To: U.S. Open Government Partnership Team
From: Katherine McFate, Sean Moulton, and Gavin Baker, OMB Watch
Date: Aug. 30, 2011

Re: **Recommendations for Improving Government Openness and Effectiveness in the U.S.**

OMB Watch appreciates the opportunity to comment on the U.S. Open Government Partnership (OGP) plan. The six topics on which the administration has requested feedback would constitute a positive agenda for the U.S. OGP plan.

For each of the six questions posted on the OGP blog (on August 8th and August 22nd), we have generated a set of specific, feasible reforms.

We look forward to working with the administration to find achievable and meaningful commitments for its OGP plan. Please feel free to contact Sean Moulton, OMB Watch's Director of Federal Information Policy (at 202-683-4833), if we can be of assistance.

1. Transform Regulations.gov into a One-Stop Shop for Citizens to Learn About Rulemaking

The Regulations.gov website was a first step toward the creation of a centralized information site on regulations, but we think it could be transformed into a "citizen's center"—a place to learn about and engage in executive branch administrative actions. In particular, the website should contain:

- A resource center explaining in common language how the rulemaking process works and how citizens can participate;

- Information and tools to help citizens engage with the rulemaking process, including how to read the *Federal Register*, comment on a proposed rule, file a petition for rulemaking, and more;

- A library of agency information pertaining to regulatory actions, including statutes, judicial and other legal documents, regulatory analyses, information collections, and administrative issuances. The section should be designed for a more knowledgeable audience who are looking for source materials but often have difficulty finding them; and

- The equivalent of the agency rulemaking docket, whether the content physically sits on Regulations.gov or on agency websites.

In addition, the Administration should encourage agencies to innovate new e-rulemaking platforms based on their own needs. For example, the **Department of Transportation** has developed such a platform, RegulationRoom.org, which should serve as a valuable example for other agencies.

2. Establish Federal Website Standards that Encourage Proactive Disclosure, Identification of Public Priorities, and Visualization Tools

Create a Vision for Federal Websites

The current guidance on federal websites (OMB Memorandum M-05-04) does not articulate a vision of what agency websites are for or what agencies should seek to accomplish with their websites. The new policy should explain that agency websites are a central method for agencies to offer information and services to citizens, broaden public understanding of what the agency does, and facilitate citizen participation with the federal governance structure. This vision would echo the administration's long-standing commitment to open government.

Maximize Proactive Disclosure of Government Information

The new policy should direct agencies to use websites to maximize the proactive disclosure of government information. In particular:

Set a Document Disclosure Goal: The administration should set a government-wide document disclosure goal (e.g., a total of 1 million new high-value documents online by the end of 2012). Such a goal would encourage agencies to think creatively about which documents represent the highest value. In the process, agencies should engage stakeholders, including FOIA requestors and website visitors, to gather input on which documents are the most sought after.

Expand the Information Required on Websites: The new policy should expand the floor of information that all agencies must consistently post on their websites. The current guidance establishes certain categories of information to be disclosed (Attachment, Section 3F), but these categories needs to be significantly expanded. The new list of categories should draw from the recommendations of the open government community's "transparency floor" and create a standard for transparency and accountability across agencies. The information should shine a light on fundamental agency activities and strengthen public trust in government through disclosure. For example, the new policy should direct agencies to:

- Post their FOIA logs and update them weekly;

- Post the calendars of department heads (i.e. Secretary and equivalent) and update them weekly; and

- Post their visitor logs at least monthly.

Maximize the Usability of Information on the Website

The new policy should direct agencies to use websites to maximize the usability of information and outreach to agency audiences. In particular:

Expand and Improve Online Tools: The new policy should direct agencies to expand and improve online tools to help Americans use and understand government information. Tools that increase access to significant health, safety, and environmental information should have priority, as should information that increases democratic accountability and engagement of on Americans in the decision-making process.

Improve Interoperability and Re-use of Government Data: In addition to developing or commissioning tools, agencies should facilitate re-use of agency information by external developers. Improving

interoperability of datasets with other information and tools from inside and outside the government would be a top priority to facilitate increased re-use of data. Agencies should also publish information in open machine-readable formats such as XML, offer bulk downloads and APIs, publish data dictionaries, and minimize copyright restrictions.

Reach Out to User Communities: The new policy should direct agencies to reach out to user communities. This outreach should include publicizing the information and tools that agencies produce, training communities on how to use it, and soliciting feedback on how to improve or expand the information and tools that agencies produce. Agencies should be sure to reach out not just to their existing user base but also to other communities that could be empowered by the information, such as environmental justice communities.

Create an E-FOIA System

The new website policy should allow the public to submit and track Freedom of Information Act (FOIA) requests, and to receive responses electronically on the agency website. Furthermore, the new policy should direct agencies to comply with the best practices identified by the Office of Government Information Services (OGIS) related to web sites.[1] In particular, the policy should direct agencies to:

- Allow the public to submit electronic requests either by email, which would require including posting the email address on their website and in their FOIA regulations, or through the agency's website, which would require establishing a web form for requests;

- Include an easy-to-understand explanation of how to submit a FOIA request, how the agency will process their request, and the individual's rights and responsibilities under the agency's FOIA procedures. Agencies should also include links to more detailed information such as the agency's FOIA regulations, the OGIS website, and FOIA.gov;

- Ensure that requesters can communicate easily with the agency by widely publicizing the contact information, including telephone and email address, of the FOIA office. Agencies should also allow requestors to receive ongoing communications and updates electronically;

- Establish an online service to allow requesters to automatically check the status of their request or appeal by entering the tracking number in a website;

- Establish categories of records that can be disclosed [i.e., proactively posted online] regularly; and

- Post online, in a searchable system, all significant documents released under FOIA without waiting for a second FOIA request. This effort should be expanded, as feasible, to more routine disclosures and documents released prior to the practice of online posting.

Improve Website Management

The new policy should improve the management of federal websites. Specifically:

Solicit Feedback: The new policy should direct agencies to solicit feedback from users, including surveying visitors, analyzing usage data, analyzing search position, surveying agency constituents about their awareness of agency websites, and conducting focus groups with current or potential user communities.

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[1] http://www.archives.gov/ogis/resources/bestpractices.pdf

Review Performance: The new policy should direct agencies to conduct regular reviews of website performance and utilize the feedback received from the public. This should include review of how well the agency is maximizing proactive disclosure, maximizing usability and outreach, and supporting the FOIA system. These agency reviews should be accompanied by more active government-wide oversight.

Keep Policy Current: The new policy should establish a process under which the administration will review and update the web policy at least every 5 years and updated if needed in order to stay current with technological changes.

3. Improve <u>Data.gov</u> with Common Data Formats, Identifiers, and User-friendly Interfaces

While much of the information on Data.gov is of significant value to the American public, much of the information is currently posted in forms that limit its use. We understand and support the role of Data.gov as a "warehouse" of bulk government information for more technical users; however, the government has a responsibility to actively disseminate significant information to the public, not just passively make it available. Therefore, the administration should direct agencies to identify data of interest to the public as a basis for developing new interfaces or improving existing interfaces to explore that data.

Improve the Organization of the Site

The interface of Data.gov should be further enhanced to make it more intuitive and engaging for members of the public. The large number of datasets currently posted makes it difficult to find a particular database of interest. If information is difficult and time consuming to find, it can entirely negate the benefit of disclosing it online. The site does not organize agency datasets by topic or office, and it provides only a limited set of categories to bring together data from different sources on similar topics.

For instance, the Environmental Protection Agency currently has 1,602 datasets posted on Data.gov. Without topic folders or some other organizing feature, this means users must scroll through screen after screen in search of the appropriate data. Similarly, the categories only offer the broadest perspectives such as Environment or Natural Resources or Geography and Environment, each of which also returns long lists of dataset entries to scroll through. We recommend the use of subtopic folders that can be expanded or closed to allow users to limit their browsing to only those datasets that are related to their interest area. The site could also use more robust tagging or metadata to enable the public to bring together information on more specific topics.

Enhance Interoperability and Facilitate Reuse

The administration should also undertake an effort to promote common data and metadata formats, as well as common identifiers, to be used across agencies. Common data and metadata formats are needed for names, descriptions, hierarchical relations and other useful properties such as geo-coordinates (see unique entity identifier). Additionally, we need common data on reoccurring public activities such as permits, certificates, reports, transactions, etc. Finally we need common data on the public statistics (counts, percentages, rates, indexes, etc.) used across agencies such as employment rate or consumer price index. Common categories should be defined in a centralized federal namespace. Individual agencies should define their unique categories in the same format in their own namespaces.

Develop New Interfaces and Visualizations

The administration should further encourage agencies to develop, commission, and improve user-friendly interfaces and visualizations to help Americans understand government data. The administration should direct agencies to expand efforts to identify data of interest to the public as a basis for developing new interfaces or improving existing interfaces to explore that data.

Solicit User Feedback

The Data.gov program should work with agencies to better publicize the information available on Data.gov and to train potential users, including journalists, librarians, and community organizations. In addition, the program should expand mechanisms to solicit user feedback in order to inform the program's activities to add and improve datasets and tools.

4. Strengthen Records Management with Smarter IT Investments and Email Policy

The administration should consider significant reforms to records management, particularly electronic records. As initial recommendations:

Include Full-Circle Transparency in IT Investments

Agencies should ensure that records management is fully considered when investing in new IT systems or upgrading existing ones. Many of the failures of electronic records management are owed to the fact that records management concerns are often absent from the considerations of adopting new IT systems. Agencies need to change their procurement process to avoid acquiring or designing limited proprietary systems that fail to address their record management needs. Instead, agencies should be proactive in ensuring that new IT systems will meet their needs to efficiently and effectively preserve and manage the records created, stored, and transmitted by those systems.

Agencies must approach IT investments as part of a larger, longer-term strategy to establish systems that work together throughout and between agencies. Maximizing interoperability will be an important standard to target, not only to create systems that work together, but also to protect against current IT investments becoming dead-end projects that fail to work with the next generation of technologies. This will require changes in how agencies draft Requests for Proposals on IT projects as well as how the procurement personnel evaluate the bids received. Agencies should also ensure that acquisition personnel appropriately consult with IT and records management personnel. Additionally, mechanisms should be developed to gather and share across agencies more robust evaluations of purchased IT systems and their records management performance to share the best solutions and avoid repeating mistakes.

Given the nearly constant growth of information being managed by agencies, it is imperative that agencies seek out systems that provide as much automatic management and disclosure as possible. A key challenge to this need is the reality that information collected by agencies can often contain portions that should legitimately be withheld from disclosure (confidential business information, privacy, national security, etc.). To the extent possible agencies should pursue IT systems that offer solutions to this problem of mixed information (disclosable/nondisclosable). This could be through the upfront structuring of information collections into disclosable and non-disclosable portions and/or that allow agency information managers to easily redact portions electronically.

Finally, agencies should also consider the suitability of IT systems to efficiently and effectively respond to the full range of potential future uses for information created and stored by those systems, such as responding to FOIA requests, proactively disclosing information, and sharing information among various government IT systems. Such multiple use applications could improve agency compliance with other requirements and mitigate cumulative costs.

Prohibit the Use of Personal Email Accounts

The government should prohibit employees from conducting official business using personal email, phone or other communication accounts. Under the current records management regulations (36 CFR 1236.22), agencies may permit personnel to conduct business using personal email and other accounts if such communications are appropriately preserved. However, the regulations do not provide any mechanism for ensuring proper preservation.

The regulation should be revised to state that personnel, as a matter of course, should only use official, adequately-preserved systems for email and other communications. Any exceptions should be strictly limited to exigent circumstances such as system outage, with strong and effective requirements to preserve records created in unofficial systems as soon as possible. The regulations should also be clear that any work-related messages that personnel may receive at a personal email address must be forwarded as soon as possible to their official account, and that personnel should inform the senders of any such messages that the sender should instead contact them at their official address. Agencies should ensure this new policy is clearly communicated to all current and new personnel and take appropriate steps to ensure compliance, with guidance and oversight from NARA.

5. Make Regulatory Compliance Information More User-Friendly

Allow Effective Searching and Saving

Agencies should ensure that enforcement and compliance data is presented in a manner that allows robust searching and exploration. Websites should provide a variety of search criteria and qualifications to allow users to target data. Without multiple criteria that allow users to customize their searches, the results of searches are immense, overwhelming amounts of poorly sorted and poorly organized data. The addition of specific search criteria can help make the data results more manageable for users. Users should, ideally, have search options to narrow the results by broad location and violation information, for example.

Generate User-Friendly Visual Tools

Government websites should present data in ways that help the public to easily understand the information. The best way to foster usability is to present summary data through visual tools such as charts, graphs, and maps, thereby engaging users through these graphic features. These tools should provide the aggregate data that is likely to be the most important to users. From the display of summary data, users should be able to link to more detailed or related information such as relevant reports. For example, OIRA's Regulatory Review Dashboard graphically presents information about rules under OIRA review through an interactive display, allowing the public to sort rules by agency, length of review, state of rulemaking, economic significance, and international impacts. Notably, the Dashboard includes a function that allows the public to view and sort data by agency, rulemaking stage, or a combination of both. Dashboards are tools that should be used across agencies to provide summary data that also links the user to more detailed information.

Create Data Dictionaries

Non-technical users should be able to understand what the results of data searches mean. Since so many data sets are written in jargon and technical language, each website should contain a data dictionary explaining the terms and data metrics used by each agency that would help users comprehend and interpret the information.

Solicit Input from Users

The data provided through agency websites should be responsive to the public's concerns. To have the data serve some meaningful purpose, agencies should seek input from user communities about what data sets are most valuable and what methods of presentation would be most useful. Ultimately, users should be able to identify trends in enforcement and compliance within an agency as well as across agencies.

Facilitate Reuse

Agencies should facilitate reuse of their compliance information. Data should be downloadable in a variety of formats, including bulk downloads in open, machine-readable formats. Agencies should make that regulatory compliance datasets available on Data.gov to improve findability. Where possible, agencies should offer APIs to facilitate use of their data by external web services. Agencies should explore opportunities to utilize common identifiers and data formats to facilitate mash-ups.

6. Promote Corporate Accountability with Better Disclosure

Establish a Unique Entity Identifier for Corporate Entities

As the government discloses more and more data, the lack of a consistent entity identification system prevents the public from linking the various datasets and performing more robust analysis. This barrier significantly limits the usefulness of the extensive disclosure efforts done by individual agencies. Being able to track entities across different datasets would be especially useful for evaluating the compliance and reporting of entities that received federal funds.

However, tracing the flow of funds from request to expenditure to reporting requires that multiple systems recognize a given entity throughout the process; that is, that the Acme, Inc. that received a federal contract last year is the same Acme, Inc. that appears in EPA's Toxic Releases Inventory. Furthermore, assessing the total amount of federal funds that an entity has ever received requires that systems recognize that unique entity in every instance it is involved in the federal spending process. Because data are housed in many disparate locations and in different systems, the ability to link these data sets is essential, but currently problematic, to federal spending transparency.

The importance of a "unique corporate identifier" extends beyond USAspending.gov. Implementing a single system to identify entities across all federal data would allow stakeholders within and outside government to link recipients of federal contracting dollars to contractor performance reviews to campaign donations to lobbying activity to environmental impacts and to workplace and consumer safety records. By linking these disparate data sets, citizens and governmental actors could increase the accountability of contractors and government alike.

Currently, the federal government utilizes the Dun & Bradstreet Universal Numbering System (DUNS) to uniquely identify companies doing business with it. Theoretically, with an entity's DUNS number, one could trace its entire federal grant and contract history, but access to the system is expensive. Moreover, because it is privately owned, and is essentially enclosed in a "black box," the system is not subject to the usual transparency requirements, including Freedom of Information Act requests, which leads to questions about its accuracy and comprehensiveness.

Moreover, the DUNS system being used with USAspending.gov cannot provide good historical information on corporate ownership; when a parent company divests itself of one of its subdivisions, the connection between parent and subsidiary disappears. For example, because Halliburton sold off a subsidiary, KBR, in 2007, billions of dollars of Iraq War contracts awarded to Halliburton no longer appear as having been awarded to the company in USAspending.gov.

The DUNS data remains locked in Dun & Bradstreet's data systems – a private service – so if the government's contract is not renewed or not properly negotiated, the federal government could suddenly find itself without a system for identifying contractors. The government needs to develop its own corporate identification system rather than remain dependent on a private system that isn't designed to do what the government needs it to do.

Publish Full Descriptions of the Work Done Under Any Government Contract

Without being able to read the full text of a contract or grant agreement between the federal government and a private entity, it's difficult to determine what the government is supposed to be getting for what it spends or to hold agencies accountable for maximizing taxpayer value. Commercial-grade websites can run from thousands of dollars to millions of dollars with price being determined by multiple factors, including site functionality, scale, and time to market. Seeing only that the government has contracted with a vendor to build a website leaves many questions unanswered.

For example, when the Recovery Board contracted with Smartronix, Inc. to build a website that was supposed to provide the greatest federal spending transparency to date, the only description of the $18 million contract was: "American Recovery and Reinvestment Act Project."

To date, the only way for someone to get a contract document is to file a FOIA request. However, this then requires a review of each contract requested to identify and redact any confidential business information (CBI) or other nonreleasable information before disclosing the contract. If, instead, contracts were submitted to the contracting agency electronically, the contractors could electronically segregate CBI from non-CBI information. Although over-redaction would be a likely initial problem, having significant portions of all agency contracts online would, nonetheless, be a step forward. Should stakeholders believe that some information was not properly redacted, a FOIA-like review process could then be initiated.

Disclose Contractor Lobbying Activities

Current law requires registered lobbyists who lobby executive branch officials to influence the awarding of federal funds to complete a disclosure document known as SF-LLL. Today, that form is paper-based and remains in filing cabinets within the federal agencies, subject to release via FOIA requests.

The SF-LLL form should be converted to an online version, and lobbyists should go to a web site to enter the information. A new SF-LLL should be filed for each communication that involves attempts to

influence future awards. Forms should be completed within 72 hours of the communication and made available to the public in a searchable format on the Internet within 24 hours of their completion.

In addition to the information currently required on the SF-LLL form, more data elements should be collected. The most important pieces of information include: (a) date and time of meeting, including meeting number (meeting number should be automatically generated when the form is filled out); (b) full name, address, and DUNS number of the entity being represented (along with the parent company) and (c) the agent representing the entity; (d) the congressional district of the entity and agent (congressional district should also automatically fill in based on information entered into the address line); (e) the federal award identifier for the current contract, grant, or other form of financial assistance, which should include the name of the federal agency that provided the award and the name or description of the federal award; and (f) information about the communication to influence future awards, including the name of the federal agency, the people involved in the meeting, the name or description of the federal program being discussed, including any identifying codes, such as RFP numbers, contract number, CDFA, etc., and a brief summary of the meeting.

Government employees should have to log communications. An efficient approach is to require government employees to file an online report immediately when they are involved in communications with those outside of government who are trying to influence federal spending. This online report could be short and trigger a notice to the non-governmental participants to complete a more detailed SF-LLL about the communication.

Disclose Contractor Campaign Contributions

Campaign contributions are seen as another potential vehicle for influence over government decisions; therefore, they are vulnerable to misuse. Transparency can reduce the possibilities of pay-to-play deals for government contracts and increase public trust in government contracting. Any entity bidding for a government contract should disclose political contributions to federal candidates or parties made within the past two years that, in aggregate, exceed $5,000. The disclosure should include contributions made by the entity's directors and officers as well as its affiliates and subsidiaries.

In addition, the disclosure should include contributions made by a prospective contractor to third parties "with the intention or reasonable expectation" that those parties would use the money to make independent expenditures that support or oppose a candidate for federal office or electioneering communications (e.g., paid ads) that refer to a federal candidate. This would mean that donors to certain nonprofit groups that are allowed to engage in electioneering (501(c)(4) organizations, unions, and trade associations, for example, would be disclosed.

The disclosed information should be posted on Data.gov in a "searchable, sortable, downloadable and machine readable format." The public needs to know who is giving how much to which candidates, and no person or corporation should be allowed to hide behind a shroud of secrecy and prevent the people from seeing who is trying to influence government and policymaking through political contributions. Such secrecy seriously damages the American people's trust in their government.

Disclose All Communications Designed to Influence Rulemaking

To prevent undue corporate influence in the rule-making that establishes and protects environmental and public safety standards, the administration should direct agencies and the Office of Information and Regulatory Affairs (OIRA) to disclose communications, both from the public and as well as between agencies, regarding a rule as part of the rulemaking docket. This disclosure could include copies of

written communications and summaries of oral communications, along the lines of the rules regarding ex parte communications recently adopted by the Consumer Financial Protection Bureau and the Federal Communications Commission.

Require Strict Adherence to Environmental Standards and Disclosure of Toxic Substances

The public and governments at all levels are faced with new environmental and public health risks due to the chemicals permeating our physical world that are undisclosed by corporations. Without new policies that require corporations to disclose the chemicals in their products and processes, the U.S. government cannot protect public health. The U.S. government, including all federal and state agencies, must mandate disclosure by corporations of the impact of their business operations on public health, safety, and environment.

Minimum standards for corporate environmental responsibility would:

- Ensure workers can participate in environment, health, and safety inspections of corporate facilities as well as developing emergency planning for such facilities.

- Disclose chemical, health and safety data, health risks of chemicals, and require disclosure of oil and gas development chemicals.

- Develop a unified facility and corporate reporting system that creates profiles of reporting entities in a single online location.

- Require companies to produce product labels that disclose all ingredients and their associated risks.

- Strengthen and enforce procedures for evaluating and discrediting unreasonable claims of confidential business information, including establishing penalties for illegitimate claims.

- Ensure the public can participate in public hearings with entities and has access to records of agency interactions with entities.