too, agencies have made greater transparency through FOIA a priority, another indication that the President's message is having an effect at the ground level.

*Processing More Requests than Requests Received.* Agency efforts to implement the President's and the Attorney General's instructions to agencies to disclose information requested under FOIA where possible necessarily reduces how fast agencies can process FOIA requests. Careful consideration of each request, operating under a presumption of disclosure rather than its opposite, takes time. Partial disclosures in particular, which require more than a simple "yes" or "no" by the agency, can be especially time consuming. In the Attorney General's words, agencies must "take reasonable steps to segregate and release nonexempt information." Notwithstanding the increased effort required to do so, agencies overall processed more requests than they received this past fiscal year, and many agencies have also increased the number of FOIA requests they processed as compared with last fiscal year. For example, the USDA increased its processed FOIA requests by 49%. HHS increased its processed FOIA requests by 39%. DOE increased its processed FOIA requests by 23%. The Department of Defense increased its requests processed by 10%.

*Request Backlogs Reduced.* Agencies have also reduced their backlogs of pending FOIA requests over the past fiscal year, meeting an ambitious Administration goal to reduce FOIA backlogs by 10%. The ninety-seven agencies across the government that are subject to FOIA collectively reduced their backlogs by 10.1%. This marks the second straight year of backlog reduction across the government. Excluding the independent agencies and commissions and focusing on the CFO Act agencies specifically, agencies reduced their backlogs by almost 12%, even while the number of incoming FOIA requests to those agencies also increased by almost 6%.

Here again, a number of departments made great strides. For example, the Department of Defense decreased its backlog by 31%. HHS decreased its backlog by 46%. DOT decreased its backlog by 39%. And at the agency level too, many agencies substantially reduced their backlogs. The U.S. Army, for instance, did so by 68%. HHS's Centers for Medicare &

Medicaid Services reduced their backlogs by 66%. All of these findings demonstrate considerable success with respect to the Administration's efforts to reduce backlogged FOIA requests.

### **Improving the FOIA Infrastructure**

Agency progress over the last two years reveals itself also in ways not captured by agency FOIA statistics. In particular, many agencies have made substantial improvements to their FOIA infrastructure. This includes increased personnel dedicated to FOIA, better training, various FOIA request processing improvements, and an increase in agency resources dedicated to FOIA. Examples are too many to mention. But to illustrate: HHS's Centers for Medicare & Medicaid Services nearly doubled the resources it commits to FOIA and radically restructured its methods for processing requests. The Department of Defense offered its components training methods to improve FOIA efficiency. The Department of Education developed procedures to increase awareness within the agency, increased FOIA training, and hired new experienced personnel. The Department of the Interior developed a "FOIA Request Status" interface on its FOIA website allowing requesters to check the status of their pending requests at any time. A branch of the Department of Homeland Security's Customs and Border Patrol processed nearly as many FOIA requests in FY 2010 as it had in the five previous years, and nearly triple the requests processed in FY 2009, and eliminated its FOIA appeals backlog. DHS's Citizenship and Immigration Services added 30 additional employees to its FOIA operations for Fiscal Year 2011. The Department of Justice now accepts FOIA requests by e-mail at all of its components and added nearly ninety full-time employees (FTEs) to handle FOIA matters. The State Department created a "FOIA Rapid Response Team," developed new procedures to handle document referrals, and streamlined its FOIA processing structure. The Treasury Department created a new webpage to facilitate public participation and the IRS created an intranet website to educate IRS employees about their FOIA responsibilities.<sup>4</sup>

In addition to agencies' own initiatives to increase transparency through FOIA, the Administration has also facilitated a stronger FOIA system across the executive branch. In March 2011, the Justice Department's Office of Information Policy (OIP) launched a new website dedicated to the administration of FOIA, called "FOIA.Gov," a site for monitoring FOIA compliance at agencies, spotlighting significant FOIA trends, highlighting major agency FOIA releases, linking to agency FOIA pages, tracking agency FOIA performance, learning about FOIA and how and where to make a FOIA request, and providing additional FOIA resources and support. FOIA.Gov provides public access to all the detailed data contained in Annual FOIA Reports and presents the data graphically in charts and tables summarizing the federal government's FOIA performance, including the number of requests and received and processed by each agency, the disposition of those requests, and time taken to respond. The data can be sorted and compared between agencies and over time using whatever criteria the user chooses. In short, FOIA.Gov provides transparency about transparency.

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<sup>4</sup> Such structural improvements, and others like them, can be found in a separate set of qualitative annual FOIA reports entitled Chief FOIA Officer Reports, submitted by all agencies with designated Chief FOIA Officers, now available at the Justice Department's Office of Information Policy website and cross-linked at FOIA.Gov.

OIP's new website also provides guidance and best practices about the administration of FOIA, frequently asked questions about FOIA, a glossary with commonly used FOIA terms, and educational videos on different aspects of FOIA. FOIA.Gov also links to the FOIA websites for all federal agencies, boards, and commissions subject to the FOIA, and also to agencies' Open Government websites to help requesters find data they need without having to file a FOIA request. Finally, FOIA.Gov highlights FOIA news and provides announcements of new opportunities for requesters to meet with agencies.

In addition, the Office of Government Information Services (OGIS) at the National Archives has also undertaken new efforts to facilitate the administration of FOIA. OGIS provides help to both requesters and federal agencies encouraging, for example, properly targeted requests and agency responsiveness, especially for complex requests. OGIS thus complements the rest of the federal government's FOIA architecture.

Thus, by a variety of reinforcing measures—agencies' statistical track records with respect to disclosures, exemptions, and request processing; agency initiatives to improve their administration of FOIA; and government-wide efforts to improve the FOIA architecture—it is clear that the Administration has taken substantial steps to implement the President's instructions to provide greater government transparency in response to FOIA requests.

### **Proactive Disclosure**

Agencies have increased transparency not only in response to incoming FOIA requests, however. As directed by the President, agencies have also disclosed information proactively: Rather than fielding requests for information, agencies are increasingly pushing information out to the public.

In some cases, agencies have affirmatively disclosed information that is traditionally sought under the FOIA. That is, many agencies are now making information available proactively as an alternative to processing FOIA requests that seek the same or nearly-same information. This has the great advantage of sparing costs and time for both agencies and the public.

For a concrete example, the USDA's Animal and Plant Health Inspection Service (APHIS) now posts online a variety of its reports, enforcement actions, and prior FOIA responses. These reports and enforcement actions were often the object of FOIA requests. As a result of posting this information proactively instead, the APHIS reduced its incoming FOIA requests by 42% over the past fiscal year.

For another example, the EPA's FOIA Office created a public interface that allows users to access information pertaining to real property, housed across multiple EPA databases, relating to the potential environmental hazards. EPA has in the past received FOIA requests for such information by prospective real estate purchasers, and most of EPA's dormant FOIA requests concerned just this information. Now, this frequently requested information is easily accessible; users can search a specific address to determine potential environmental hazards prior to prospective real estate transactions.



For another example, the Commerce Department's National Telecommunications and Information Administration now posts 500 to 10000 pages of grant documents on its website *daily*, documents that used to be the frequent object of FOIA requests. Other agencies have likewise increased their affirmative disclosure of information. For instance, the Department of Transportation launched a new interactive website which not only provides detailed grant and project information for programs funded by the American Recovery and Reinvestment Act of 2009, but also makes the information more usable.

In some circumstances, agencies have made new information available to the public proactively not because such information has been traditionally sought under FOIA, but rather in anticipation of many FOIA requests prompted by some external event. The federal government's response to the BP oil spill is a case in point. Shortly after the spill, the EPA undertook to inform the public about its environmental impacts. The agency posted contemporaneous information it collected on air quality and the effects of the spill on coastal waters. Several federal agencies also jointly developed an oil spill response database to inform the public—in real time and with maps—of the movement of the oil spill, its effects on fisheries, shipping information, and cleanup progress. Those agencies continue to provide information about the spill's consequences. The Interior Department's Bureau of Ocean Energy Management also maintains a searchable web reading room housing its responses to spill-related FOIA requests that contains voluminous information, and the inter-agency spill Unified Command maintains voluminous oil spill FOIA materials as well. The National Oceanic and Atmospheric Administration likewise maintains an oil spill archive, and continues to provide new information about the spill's ongoing effects.

Finally, many agencies make voluminous information available to the public proactively neither because that information has traditionally been requested under the FOIA, nor because they anticipate many new FOIA requests as the result of some external event, but rather because open government entails a commitment to disclosure quite apart from what the Freedom of Information Act requires. Again, greater transparency is a primary mechanism for creating a more open government. Agency responses to FOIA requests are one way to promote transparency and openness, but not the only way.

Agencies' Open Government plans provide another. In fact, most agencies' Open Government Plans emphasize agency efforts to provide the public with more information about what agencies have done, what they are doing, and what they intend to do—part of agency efforts to solicit public feedback and participation in agency decision-making. Here, the distinction between changing agencies' FOIA practices by emphasizing affirmative disclosures, on the one hand, and the Administration's Open Government initiative, on the other hand, fades. For viewed through either the lens of FOIA or the lens of Open Government, agencies are doing the same thing—proactively making more information available to the public.

### III. THE OPEN GOVERNMENT INITIATIVE

**The Administration's open government efforts** have begun to institutionalize a more accessible and accountable government far beyond agencies' efforts to disclose more

information through the FOIA. Like the FOIA Memorandum, the President's Transparency and Open Government Memorandum called on agencies to disclose useful information to the public. But it also instructed agencies to solicit information *from* the public, and to give policymakers the benefit of outside experience and expertise through greater public participation and collaboration in agency decision-making. The Transparency and Open Government Memorandum also directed the Director of the Office of Management and Budget to issue further instructions to agencies for specific actions implementing the principles of transparency, participation, and collaboration.

### **The Open Government Directive**

In December 2009, the OMB Director issued a comprehensive "Open Government Directive" to the heads of executive departments and agencies. The Open Government Directive included four sets of instructions, each specified in detail. First, agencies were instructed to "publish government information on line," and in doing so to "respect the presumption of openness." Reiterating the instructions of the President's FOIA Memorandum, the Open Government Directive instructed agencies "to disseminate useful information, rather than waiting for specific requests under FOIA." Second, the Directive instructed agencies to "improve the quality of government information," and specifically the quality and transparency of federal spending information. Third, the Open Government Directive instructed agencies to "create and institutionalize a culture of open government" by developing and sharing best practices among agencies. Finally, the Directive instructed agencies to "create an enabling policy framework for open government" employing new technologies and forms of communication.

The Open Government Directive also required each agency to develop and publish its own Open Government Plan, and to create an Open Government webpage to house information about how each agency will promote transparency and participation. The Directive furthermore prescribed the minimum contents of agency Open Government Plans. For example, it required agencies to describe in detail how their Open Government Plans will: improve transparency, identify and publish "high-value" information, increase opportunities for public participation and feedback, and use new technology platforms to foster collaboration between agency personnel and those outside of government. It also instructed agencies to develop new "flagship" initiatives to advance openness principles, and to specify how such new initiatives could be improved over time.

### **Agency Open Government Plans**

For much of 2010, agencies worked to develop and refine their Open Government Plans. As prescribed by the Open Government Directive, agency plans provided for the publication of high-value data and the development of high-profile agency initiatives to foster increased public participation and collaboration. Agencies established new Open Government web pages highlighting their efforts, and providing a gateway for soliciting public feedback about those efforts. In other words, agencies solicited public participation in the very course of refining their Open Government Plans.

In addition, also as contemplated by the Open Government Directive, the federal Chief Technology Officer and Chief Information Officer created an "Open Government Dashboard,"



accessible through the White House website, to facilitate the transparent development and assessment of agencies' draft Open Government Plans. The Dashboard allowed the public to track the progress of agency plans during their formulation. Agency draft plans were reviewed also by components of the Executive Office of the President, in response to which agencies revised their draft plans. Outside good-government groups also evaluated agency plans. Most importantly, agencies' Open Government Plans expressly sought public participation in their development and implementation.

Many agencies' Open Government Plans—including those of the Department of Health and Human Services, the Department of Labor, the Department of Transportation, the Environmental Protection Agency, the National Aeronautics and Space Administration, and the Social Security Administration, among others—have received wide acclaim for their breadth and depth. The EPA's Open Government Plan, for example, provides detailed and continually updated information about upcoming agency action and encourages public participation in EPA rulemakings, hearings, and other initiatives. DOT's ambitious five-year, two-phased Open Government Plan harnesses new technology to create an agency culture of openness with stakeholders and provides comprehensive information about the Department's accomplishments, activities, and agenda.

Other agencies' Open Government Plans also employ new technology to promote transparency and participation. The Department of Commerce, in connection with its extensive outreach effort for the 2010 decennial census, launched an interactive website at "2010census.gov" to inform the public about the census count. To build public confidence and trust, DOC's site included information about the Census in 60 languages and used rich multimedia features.

In April 2010, the Department of Energy launched its Open Energy Information, a new open-source web platform that made DOE resources about clean energy sources widely available to the public. DOE's site, "OpenEI.org," houses more than 60 clean energy resources and data sets, including maps of worldwide solar and wind potential, information on climate zones, and energy best practices. In due course, the public, and indeed the energy community globally, will be able to upload additional data to the site and download the information in accessible formats. The Energy Department plans to expand this portal to include online training and technical expert networks to promote clean energy use.

The Department of Health and Human Services (HHS), together with the Institute of Medicine, released vast amounts of data over the past year to promote health and to aid policy decisions as part of HHS's Community Health Data Initiative. HHS's Open Government Plan aims to "help consumers and communities get more value out of the Nation's wealth of health data." These data includes local smoking rates, obesity rates, access to healthy food, hospital quality, and nursing home quality. The Community Health Data Initiative seeks to render such data more accessible for ordinary citizens thereby enabling them to make more informed health-related choices.

For another example, in July 2010 the Transportation Security Administration launched "My TSA," an application that gives citizens continuous access to information that passengers frequently request from the TSA, including a partly "crowd-sourced" feature of providing

security line wait times. MyTSA also provides a tool to permit people to find whether an item is allowed in carry-on or checked baggage, information on ID requirements and liquids rules, tips for packing and dressing to speed through security, and real-time operating status for U.S. airports from the FAA.

Other agencies have solicited public participation to focus on long-term issues as well. For instance, earlier this year the Social Security Administration (SSA) hosted a webinar entitled “Social Security 101: What’s in it for me?” designed to reach college students and young workers around the country. SSA’s webinar aimed to educate future workers and young workers about the financing principles of Social Security, along with issues like disability and survivors insurance, how workers and their families qualify for coverage, and how to plan and save for their financial future. It included a live question-and-answer session for participants.

Still other agencies have provided increased transparency designed to serve the President’s Memorandum on Transparency and Open Government and the Open Government Directive’s explicit purpose of promoting greater government accountability. For example, the General Services Administration (GSA) in April 2011 launched a new website providing easier and more accessible information about the composition of Federal Advisory Committees. Federal Advisory Committees play an important role in the development of policy throughout the government, and agencies commonly create Federal Advisory Committees to enlist policy advice from experts outside of government. Yet, information about the types of interests represented on Advisory Committees can be difficult to find. To address that problem, GSA’s new FACA website makes information about who serves on Federal Advisory Committees, and what interests they might therefore represent, more accessible to the public.

These examples are far from exhaustive. But they illustrate how the development of agency Open Government Plans has already promoted government accountability and, in palpable ways, has improved the lives of ordinary citizens.<sup>5</sup> Before the end of 2010, federal agencies had developed comprehensive, long-term Open Government Plans as prescribed by the Open Government Directive. By May 2011, agencies had taken substantial steps towards implementing those plans.

#### IV. DATA.GOV AND TECH-DRIVEN INNOVATION

**The Open Government Directive** contemplates many forms of increased agency transparency. One unprecedented and powerful vehicle for achieving greater disclosure of agency information is Data.gov. Launched in May 2009, Data.gov provides a central platform for agency data sets—a warehouse of original government information. The President has called information maintained by the federal government a “national asset,” and Data.gov makes such information available to anyone. Data accessible through this new platform can also be downloaded and used to create useful tools and programs. Many outside of government have used information available through Data.gov to create applications useful to citizens in their everyday lives.

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<sup>5</sup> More examples can be found at <http://www.whitehouse.gov/open/highlights>.

## Data.gov

*Agency Data Sets.* Over the last two years, agencies have provided the public with access to hundreds of thousands of data sets, as part of agencies' larger Open Government Plans. By May 2010, one year after Data.gov's creation, federal agencies had provided the public with access to over 272,000 data sets. By September 2011, the number of agency data sets newly available to the public grew to over 389,000. Agency data sets available through Data.gov concern a wide range of subjects, corresponding to federal agencies' broad responsibilities, including air travel, air quality, automobile safety, crime, drug safety, education and early childhood learning, the employment market, health care, nutrition, obesity, and workplace safety, among others.

Over the past two years, this gateway to original agency data has seen more than 200 million hits. Government data sets have been downloaded over 2 million times. Data sets from EPA alone have been downloaded hundreds of thousands of times. As agencies are continuing to make information available to the public, these numbers grow daily. In short, Data.gov has democratized federal agency data.

These data have proven valuable in several ways. First, Data.gov aggregates and presents certain agency data. For example, information about air quality is available through the "Clean Air Status and Trends Network," which provides measurements of ambient ozone levels from EPA measuring stations around the country. These data not only provide absolute measurements but also geographic comparisons, presented in both quantitative and visual form.

The information accessible through Data.gov can also be used by researchers to conduct studies. Entrepreneurs and scientists too can use this raw agency data to build new data-oriented services. Over the past year, data developers have converted the raw agency data made available at Data.gov into user-friendly data applications, providing ordinary citizens with information in forms they can readily use.

*Data.gov Communities.* Data.gov also houses data-oriented "Communities." These communities provide an organizing framework for data relating to particular subject matter. The first such community, Health.data.gov, was launched in February 2011. Health.data.gov provides numerous health-related datasets, tools, and applications collected from many agencies, including information for non-experts. For instance, patients and consumers can retrieve the latest information about drug labeling and medication content. Health.data.gov's "Insurance Finder" provides a customized menu of potential insurance choices based on a user's answers to several simple questions. Information concerning leading health indicators is also available at Health.data.gov.

Law.data.gov, another community at Data.gov, provides access to legal decisions from across the executive branch, and in particular those rendered by administrative agencies. Agencies' legal decisions—including agency adjudications, administrative rules, authoritative guidances, and other sources of law—profoundly shape the implementation of laws passed by Congress. Yet such legal sources can sometimes be difficult to find. Law.data.gov gathers such sources from across the executive branch in one searchable place, providing greater access to legal materials for ordinary citizens, researchers, and not least of all small businesses. Since its

recent release in March 2011, over 25,000 pages of legal materials have been viewed through Law.data.gov.

### **Open Innovation and Data-Driven Collaboration**

New agency data sets available through Data.gov have been used to create a number of programs and applications that improve ordinary citizens' lives in a variety of ways. For example, the Department of Health and Human Service's release of its agency data, in connection with HHS's Community Health Data Initiative, has spurred collaboration and the development of many useful applications. These include community health maps and dashboards, health data integrated with web search engines, and tools for citizens to find the best healthcare providers. Information about hospital performance now appears in internet search results also as a result of work by HHS.

There are many similar examples, too many to list. The Department of Agriculture's release of nutritional data enabled the development of healthy eating applications. Developers, students, and other innovators used USDA data to design applications encouraging children to eat better and become more physically active. A site called FlyOnTime.us uses information made available from the Bureau of Transportation Statistics to allow consumers to see estimated versus actual arrival times for flights on major commercial carriers. BrightScope, a financial information company, has used federal data to provide information to employees about the fees charged on 401(k) plans, which can save employees from excessive fees.<sup>6</sup>

Some agencies have collaborated to leverage their efforts to promote open government through disclosure of agency data. For example, Recalls.gov, a project of six federal agencies, alerts the American people to unsafe, hazardous, or defective products, a virtual "one-stop" for United States Government recalls, providing consumers with up-to-date product safety information. Users can download mobile phone applications to find the information by typing a product's name into a phone and learning immediately whether that product has been recalled because of a safety concern. Consumers can also see photos of recalled products and learn what to do with recalled products in their homes.

For another example, the EPA, NOAA, NPS, tribal, state, and local agencies developed AIRNow.gov to provide the public with easy access to air quality information wherever they live. This site offers daily Air Quality Index forecasts, as well as real-time Air Quality Index conditions for over 300 cities across the U.S., and provides links to more detailed state and local air quality sites. AIRNow.gov also links to collaborations with Google Earth and other sites, and that data supports local government initiatives, such as the Los Angeles area's South Coast Air Quality Management District's air quality application for smart phones.

The Department of Homeland Security together with the local emergency responders created Virtual USA, which will enable public safety official across levels of government to share information in real time and improve response to national disasters. This system develops links to share both location and operational status of power and water lines, flood detectors, helicopter-capable landing sites, emergency vehicle and ambulance locations, weather and traffic

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<sup>6</sup> More examples of innovative applications using raw agency data can be found at: <http://www.data.gov/developers/showcase>.

conditions, evacuation routes, and school and government building floor plans. It does so without requiring local government to change their own systems.

For another example, The National Institutes of Health, together with the Food and Drug Administration and the National Library of Medicine, developed a tool called “Pillbox” that allows consumers to identify tablet and capsule medications, together with linked drug and labeling information. This site contains high-resolution images of pills along with appearance information concerning pill color, size, shape, and imprint. The Pillbox site can aid consumers—as well as medical emergency and poison center personnel—in the identification of unknown pharmaceuticals.

Nor is cooperation limited to government agencies. To the contrary, public-private collaboration as called for by the President’s Transparency and Open Government Memorandum has led to many innovative uses of government information. For example, the Veterans Administration, with help from both other federal agencies and outside foundations, launched a “Blue Button” capability that allows veterans to download their personal health information from their “My HealtheVet” account. Since its launch in August 2010, the VA has had over 300,000 unique Blue Button downloads.

Such public-private collaboration has been encouraged over the past year through the establishment of the GSA’s Challenge.gov. Challenge.gov provides a platform for government agencies to tap the creative and entrepreneurial spirit of experts and ordinary citizens alike to address problems identified by agencies. In its first year, Challenge.gov featured more than 100 challenges from more than 25 agencies across the executive branch. For example, the Department of Defense, the Department of Energy, the State Department, and NASA have issued challenges to seek solutions to pressing technological problems relating to their missions.

To illustrate, in partnership with the Wright Brothers Institute, the United States Air Force Research Lab launched a new “Open Innovation Pavilion” featuring more than \$100,000 in prizes for novel solutions to tough challenges facing the U.S. Air Force, including how to detect small arms fire within a fraction of a second and accurately pinpoint its source, how to drop humanitarian supplies into populated areas without danger of falling debris to the people below, how to stop an uncooperative fleeing vehicle without permanent damage to the vehicle or harm to any of its passengers, and how to determine the approximate age and gender of small groups of people at a distance. The America COMPETES Reauthorization Act of 2010 provided all agencies with broad authority to conduct prize competitions. Agency efforts to promote public-private collaboration and harness the ingenuity of those outside of government are ongoing.

Finally, as a complement to agencies’ ongoing efforts, a recent report by the President’s Council of Advisers on Science and Technology noted the necessity of an open government research and development agenda, with emphasis on understanding how open government policies spur economic growth. Based on that report, the Federal Chief Technology Officer convened the first “Open Government R&D Summit” in March 2011, bringing together scholars, researchers, and policymakers to address the most important issues that could impede open government’s lasting success. Following the conference’s success, several academic centers

around the nation—each focusing on different legal, policy, and technical questions—have begun to address these issues as well.

## V. TRANSPARENCY FOR TAXPAYERS: FEDERAL SPENDING DISCLOSURE

**Information about government expenditures** is an especially important category of information warranting greater public disclosure. Simply put, citizens are entitled to know where their tax dollars go. As a corollary, government should make that information readily accessible. A number of websites provide that transparency, and furthermore solicit public participation to ensure the best use of taxpayer dollars.

### Recovery Act

Recovery.gov provides comprehensive and detailed information about how funds allocated under the American Recovery and Reinvestment Act of 2009 (Recovery Act) have been spent. This website provides data about tax benefits, government contracts, grants and loans, and Recovery Act entitlement spending. It traces the use of Recovery Act dollars by spending agency, by recipient and subrecipient, and by geography. In fact, Recovery.gov shows where stimulus spending takes place, down to specific zip codes. It also provides information about specific Recovery Act projects. In addition, Recovery.gov allows citizens who suspect fraudulent use of Recovery Act funds to alert the Recovery Board that administers the funds. The quantity and quality of spending information at Recovery.gov is unprecedented. The federal website also provided a model that lead the states to create state-level websites on Recovery Act spending.

### Federal Grants

USASpending.gov, revised and re-launched in March 2010, provides expanded transparency of federal spending information beyond Recovery Act funds. It provides extensive information about federal contracts, grants, and loans in one searchable location. USASpending.gov now also includes spending data on sub-awards to federal grants and contracts. The public can therefore now track how taxpayer dollars are spent down to the sub-award level.

### Information Technology Spending

The federal government spends significant resources on investments in information technology (IT). IT.usaspending.gov is a new information clearinghouse that allows the public visually to track approximately \$80 billion in federal IT initiatives and to hold the government accountable for its investments in new IT. The website's dashboard allows the public to see which IT projects are working and on-schedule and which are not. It solicits public participation as well, by allowing the public to offer alternative approaches to planned government IT spending and to provide feedback to the chief information officers at federal agencies about their IT investments. And increased transparency in this context has in fact exposed underperforming



initiatives. For one example, the VA has terminated \$54 million dollars' worth of IT projects. More generally, the increased scrutiny that federal IT spending has received has already saved over \$3 billion dollars of taxpayer money.

### **Other Government Payments**

A new improper payments dashboard, Paymentaccuracy.gov, was launched in June 2010 in response to Executive Order 13520, "Reducing Improper Payments and Eliminating Waste in Federal Programs." Executive Order 13520 requires federal agencies to analyze why improper payments by the government occur, and to increase their efforts to protect against such payments. Paymentaccuracy.gov contains information about current and historical rates and amounts of improper payments, information on why improper payments occur, and information about what agencies are doing to reduce and recover improper payments. The site allows the public to download data about improper government payments, and to report suspected overpayments. Greater disclosure of unwarranted government expenditures provided by Paymentaccuracy.gov creates strong incentives for agencies to avoid mistaken or otherwise improper payments.

### **Taxpayer Receipts**

The White House also recently launched a new web site, "Taxpayer Receipt," (<http://www.whitehouse.gov/issues/taxes/tax-receipt>), that allows citizens to see exactly where their tax dollars go, fulfilling a promise President Obama made during his 2011 State of the Union Address. Here, taxpayers can enter their 2010 income tax information, and see how their tax payments were used, both as a percentage of their income tax payment and in absolute dollars given their individual income tax payment information. Taxpayer Receipt thus provides accountability of the use of tax dollars not by specific programs, but across the board.

## **VI. CLASSIFIED INFORMATION AND OTHER GOVERNMENT RECORDS**

**Creating a more open government** requires more than pushing information out to the public and soliciting public participation and collaboration to solve challenges agencies face, as essential as those are. Openness also requires the government to generate information that is categorically unavailable to the public less often. Here, the Administration has made great efforts to limit designating government records as beyond the public's ken. Specifically, President Obama has issued executive orders aimed at curbing the over-classification of agency documents and excessive designation of government information as sensitive, while establishing a process for declassifying documents that no longer should be withheld.

### **Over-Classification and Declassification of Government Information**

In December 2009, the President issued Executive Order 13526, "Classified National Security Information," and an accompanying Presidential Memorandum on the subject of the Order's implementation. This Executive Order 13526 improves the process by which government information becomes "classified," and how long it remains classified. It provides



clarified, and stricter, standards for classifying information. It further provides that government information “shall not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security” according to specified criteria, and furthermore provides explicit reasons for which classification is prohibited. The Order also limits the delegation of classification authority within agencies, and restores the presumption against classification in cases of “significant doubt.” It also requires agencies to undertake comprehensive review of their classification practices, issue guidelines to facilitate proper and uniform classification, and to create procedures for keeping their guidelines current. The Order also tightens the standards for keeping information classified for more than 25 years, and provides that no information may remain classified indefinitely.

Executive Order 13526 also establishes a National Declassification Center within the National Archives and Records Administration (NARA). The National Declassification Center is charged with streamlining the declassification process, overseeing quality assurance of agency declassification efforts, and implementing standardized training for the declassification of government records determined to have permanent historical value. Finally, the Order instructs the Information Security Oversight Office (ISOO) within the National Archives Office to implement the Order by issuing directives, “binding on the agencies.”<sup>7</sup> It furthermore authorizes the Director of ISOO to report violations of the Order, and explicitly contemplates sanctions for government officers and employees who knowingly or negligently “classify or continue the classification of information in violation of [the Order] or any implementing directive,” among other reasons. The Order also requires agency heads to provide the Director of ISOO with reports summarizing their efforts to review comprehensively their classification guidance. In the Presidential Memorandum accompanying Executive Order 13526, President Obama explained that the Order should “produce measurable progress towards greater openness and transparency in the Government’s classification and declassification programs.”

NARA has taken important steps to implement the Order and to ensure that agencies comply with it. In January 2011, the Director of ISOO advised senior agency officials with responsibility to undertake comprehensive review of their classification standards and to facilitate their declassification efforts to issue periodic status reports on their progress. In June 2010, the National Declassification Center (NDC) created by the Order held an open forum seeking public participation and feedback in response to the NDC’s draft plan to implement the Order and to prioritize declassification efforts. The NDC made clear that its efforts would focus on the declassification of government documents “determined to be of high public interest.” Following that forum and publication of a draft implementation plan, the NDC issued a final public plan to implement the Order, on which it continues to invite public comment. The NDC also plans biannual reports tracking progress on agency declassification efforts.

Executive Order 13526 has already begun to have an effect. According to the ISOO’s April 2011 report, executive branch agencies in fiscal year 2010 reduced their personnel authorized to classify documents by 7%, recording their lowest number to date. Agencies also employed a 10-years-or-fewer classification designation for 74% of all original classification

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<sup>7</sup> The Open Government Directive also requires agencies to include information about their declassification activities as part of their Open Government plans.

decisions, which is the highest percentage of that short-term designation used to date. With respect to declassification, the executive branch reviewed 53.1 million pages of classified information, and declassified 29.1 million pages (55.4%). Over the course of 2010, NARA also oversaw efforts to improve the infrastructure for reducing the backlog of documents for declassification review. From January 2010 to April 2011, 104.9 million backlogged pages were initially reviewed, most of which require further review. Of those, nearly 12 million pages were released to the public. As with improving agency processes for administering the Freedom of Information Act, government-wide reform of classification and declassification requires sustained commitment. But with NARA's coordination and assistance, agencies have begun to make meaningful progress.

### **Limiting Use of Controlled but Unclassified Government Information**

Formal classification is not the only way in which government documents are restricted. Agencies currently use many dozens of markings, such as "for official use only," to designate information that requires safeguarding or dissemination controls, referred to as "Controlled Unclassified Information" (CUI). In November 2010, President Obama issued Executive Order 13556 to standardize such designations and reduce agencies' over-reliance on them. As the President explained, agencies' "inefficient, confusing patchwork has resulted in inconsistent marking and safeguarding of documents," as well as "unclear or unnecessarily restrictive dissemination policies." To promote "openness and uniformity" across the government, Executive Order 13556 requires agency review of all forms of non-classified information withheld from the public. The Order instructs agencies to review their relevant practices, and to submit to the National Archives and Records Administration all of their proposed categories of CUI. It makes clear that CUI markings do not provide an independent basis for withholding information from the public. The Order also charges NARA with reviewing categories of such information and, in consultation with agencies and the public, with approving categories and subcategories to be applied uniformly throughout the executive branch. NARA is spearheading those efforts at present.

## **VII. WHITE HOUSE TRANSPARENCY**

**President Obama has done more** than direct the executive branch to become more open. Leading by example, the White House has opened its own windows. It has provided the public with information about presidential scheduling, financial disclosures, ethics materials, and White House visitors. The President has also issued an executive order to provide increased access to Presidential Records.

### **Daily Schedules**

Since July 2010, the White House has made the President's and the Vice President's daily public schedules available. Those schedules are available at the White House web site, [Whitehouse.gov](http://Whitehouse.gov). In addition, anyone can subscribe the President's or Vice President's schedules electronically—sent, or added to one's own computer calendar, automatically. In this way, citizens have instant access to the President's and Vice President's public schedules.

### **Presidential Tax Returns and Financial Disclosure Forms**

The White House has also released the President's and the Vice President's tax filings, as well as their annual financial disclosures forms. Both of these are also posted prominently on the White House website. The public thus has easy access to the President's and Vice President's income and other financial interests.

### **Ethics and Financial Disclosures of White House Staff**

The White House has also posted all waivers of strict new ethics requirements for White House personnel. President Obama's Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," imposes new rules on how executive branch appointees are to conduct themselves, and restricts appointees' pre-government and post-government employment. The Order also requires every political appointee in every executive agency to sign an Ethics Pledge, while it allows for a waiver when the literal application of the Ethics Pledge does not make sense or is not in the public interest. All such waivers are posted online in their entirety for the public and media to review.

White House staff salary and financial disclosure forms are publicly available as well. Here again for the first time, interested parties may submit requests online for the staff financial disclosure reports they would like to review. The records and distribution process have been streamlined, so that each report is available in pdf form for transmission via email. Requested reports are e-mailed as quickly as possible.

### **White House Visitor Logs**

The White House has also made the security log of all White House visitors publicly available, posted online on a rolling basis. The public can now browse the names of everyone who visits the White House. The visitors log can be searched by name or by date, and log records can be downloaded as well. The White House has released over 1,250,000 names so far.

### **Presidential Records**

President Obama has also ensured that White House records, even sensitive documents, will become more readily and more quickly available to the public in the future. In January 2009, the President issued Executive Order 13489, promoting greater access to Presidential Records. That Order rescinded Executive Order 13323, which had restricted the disclosure of Presidential Records by allowing former presidents and their descendants to delay indefinitely the release of information. This new Order also gives the Archivist, the Attorney General, and the White House Counsel roles in determining the use of presidential privileges. Executive Order 13489 thus promotes openness for the near and far future.

## **VIII. CRITIQUES**

**Public feedback** is an intended and valued consequence of open government. Just as the Administration has directed agencies to solicit the public's views about their Open Government Plans, so too has it welcomed the public's assessments of its larger open government efforts. As

mentioned, not all expertise—including expertise about open government—resides within government. It is not surprising, then, that promoting public participation and collaboration about open government is one aim of open government.

Analyses and critiques of the Administration's efforts are especially valuable. For one thing, they hold those within government accountable for the efficacy of their efforts to foster open government. Critical assessments of the Administration's efforts also can reveal better ways to promote open government. The Administration will therefore continue to solicit participation and collaboration in its open government initiatives.

Some critics have alleged that the Administration has not done enough to create a more open government, and that much work remains. They are right; notwithstanding the measurable and undeniable progress made on all of the Administration's major initiatives, still more work is necessary. Others, however, underestimate the progress made over the past two years towards creating a more open government.

With respect to FOIA, for example, some have measured progress towards achieving greater transparency by looking at the volume of agency responses to FOIA requests. Such a metric by itself can be misleading, however, given that the President has directed agencies to consider releasing partial information in response to FOIA requests even where they cannot release all requested information. As noted, identifying what information can and cannot be disclosed in response to FOIA requests—as opposed to denying requests outright under the previous presumption against disclosure—can take time. In other words, processing FOIA requests with an eye to making partial disclosures where full disclosures are not possible is often more time consuming than denying a request altogether any time the request implicates some information that cannot be disclosed. Likewise, agencies' focus on resolving backlogged FOIA requests, as specifically instructed by the Open Government Directive, also requires greater agency efforts given that backlogged requests can involve the most complex or intractable requests. In this light, processing fewer requests is an expected consequence of examining each FOIA request more carefully and addressing difficult requests.

Nor do the percentage of agencies' full disclosures, or the proximity of agencies' partial disclosures to 100%, constitute conclusive measures of FOIA transparency. For again some FOIA requests are properly denied, and some under law must be denied. Given that even agencies focused on providing as much transparency under FOIA as possible will deny some FOIA requests, not all FOIA denials are properly viewed as failures to promote transparency, notwithstanding an understandable tendency by some observers to treat the percentage of requests for which agencies provide requested information as a decisive indicator of progress on FOIA transparency.

In fact, as agencies do more and more to disclose information to the public proactively by releasing information before receiving FOIA requests, it is to be expected that they will deny or partially deny a larger percentage of their FOIA requests over time. This is true because by affirmatively disclosing information, agencies in effect preempt the most straightforward FOIA requests. That is, agencies will proactively disclose only information that, had the information been the subject of ordinary FOIA requests, they would have fully disclosed anyway, requests to which no FOIA exemptions would have applied. This means that proactive agencies disclosures

will resolve the easiest cases, leaving more challenging requests—seeking information agencies could not disclose categorically proactively—to be sought through FOIA. In short, as agencies release more and more information on their own, greater proactive transparency will leave a higher percentage of harder cases among traditional FOIA requests. More frequent denials or partial denials thus can be a consequence of the desirable progress agencies have made to disclose more information proactively.

Sometimes the utility of Data.gov has been underestimated as well. For example, notwithstanding the unprecedented volume of government data sets newly available there, downloaded over two million times, some have raised questions about the form of data agencies have made available through Data.gov to the general public. Agencies have provided mostly raw, “wholesale” data through Data.gov, as opposed to user-friendly “retail” data that has been aggregated in some way. As some have rightly observed, for ordinary citizens raw data sets may not be immediately meaningful.

Although the raw data sets at Data.gov do require aggregation and synthesis, at the same time those data come with an important advantage, which is precisely that they can be analyzed, synthesized, and repackaged in any way. In other words, raw data are flexible, and upon making such data available to the public, agencies have explicitly invited the public to put that information to new uses, tailored however users of that information desire. It would therefore not be preferable to specify the form agency data available through Data.gov should take. Better for agencies to provide their own data, in the form agencies already maintain it, as they see fit. The Open Government Directive instructs agencies to include within their Open Government Plans “high-value” data, but leaves agencies to determine which of their data are of high value, while agencies’ Open Government Plans invite feedback about which data would be highly valued by the public.

The White House’s release of its visitor records has also been the subject of misplaced criticism. Some have alleged that these visitor records are incomplete; others observe that they do not record meetings that occur outside of the White House. But the visitor entry system, used by previous administrations as well, was created solely for the purposes of ensuring secure access to the White House complex. It is over-inclusive, for example, with respect to those who have been security cleared to enter but who do not show up or for whom meetings are cancelled. Also, the visitor records may list the White House staffer who seeks clearance for visitors, as opposed to the White House official with whom visitors meet; the entrance system was not created to match outside parties with the person or office convening a meeting, but to ensure those coming in do not pose security risks. Finally, White House personnel appropriately meet with other government officials and outside parties beyond the White House gate, for reasons of convenience, courtesy, and availability of space, and it is not clear what a functioning White House would otherwise look like.

None of this is to suggest that the Administration’s efforts to make government more open are beyond improvement, however. Creating a more open government depends, crucially, on input from the public and all interested parties about how our democracy can best be strengthened, and our government made more efficient and effective—feedback both positive and negative. At the same time, the significance of the steps the Administration has already taken can bear public scrutiny and critique.



## IX. BUILDING ON PROGRESS: OPEN GOVERNMENT GOING FORWARD

**While the Administration has made great progress** towards creating expanding openness in government, there is also much yet to be done. Promoting greater transparency, participation, and collaboration across the government requires sustained effort. None of the initiatives described above can be completed in mere weeks or months. Accordingly, the remainder of 2011 and 2012 will see continued progress on the Administration's long-term commitment to create a more open government. Agencies will continue to implement major reforms initiated in 2009 and 2010, and will extend their efforts to promote transparency, participation, and collaboration in new ways as well.

### FOIA

For example, to promote greater participation with the FOIA requester community the Justice Department's Office of Information Policy (OIP), in cooperation with the Office of Government Information Services (OGIS) at the National Archives and Records Administration, has just begun hosting a series of "Requester Roundtables" for frequent and potential FOIA requesters. These Roundtables—organized around themes defining general areas in which FOIA requesters have special interests (law enforcement records, third-party records, referrals and consultation procedures, and so on)—will bring requesters together for face-to-face discussion about how they can make the most effective requests, what they should expect from agencies, and how agencies can be most responsive. OIP and OGIS are also teaming to offer dispute resolution training to FOIA professionals to provide enhanced communication skills and training on the importance of customer service in the administration of the FOIA.

OIP will also continue to work directly with agencies, including continued meetings and outreach with Chief FOIA Officers, and will continue to issue guidance on the full range of issues related to proper FOIA administration. OIP will host various training sessions for agencies designed to enhance their knowledge of the FOIA, like the "Fee Summit" it held in May 2011 to discuss FOIA fee practices and how FOIA fee waivers are determined, and the session on Exemption 2 which addressed OIP's guidance to agencies on the scope of that exemption in light of a recent Supreme Court decision. OIP will also continue to issue guidance and provide training to agencies specifically focused on implementation of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines, including sessions on making discretionary releases under the Guidelines and increasing proactive disclosures.

Other agencies will help to strengthen FOIA's infrastructure as well. The Office of Personnel Management (OPM) will complete a process designed to enhance the professionalism of individuals who work in the FOIA field. In March 2011, OPM created a new job title allowing agencies to designate FOIA-specific personnel, and over the course of the next year OPM will undertake a process to create a new job series of FOIA and/or information specialists, answering calls to create a FOIA-specific career track within agencies, who otherwise often depend on personnel with multiple job responsibilities to process FOIA requests.

For another example, the General Services Administration (GSA) and the Department of Justice will examine changes to GSA's "Schedule 36" contract that would allow agencies to

supplement their existing FOIA processing capabilities with a wide variety of contract services, including contractor-supplied software, hardware, storage capability, and personnel, to assist agencies in response to unexpected spikes in incoming FOIA requests. Under a revised contract, agencies that experience a sudden increase in FOIA requests, prompted by a natural disaster or some other external event, could use a revised Schedule 36 contract to supplement their capacity to process FOIA requests. Agencies facing large FOIA backlogs could do the same.

Finally, and not least of all, agencies will continue to make proactive disclosures of information, review their FOIA guidelines as appropriate, further implement reforms to the process by which they administer FOIA requests, and continue their efforts to reduce FOIA backlogs. Thus will agencies build upon their ongoing efforts to provide greater disclosure through FOIA.

### **Open Government Agency Plan Implementation**

Agencies will also continue to implement their Open Government Plans, many of which contemplate phased implementation. In concrete terms, continued implementation of agency Open Government Plans means agencies will continue to disclose information to the public, identify new opportunities for public participation in agency decision-making, and solicit collaboration with those outside government to address challenges agencies face. For example, agencies that have not already posted their congressional testimony and required reports to Congress as part of their Open Government Plans will do so during 2011. Similarly, agencies that have not already posted organizational agency directories, so that ordinary citizens might better navigate their government, will do so during 2011. In addition, agencies will also continue to implement the marquee “flagship” initiatives they identified in 2010 during the development stage of their Open Government Plans.

In the course of implementing their Open Government Plans, agencies will also assess their own progress in 2011, specifically by tracking their implementation against the elements of plans specified by the Open Government Directive. They will do so by considering whether the milestones they anticipated during the development of their plans are being met on schedule, and will adjust their efforts to ensure that realistic milestones can be reached on the timetables agencies anticipated. Given that agencies’ Open Government Plans explicitly seek public feedback, the implementation and evolution of agency plans will reflect the already dynamic nature of agency Plans. Finally, agencies will also facilitate evaluation of the implementation phase of their Plans by outside experts as well.

### **More Open Innovation: New Uses for Government Data**

Agencies will continue to build on their efforts to disclose government information in accessible and useful forms. Data.gov is developing and housing additional subject matter communities, such as the recently launched community of energy data. There, citizens can find information on the energy activities of Federal agencies, learn more about how energy is produced in the U.S. or in a local area, and discover tools for becoming more energy-efficient. In addition, agencies will work to expand the Blue Button capability into areas beyond personal health information. The federal CTO will continue to work with innovators and the R&D community to develop long-term strategies for open government’s lasting success.



Agencies will likewise continue their collaboration with outside parties to develop new uses for government data. For example, DOT, EPA, and HUD will work with good-government groups, technologists, and citizens in late 2011 to host a “code-a-thon” designed to look for new practical uses for agency data related to creating more sustainable and livable communities. This effort will convene good-government groups, data mining experts, and the agencies to do concentrated work over a short period of time to create new practical uses of raw data that DOT, EPA, and HUD have made available.

Other agencies will also continue to collaborate with outside parties to find new practical uses of government data. For instance, HHS will build on the substantial progress it has made in connection with its Open Health Data, a flagship initiative of HHS’s Open Government Plan, by working with the private sector to develop new uses of raw government health data that promote public health in tangible ways. For another example, EPA recently initiated a major new challenge to data entrepreneurs to develop innovative environmental applications of EPA data.

### **Updating Federal Web Policy**

In part as a result of agencies’ open government efforts, agency websites have become a primary if not dominant means by which the public gets government information. It is therefore crucial for government web sites to provide information in an easy to access and usable manner. The current policy governing federal agency websites, OMB Memorandum, M-05-04, “Policies for Federal Agency Websites,” was issued in 2004. To take into account recent advances in technology and the way the public uses the internet, OMB will be reviewing and updating this policy over the next year.

### **Classification, Declassification, and Controlled Information**

Agencies will also continue to implement Executive Order 13526 by reviewing, standardizing, and tightening their classification standards, overseen by the National Archives and Records Administration (NARA)’s Information Security Oversight Office (ISOO). Pursuant to the Order, agencies with original classification authority will complete comprehensive reviews of their efforts by June 2012. In the interim, agencies will issue status reports on their progress, as prescribed by ISOO, in late summer 2011 and early 2012. At the same time, the National Declassification Center will continue to oversee the declassification of hundreds of millions of pages of classified government documents. NARA will also oversee agency implementation of Executive Order 13556, limiting agency use of non-classified restrictions on government documents. As prescribed by Executive Order 13556, agencies will focus on streamlining categories of such restrictions, and submit proposed categories to NARA, ultimately leading to a public registry of standardized government markings. All of these efforts will require sustained efforts by NARA, ISOO, the National Declassification Center, and not least of all agencies themselves over the next several years.

### **Greater Public Participation in Rulemaking and Retrospective Review**

Agencies will promote transparency, participation, and collaboration in still other ways as well, for one example by continuing to promote greater public participation during the agency rulemaking process and the retrospective review of those rules. On January 18, 2011, President Obama issued Executive Order 13563, reaffirming the framework for White House review of

rules that was established by Executive Order 12866 and requiring agencies to develop plans to conduct a retrospective review of their existing rules. Section 2 of Executive Order 13563, entitled "Public Participation," directs agencies to promote an "open exchange of information and perspectives" among all stakeholders during the regulatory process, and to provide the public with a "meaningful opportunity" to comment on proposed rules. Specifically, the Order directs agencies to provide the public with a "timely" opportunity to comment on proposed and final rules, and to make electronic rulemaking dockets, including the scientific and technical findings relevant to a proposed or final rule, available and searchable online. Executive Order 13563 also instructs agencies to "seek the views of those likely to be affected" by a proposed rule, including likely beneficiaries and those who would be subject to a rule. Notably, the Order directs agencies to do so before issuing a notice of proposed rulemaking.

In other words, Executive Order 13563 promotes increased public participation throughout all stages of the rulemaking process. Agencies will not satisfy the Order simply by allowing interested parties to comment on the text of a proposed or final agency rule after it is published in the *Federal Register*. Instead, it prescribes transparency—searchable, online access—to the docket underlying the proposed or final rule on Regulations.gov. Such access will foster meaningful participation during the development stage of proposed rules, not merely in response to propose rules. That is no small difference. Full agency implementation of Executive Order 13563 over the next year and beyond will increase significantly the opportunities for public participation in the rulemaking process.

The relevance of rulemaking of course continues even after the publication of a final rule. Section 6 of Executive Order 13563 accordingly directs agencies to develop plans to "periodically review . . . existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives." Many agencies have sought public comments on their preliminary plans for retrospective review. They have been encouraged to publish their preliminary plans online on their Open Government websites, and to do so "in an open format that enables the public to download, analyze, and visualize any information and data."<sup>8</sup> The transparent development of agency review plans provides another example of how the Administration will continue to promote open government through the rest of 2011 and beyond.

### **Regulatory Compliance and Enforcement Transparency**

Executive Order 13563 was accompanied by a Memorandum from the President on the subject of "Regulatory Compliance," issued the same day. The President's Regulatory Compliance Memorandum instructs agencies with substantial regulatory responsibilities to disclose to the public information about their regulatory inspections, citations, reviews, warnings, revocations, and other regulatory compliance and enforcement activities. The Memorandum further directs agencies to provide such information in a centralized way that is accessible and searchable on line, and to promote "new public uses" of this information. It also instructs the federal government's Chief Technology Officer and Chief Information Officer to

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<sup>8</sup> See Memorandum for the Heads of Executive Departments and Agencies, "Retrospective Analysis of Existing Significant Regulations," M-11-19, available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-19.pdf>

help agencies develop ways to make their compliance and enforcement information searchable across agencies.

The Regulatory Compliance Memorandum will therefore lead to greater transparency of regulatory agencies' compliance and enforcement records. Such transparency will promote greater government accountability, as the agencies with weak compliance and enforcement records will be more readily revealed. At the same time, greater disclosure of regulatory compliance and enforcement information will also provide more accountability of chronic bad actors who fail to comply with the law, especially across multiple regulatory areas. This in turn will help level the playing field among regulated entities, and provide citizens with information they need to make more informed decisions. All of these consequences constitute express purposes of the Regulatory Compliance Memorandum.

Given its breadth, implementation of the Regulatory Compliance Memorandum will require sustained commitment by regulatory agencies over the next months and years. Agencies have developed preliminary draft implementation plans, and during 2011 will finalize their implementation plans and begin to make new regulatory compliance and enforcement information publically available. In fact, many agencies have already begun to make their compliance and enforcement activities accessible to the public. The Regulatory Compliance Memorandum will require all executive branch regulatory agencies to do so, and to expand the information they already provide, in increasingly searchable ways.

### **International Open Government Partnership**

President Obama's emphasis on open government has proven contagious. For example, the President's trip to India in 2010 resulted in a US-India Open Government Dialogue. Australia, Canada, Estonia, New Zealand, and Norway have built directly on Data.gov by launching similar government websites. The United Kingdom announced a new open government initiative that draws heavily from the Administration's efforts over the past two years. Other governments have also borrowed from those efforts. Emerging economies have also shown strong initiative as well, including Brazil's dedication to anti-corruption reforms, South Africa's efforts to provide greater fiscal and budgetary transparency, and Indonesia's initiatives to promote citizen engagement.

Over the next two years, the Administration will take affirmative steps to promote open government around the world, not only by example but also through engagement with governments that have indicated interest in strengthening accountability and transparency. As the President stated in his speech before the United Nations in September of 2010:

The common thread of progress is the principle that government is accountable to its citizens. . . . In all parts of the world, we see the promise of innovation to make government more open and accountable. . . . We must build on that progress. And when we gather back here next year, we should bring specific commitments to promote transparency; to fight corruption; to energize civic engagement; to leverage new technologies so that we strengthen the foundations of freedom in our own countries, while living up to the ideals that can light the world.

Responding to the President's challenge, the United States and Brazil are jointly leading a multi-stakeholder effort, the Open Government Partnership, to support more open and transparent government around the world. In July 2011, Secretary Clinton hosted a meeting of over sixty governments to announce this new effort, and to initiate the development of country-specific commitments to promote transparency and citizen participation, in anticipation of the formal launch of the Open Government Partnership in September 2011 in New York.

## Congress

The promise of open government cannot be fully realized by the executive branch alone, however. Increasing the accountability of public decision-makers, strengthening our democracy, and promoting efficiency—these all will require greater openness on the part of Congress as well. Congress could do more of its share to promote open government, in part by taking steps not unlike those the White House has taken.

Members of Congress might, for instance, post their daily schedules online, and make electronic subscriptions to those schedules available to the public. They could post logs of all visitors to House and Senate offices. Members could post their income tax returns and financial disclosure forms, and make those downloadable for the public. Congress could also do more to post ethics investigations and reports. Members could take ethics pledges, and require the same of their staffs, to combat the influence of lobbyists, and close the “revolving door” between Capitol Hill and lobbyists at least part way.

These are just examples of what Congress could do to promote open government; other steps may be equally important. Which particular reforms are best to create a more open legislative branch is of course a matter for Congress to determine. The point is that the Administration's efforts to create an unprecedented level of openness in government have not been matched by the legislative branch. Yet fully realizing the benefits of open government will require greater openness by Congress as well.

## CONCLUSION

**To strengthen democracy** and promote government efficiency and effectiveness, President Obama committed to promote a new level of openness in government. Accordingly, for over past two years, the Administration has taken substantial steps towards creating a more open government. At the President's direction, federal agencies have promoted greater transparency, participation, and collaboration through a number of major initiatives. The results of those efforts are measurable, and they are substantial. Agencies have disclosed more information in response to FOIA requests; developed and begun to implement comprehensive Open Government plans; made thousands of government data sets publically available; promoted partnerships and leveraged private innovation to improve citizens' lives; increased federal spending transparency; and declassified information and limited the proliferation of classified information.

To be sure, these efforts are still in progress, a consequence of their ambitious scope. The Administration will continue to improve FOIA's architecture, implement and expand agencies' Open Government Plans, make new government data available and solicit participation

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and collaboration to find innovative uses for government data, and continue to declassify information. At the same time, agencies will also continue to implement more recent initiatives, including creating greater opportunities for participation in agency rulemaking, and greater transparency of regulatory compliance and enforcement activities. Not least of all, the Administration will also promote open government internationally. In these ways and others—the above is not exhaustive—the executive branch will continue to fulfill the President's commitment to promote public trust through a more open government.