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OIRA Director Addresses "The Power of Open Government"

WASHINGTON, D.C. --- Office of Information and Regulatory Affairs Administrator Cass R. Sunstein today discussed the Administration's concerted efforts to expand transparency in the federal government. His remarks, as prepared for delivery at the Brookings Institution, are below.

The authors of the American Constitution met behind closed doors in Philadelphia during the hot summer of 1787. When they completed their labors, the American public was, naturally enough, curious about what they had done. A large crowd gathered around what is now known as Convention Hall. One of its members asked Benjamin Franklin, as he emerged from the building, "What have you given us?" Franklin's answer was hopeful, or perhaps a challenge, even a dare: "A republic, if you can keep it."

The distinctly American combination of humility and determination that met Franklin outside the doors of the Convention Hall provides a clue to our nation's character – and the challenge in Franklin's response is central to the continuing work of improving our experiment in self-government.

What Franklin helped give us was indeed a republic – a charter that recognized the sovereignty of We the People, and that can be counted, in multiple ways, as the nation's first Open Government Directive.

The republic that we have kept has lasted for well over two centuries. At the President's direction, this Administration has taken unprecedented measures to promote transparency and open government. We have started to democratize data. We have used openness to promote accountability. Through our government-wide efforts, we are providing the people with new access to information and analysis. We are reaching out to them directly for innovative ideas. We are making government a partner with the American people by breaking down the barriers that have long stymied public collaboration and participation. In domains ranging from nutrition and obesity to automobile safety and energy efficiency, we have attempted to use disclosure as a low-cost, high-impact regulatory tool.

Since his inauguration, this President has placed a great deal of emphasis on open government. In January 2009, he issued a memorandum calling for a "presumption in favor of disclosure" under the Freedom of Information Act. On the very same day, he issued a memorandum on openness in general, calling for new measures to promote transparency, participation, collaboration. Since then, the Administration has taken a number of steps to promote commitments from putting into place sweeping ethics standards to making new data available

online. Just as an example: today – for the first time in history –the White House posts online the names of almost every visitor and whom they visited.

But the work this Administration has done in the last year to open government responds to something far older than President Obama's charge to OMB. Our work to make government more transparent, participatory, and collaborative – to make our Republic more accountable to the citizens it serves – is designed to help rise to Franklin's challenge and keep that republic.

The recent efforts are hardly the end of the Administration's open-government efforts; they are merely the beginning. The collective progress made in the Administration's first year underscores the President's commitment to a transparent, accountable government. Each new step is an unprecedented one. Each new set of information made public in easy-to-read formats, and each removal of arcane barriers to citizen participation, is helping to restore the confidence of the American people in their government – and also to improve its operation

The real-world benefits are significant. Backlogs of constituent-focused information and services are being erased. Taxpayers' dollars are being saved. Confusing, bureaucratic nightmares are being replaced with streamlined, plain-language, and, often, online resources. Outmoded practices are being eliminated and new, open practices are being informed by the collective wisdom of the American people. We are improving services and saving money – and making regulation work better to boot.

As the President has emphasized, there are three independent reasons to support open government. First, open government promotes accountability – in the words of Supreme Court Justice Louis Brandeis: "Sunlight is said to be the best of disinfectants." Second, transparency enables people to find information that they "can readily find and use." That is why the President has asked that agencies "harness new technologies" and "solicit public feedback to identify information of greatest use to the public." And third, the President has said that "[k]nowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge" and hence to "collective expertise and wisdom."

All of this is central to the drive to change the way that Washington works. Through more open, accountable, participatory approaches, we are bridging the gap between the American people and their government. We are reshaping government according to three core values:

- Transparency. Government should provide citizens with information about what their government is doing so that government can be held accountable.

- Participation. Government should actively solicit expertise from outside Washington so that it makes policies with the benefit of the best information.

- Collaboration. Government officials should work together with one another and with citizens as part of doing their job of solving national problems.

Open government is not the work of any single federal office or official. The entire Obama Administration is moving forward with broad measures to translate the values of openness into

lasting improvements in the way government makes decisions, solves problems, and addresses national challenges.

Sunlight

When the President quoted Justice Brandeis' words in the Open Government Memorandum, he referred to the principle of accountability. The basic idea is that officials should be held accountable for their action and inaction – and that accountability requires transparency. This is, of course, a central idea behind the Freedom of Information Act (FOIA), and the reforms to FOIA implementation that this Administration has promoted.

The President's starting principle is clear: "accountability is in the interest of the Government and the citizenry alike." And in establishing a "presumption in favor of disclosure," the President has demonstrated his commitment to that principle. "The Government," he has said, "should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of government at the expense of those they are supposed to serve."

But the call to remove barriers is only part of the reform. The President has also sought to reorient the government's posture – to change the default setting from one that is closed and insular to one that is open and collaborative. He has asked agencies to take affirmative steps to make information public, and not to wait for specific requests from the public. This change marks a shift in both policy and philosophy. As the President has noted, it will make meaningful the statute that counts as "the most prominent expression of a profound national commitment to ensuring an open Government."

FOIA, however, is just one example of how transparency policies can help make public officials more accountable. Consider another, the new Information Technology Dashboard, which provides the public with an online window into the details of Federal information technology investments -- and allows users with the ability to track the progress of investments over time. With these dashboards, it is possible to see spending by each major government department. Graphs display performance against schedule, costs, and an informed assessment of how well they are meeting their objectives.

With the IT Dashboard as a case-in-point, I want to underline the clear relationship between transparency and accountability. This past year, in no small part because of the clear look at the status of projects that the Dashboard provides, VA announced the temporary halt of 45 of its most problematic computer projects last summer, so that they could be fixed. During the next six months, VA restarted 32 of these projects, stopped 12, and continued the review of one. These actions resulted in cost avoidance of $54 million for VA during fiscal year 2010. The deliberative advantage of democratizing data aside, the case is clear: transparency is fiscally prudent.

At OIRA, we are undertaking a similar drive toward more transparency. Ironically, at an organization designed to gather public opinion and expert advice about proposed rules and

regulations, one of the largest concerns we hear is that OIRA is not transparent enough. In response, we have launched the OIRA Dashboard at reginfo.gov. This easy-to-use website allows people to track the rules and regulations that have been submitted for interagency review and find other relevant information about OIRA. With the help of intuitive and graphical displays, the Dashboard makes it easier for people to identify the rule or category of rules they are interested in, and allows them to monitor progress. Through the Dashboard, we add transparency to this important lever of policy – and we invite participation to strengthen accountability and effectiveness.

As Web 2.0 pioneer Tim O'Reilly says of the IT Dashboard, allowing such information to be "being shared with the public…[is] a bit like having your performance review posted on the company bulletin board for all to see." And that's a pretty strong incentive to help government perform more effectively.

Data

Transparency not only improves performance and effectiveness; it also provides people with access to information they "need and use," thereby promoting learning and making data and evidence easy to find and easy to use. In an open government, anecdotes and guesswork can be replaced with hard evidence. And indeed, that is a central goal of transparency. There are numerous examples; let me share just a few.

In September, the Consumer Product Safety Commission launched an initiative that is making important information more accessible to millions of consumers. Now, families can find the latest safety information on CPSC's blog, which has articles, videos, podcasts and other information that can keep kids and families safe from a variety of product-related hazards. Among other tools, the site features a "Recall Search," which provides the latest updates on recalls affecting products families use every day.

Of course, there is a great deal of interest in promoting transparency in the domain of health care. The OMB Director has referred to two reforms: (1) "expanding the use of health information technology (IT) and electronic medical records, which is a necessary, but not sufficient, measure to improving the quality and efficiency of the health care system" and (2) "expanding research on 'comparative effectiveness' of different options for treating a given medical condition, which could provide information on both medical benefits as well as costs."

In the Director's words, "The key challenge from a cost perspective is substantially broadening out the base of information on a clinical basis in terms of what works and what doesn't." A good start can be found with on HHS's website, which offers a great deal of information on hospital performance, and which allows hospitals to be compared with one another. And recently HHS has put out for comment a new rule on meaningful use of health IT – a rule that could lead to significant improvement in health outcomes, make things easier for both doctors and patients, and save money in the process.

In multiple domains, and for the private and public sectors alike, transparency ensures that more data is available.

Dispersed Information

The third function of transparency draws on the understanding that no one of us knows what all of us know. I am speaking of access to dispersed information – of how open government can encourage public participation and allow citizens not just to keep the republic, but to shape it.

To understand the underpinnings of this notion, we can reach back to some thinking from centuries ago. It was Aristotle who claimed that when diverse people "all come together…they may surpass – collectively and as a body, although not individually – the quality of the few best." This is an early recognition of the power of groups, deliberating together. And when we ask for ideas from many people, we are likely to do much better than when we ask for ideas from just a few.

Consider, as one example, the President's SAVE Award – charged with the goal of producing ideas to yield savings while also improving the way that government operates. In a radio address on April 25, President Obama called for "a process through which every government worker can submit their ideas for how their agency can save money and perform better."

We received well over 38,000 suggestions. And after a public vote where more than 84,000 Americans cast an online ballot, the President welcomed Nancy Fichtner from Colorado to the White House as the winner of the first annual SAVE Award.

Her idea? Let veterans take unused medication home from the hospital. She argued that veterans leaving VA hospitals should be able to take medication they've been using home with them, so that it is not just thrown away when patients are discharged. As is the case in most hospitals all across the country, medicine that is used in the hospital is not given to patients to be brought home; instead, it is thrown out. No more.

We are saving money not only for the VA but also – and I want to underline this -- for the veterans who don't have to go to the pharmacy to buy the very same medicines that had been going into the trash can.

And this outreach effort wasn't just a one-idea-and-done approach. We've already begun to implement a host of additional suggestions made through the SAVE Award. Many of them are included in the President's Budget. And while promoting electronic paystubs or scheduling Social Security appointments online or re-purposing unused government supplies may not be the most glamorous reforms in our nation's history, they do add up. They are important in transforming how government works effectively and efficiently.

This is the power of open government. It promotes the innovation that can come from an open, participatory government that keeps central the understanding that we need to reach far beyond the borders of Washington DC.

To drive this approach across the government, OMB issued the Open Government Directive in December 2009, focusing agencies on numerous ways to collect dispersed knowledge in order to

produce better outcomes and effectively engage citizens in the creative task of making government better and more effective. The directive begins to shift fundamentally the culture of government toward increased openness and accountability.

The Directive requires of agencies both immediate deliverables and long-term objectives. It recognizes that each agency has a different mission and serves different members of the public. Instead of imposing a one-size-fits-all strategy, the directive allows each agency, in consultation with the public, to create an Open Government Plan to meet the President's goals in the manner most appropriate and most effective for it.

Already, agencies have launched their own open government pages. They have published online previously unavailable high-value data sets. They are adopting new, innovative approaches to public outreach and collaboration. To be sure, our efforts are only beginning. It is not easy to change the culture of a government, especially when that culture has been cemented over decades. For too long, administrations allowed bureaucratic barriers to be the rule, not the exception, to government decisions.

No more.

The status quo is not acceptable, and we are committed to changing the way Washington works for the people and with the people, not above the people.

Importantly, the foundation for this directive stems largely from the unprecedented Open Government Initiative, coordinated by the White House Office of Science and Technology Policy during the summer, in which the Administration reached out directly to the American people for specific policy recommendations. Thousands of citizens participated in forums online and offered ideas on how to transform the government into a more transparent, accountable, and participatory operation.

 The American people know a lot about how to make government work better – to save money and improve services. It's more than fitting that the Open Government Directive has been shaped significantly by the collective wisdom of the American people.

The wisdom in Aristotle's ancient insight is being amplified by the power of technology.

Open Government and Regulatory Policy

I now want to turn to the question of how openness can promote regulatory policy. With respect to openness and regulatory policy, the central ideas are twofold. First, open government can help promote regulatory goals simply through enlisting the power of accountability. Second, disclosure must be well-suited to how people process information.

As a matter of history, a significant success story for "sunlight" is the Emergency Planning and Community Right-to-Know Act, enacted by Congress in 1986 in the aftermath of the Chernobyl nuclear plant disaster in the Soviet Union. At first, this law seemed to be merely a bookkeeping measure, requiring a Toxic Release Inventory in which firms reported what pollutants they were

releasing. But the law has had dramatic beneficial effects, spurring large reductions in toxic releases throughout the United States. And in March of 2009, the Administration worked with Congress to strengthen the Toxic Release Inventory by lowering the thresholds for reporting releases of more than 650 toxic chemicals.

The Environmental Protection Agency recently built on this precedent and issued a Greenhouse Gas Reporting rule, requiring disclosure by the most significant emitters. The data will also allow businesses to track their own emissions, compare them to similar facilities, and provide assistance in identifying cost-effective ways to reduce emissions in the future.

All this is merely a start. Consider as well the following:

- The Department of Transportation has issued a passenger protection rule that will disclose clear, available information about prolonged delays at the airport. The same Department has proposed a rule that would call for disclosure of information about the safety, durability, and fuel efficiency of tires. The Department has released a great deal of new information about car safety and also about infant safety seats.

- The FDA has taken action to police deceptive front-of-the-package labeling and signaled its intention to investigate methods for ensuring accurate labels, so that people will have a clear and simple way to see key nutritional information. This project uses openness and transparency as a way of promoting healthy choices and in particular as a way of combating childhood obesity, a particular concern of the First Lady.

- The Occupational Safety and Health Administration has, for the first time, listed a great deal of fatality information on its website. When workers die on the job, the public can learn about it -- a step that might well end up increasing safety.

Social science research shows that disclosure policies work best if the relevant information is clear, simple, salient, and meaningful. It also shows that when people are informed of the benefits or risks of engaging in certain behavior, they are far more likely to engage in corrective action if they are also provided with clear, explicit guidance on how to do so. For example, those who are informed of the benefits of receiving a vaccine show a greater tendency to be vaccinated if they are simultaneously given detailed plans and maps describing where to go. In many domains, the identification of a specific, clear, unambiguous path has an important effect on social outcomes; complexity or vagueness can ensure inaction, even when people are informed about risks and potential improvements. We are attempting to incorporate these ideas into disclosure policies.

More ambitiously still, Data.gov is the new government website that allows the public to download federal datasets to build applications, conduct analyses, and perform research. Early usage of the website suggests that individuals and organizations are not only viewing the data, but they are repurposing it. When Data.gov was launched, the Sunlight Foundation launched a parallel competition to elicit from the public the most innovative applications based on data available from the government site. Within days, there was a new application called "FlyOnTime.US," which uses data from the Bureau of Transportation Statistics to allow

consumers to see estimated versus actual flight times for flights on major commercial carriers. If you have a look at Data.gov, you will see countless examples of openness in action.

Cost-Benefit Analysis and Open Government

Let me now turn to a question that obviously relates to my role at OIRA: How does all this bear on cost-benefit analysis? The answer is that, properly understood, a public accounting of costs and benefits is part and parcel of open government.

Some risks are large and others are small. Some precautions are burdensome and some are not. Some precautions have unintended bad consequences; other precautions have unintended good consequences. Before acting, regulators should "look before they leap," in the sense of obtaining a clear understanding of the likely effects of what they propose to do. Science, including social science, is critically important, in the sense that regulators cannot decide how to proceed without having a sense of what is known and what remains uncertain.

An Executive Order signed by President Obama that it is "the policy of the United States that . . . agencies shall prioritize actions based on a full accounting of both economic and social benefits and costs and shall drive continuous improvement by annually evaluating performance, extending or expanding projects that have net benefits, and reassessing or discontinuing under-performing projects

Transparency allows the public to see, and to comment on, what seem to be the easy cases and the difficult ones.

Consider three examples:

- The Executive Order on environmental, economic, and energy performance will attempt to track improvements and progress and disclose both costs and benefits to the public.

- Our analysis of the social cost of carbon ensures that global harm from greenhouse gas emissions will be considered in regulatory decisions. Candidly acknowledging uncertainty in terms of both science and economics, that analysis asks for public comments.

- OMB's recent report on federal regulation goes much further. Among other things, the report catalogues, by department or agency, the costs and benefits of all major rules between 1998 and 2008; discloses key information about all major rules between October 1, 2007, until Sept. 30, 2008; and describes their costs and their benefits. With information of this kind, it is possible to see differences across areas and over time.

Of course, this is only a beginning. As the Report says, "Indeed, careful regulatory analysis, if transparent in its assumptions and subject to public scrutiny, should be seen as part and parcel of open government. It helps to ensure that policies are not based on speculation and guesswork, but instead on a sense of the likely consequences of alternative courses of action. It helps to reduce the risk of insufficiently justified regulation, imposing serious burdens and costs for

inadequate reason. It also helps to reduce the risk of insufficiently protective regulation, failing to go as far as proper analysis suggests. We believe that regulatory analysis should be developed and designed in a way that fits with the commitment to open government. Modern technologies should be enlisted to promote that goal."

The new OIRA dashboard fits squarely within that commitment, offering a clear, vivid picture of forthcoming rules from executive agencies. We are looking for ways to make the dashboard even better – and to improve our own performance – but we think that this is a good start.

Let me conclude. I have emphasized three functions of open government – promoting accountability; providing material that people can readily find and use in their daily lives; and allowing access to the "dispersed knowledge" of the American public. I have sketched the multiple ways in which we are holding ourselves accountable, improving performance and saving taxpayer money; disclosing information that will lead to safer cars, safer workplaces, and healthier lives; enlisting dispersed knowledge to produce fundamental improvements in what we do.

I started with some words from the Constitutional Convention. Let me end with a few more words from the same period.

In Federalist No. 1, Alexander Hamilton wrote:

> It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

The founders of this nation – and the authors of our oldest Open Government Directive – made the right election. With humility and determination, let us continue their work.

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