

CIVIL SOCIETY PROGRESS REPORT

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

September
2015

Background

The White House released its second National Action Plan (hereafter, Plan) for open government in December 2013. The United States government's action plan fulfills a membership requirement of the Open Government Partnership (OGP), an international and multi-platform initiative that requires government and civil society to work together on the creation and implementation of open government reforms. In September 2014, the administration fulfilled its promise to update the Plan and issued several new commitments. As a founding member of the OGP, the United States' Plan and its implementation receive international attention and are intended to serve as models for other OGP member countries.

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

To encourage consequential progress and collaboration throughout the two-year implementation period of the second plan, civil society provides updates on progress on specific commitments and on collaborative efforts and interactions between agencies and civil society. Not all commitments are necessarily evaluated; some commitments are not evaluated because civil society organizations interested in engaging on the commitments have not yet been identified.

The following report is not exhaustive and does not follow the same format as previous civil society evaluations and progress reports. It is, rather, a summary of a subset of commitments based on interviews and discussions with our civil society partners (hereafter, civil society leads) who have been monitoring the progress made by agencies over the course of the OGP process and have directly engaged in meetings with government. This report does not provide a complete evaluation of every initiative associated with the U.S. OGP commitments, but is intended to capture civil society perspectives on general progress made, and draw attention to critically important issues that the openness community still hopes the U.S. OGP process will address.

For more details on the progress made on the U.S. OGP commitments, readers can reference the government's latest [Self-Assessment report](#), as well as the OGP's Independent Reporting Mechanism (IRM) [Progress Report](#).

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Summary

As the final year of the current National Action Plan comes to a close, and despite commendable efforts and some meaningful progress, the United States government is not poised to fulfill many of its open government commitments. Notwithstanding President Obama's 2009 pledge to usher in a "new era of openness," the White House has failed to take advantage of the OGP platform to push through transformative openness initiatives. Still, the Administration has laid the groundwork for some significant reform, and civil society still holds hope that the next (third) National Action Plan will include consequential initiatives that strive to advance the transparency promises made on the President's first day of office.

OTG has worked with civil society leaders to update our evaluation of the Administration's implementation of select OGP commitments, and the results are presented in this check-in report. While there has been some progress on each commitment, the broader picture remains one of minor change and unfulfilled potential. According to the latest OGP IRM [Progress Report](#), just two of the United States' 26 commitments have been completely fulfilled, with less than four months remaining for implementation.

The U.S. government has made some notable achievements in the implementation of the second Plan. For example, the Administration has gone beyond its commitment on the Extractive Industries Transparency Initiative (EITI), and is on track to publish its first EITI report in December 2015. In addition, initiatives associated with the commitment to open government data have led to access to

important information that goes beyond the scope of the commitment and would not otherwise be available, such as criminal justice data.

Nonetheless, promising initiatives such as the consolidated Freedom of Information Act (FOIA) portal and the Office of Special Counsel Whistleblower Certification Program have fallen vastly short of their potential. In some cases, such as the commitment to make agency reports on privacy and civil liberties compliance more accessible to the public, agencies have failed to meet their legal requirements, much less make meaningful progress. Some areas have even seen regressive trends despite OGP commitments, such as the initiatives on foreign assistance transparency, where the Departments of Defense and the Treasury have become *less* transparent on foreign aid information than they were prior to the second Plan.

Although the Administration continually meets with civil society on many aspects of the Plan, the government has neither incorporated nor indicated whether it is considering many civil society recommendations. Members of civil society devote considerable time and resources to developing recommendations, working on implementation (when possible), and evaluating OGP commitments and progress. A common sentiment among civil society stakeholders is that a more collaborative and responsive consultation process from the U.S. government is needed for civil society to justify continued investment in the OGP process.

Moreover, in the general context of U.S. government transparency, certain areas of secrecy continue to cast a dark shadow over the entire OGP process. These include continued secrecy surrounding U.S. national security issues such as domestic and global surveillance programs, targeted drone killings, torture programs, and the use of secret law to shut the public out of the debate on these issues. In order to convince the U.S. public and the globe that the U.S. government is truly committed to openness, the Administration needs to demonstrate greater commitment to transparency on these issues before this President leaves office. (For more details on these issues, see [OTG's remarks](#) given by Abby Paulson during the July 30th White House [public meeting](#) on open government).

This is a pivotal moment for the Obama Administration on transparency. While time is running out on the second Plan, the Administration has a final chance to live up to its openness promises on transparency as it finalizes its third Plan for 2016-2017. Civil society urges the Administration to adopt substantive, measurable and transformative commitments, commit to a more collaborative relationship with civil society, actively support transparency-related legislation and policies, and ensure agencies work both to fulfill and exceed its commitments. The Obama Administration still has a chance to leave office having changed the default culture of the executive branch from closed to open and accountable.

OGP NAP 2 – Civil Society Check-in, Round 3

Commitment: Improve Public Participation in Government

- The civil society progress report from January 2015 indicated that the White House released a new streamlined process to allow third parties to collect and submit signatures to the [We The People](#) online petition websites. While the *We The People* petition site has reached the wider public, civil society members note that the threshold required for signatures is too high, and the petitions that do reach the threshold rarely lead to significant policy changes.
- The January 2015 progress report also indicated that the GSA had reached out directly to civil society leads for initial input on the development of the [Public Participation Playbook](#), sent regular updates about the development process, and incorporated changes suggested by the commenters. The report also noted the progress made on Regulations.gov, in ways that made it easier for people to find open rulemaking, review relevant documents, and submit their comments.
- Since the launch of the playbook, civil society leads have expressed concern that the Playbook reads more like a guide for agency social media managers to increase engagement than a tool for ensuring public participation in policymaking. Some users find the resource largely superficial and lacking substance. While the government has indicated that they are open to making changes to the Playbook, civil society leads note that public input submitted in the past has yet to be incorporated.
- The process of putting together the playbook via Hackpad was good in theory, but civil society contributors did not see many of their suggested changes incorporated. In particular, the recommendation that the Playbook include a definition of public participation was not accepted, and those who made this recommendation did not receive a response as to why this was.
- On a broader scale, civil society leads have observed a decline in meaningful public participation activity over the course of this Administration. Civil society leads note that, in the past, agencies such as the EPA engaged in public outreach at the local level before implementing a project, but that this doesn't take place anymore. This change is mostly attributed to significant budget cuts.
- [Civil society leads](#) on this commitment have [outlined](#) several ideas for the U.S. government to undertake in order to advance public participation, including expanding the use of thicker, more deliberative modes of participation (such as participatory budgeting, or face-to-face meetings), particularly in combination with the thinner, online modes of participation (such as e-petitions, crowdsourcing, etc.). The U.S. could also adapt commitments made by other countries, like the Federal Policy Conferences in Brazil.

Commitment: Modernize the Freedom of Information Act

- The past National Action Plan commitments on FOIA have led to incremental steps towards improving public access to information. However, they have not addressed the root causes of the

problems with the FOIA process, and fall considerably short of the ambitious commitments this Administration needs to adopt in order to demonstrate a strong political will to improve public access to information. It is important that the Administration adopt initiatives that strengthen the openness policies laid out on the first day of this Administration, when the President promised to usher in a “new era of openness.”

- While the OGP commitments on FOIA had potential, the way they have been implemented has not led to tangible transparency advancements. The measures carried out in response to these initiatives, for example, have not led to a measurable increase in the speed of disclosures or in the amount of information released, or a reduction in the high use of exemptions, such as b5, to withhold information.
- According to the government’s self-assessment of March 2015, GSA and DOJ worked throughout 2014 with an interagency task force to launch the first iteration of the consolidated online FOIA portal. Civil society leads who have reviewed this portal, in its latest form, find that it is not an improvement on what was previously available to requesters. For example, it does not provide much more than links to agency websites, and does not improve FOIA processing. The portal has potential, but in order to become an effective tool it would need to be fixed to accept and track requests, to share requests between agencies, and to post FOIA releases online in a systematic and organized manner.
- The government reported on advances in the DOJ’s best practices workshop, launched in 2014, that focus on a specific topic in FOIA administration. All best practices, as well as related guidance and resources, are tracked on DOJ’s [website](#). Civil society leads view this commitment on training and workshops as having potential, but in order for the trainings to have an impact, they should be mandatory for poor-performing FOIA offices.
- The FOIA Advisory Committee has had meetings to address important issues: FOIA fees, proactive disclosure, and FOIA enforcement. While the Advisory Committee is able to advocate for important advances, in the end, the Committee will only create recommendations, and while good agencies may adopt them, poor-performing agencies will unlikely change their process as a result.
- The commitment on common FOIA regulations had potential to bring agencies in line and encourage proactive disclosure. However, there is concern that the model regulations that the Office of Information Policy (OIP) plans to produce will not be adopted by the worst-performing agencies. The next NAP should include a commitment to ensure that agencies update their FOIA regulations and adopt the key provisions included in the model regulations.
- The guidance on proactive disclosure is a positive advancement, but the next action plan should include enforcement mechanisms to ensure that the guidance is implemented.
- The Administration should take stronger measures to ensure that agencies with the poorest FOIA performance identify the challenges and improve their FOIA practices. Certain DHS components, for example, have major FOIA problems and need to change their practices and modernize their FOIA process.

- At the start of this Administration, President Obama indicated that each agency should decrease its FOIA backlog by 10 percent each year. Had that been carried out, it would have been a significant advancement in terms of public access to information. This is the type of benchmark that that OGP initiatives on FOIA should include, and the government should carry out to completion, in order to make a significant impact. But to succeed there need to be clear steps agencies must take, incentives for meeting the goals, and mechanisms to hold agencies accountable should they fail.
- The current measures on FOIA are not leading to tangible changes on records release and public access to information. Other OGP-related initiatives, such as those associated with NARA's National Declassification Center, have been successful in getting more information declassified. This is the type of output that future OGP commitments on FOIA should use to measure progress.
- Civil society has outlined a [number of ambitious initiatives on FOIA](#) recommended for adoption by the Administration to demonstrate to U.S. civil society that continued engagement in OGP is a valuable investment that leads to significant openness advances.

Commitment: Increase Transparency of Foreign Intelligence Surveillance Activities

- In general, there are no measurable advances to report since the last civil society check-in of January 2015.
- The commitment to disclose data on how often the government used certain national security authorities during 2013 is important. This has led to disclosures such as ODNI's June 2014 release of its annual Statistical Transparency Report, with data on the number of orders issued and targets affected under sections of the FISA and section 215 of the PATRIOT Act. However, the statistical report omits important information that ODNI has refused to report, including the number of accounts (phone or email) affected by U.S. surveillance programs. This information is significantly different from the number of orders or targets; omitting it gives a misleading picture of the scope of surveillance. In addition, it is difficult to navigate the ODNI statistical information that has been disclosed on orders issued and targets affected, because it lacks standards and organization.
- In terms of the commitment to declassify information on foreign intelligence surveillance programs, there is also a need for more transparency about what has and has not been declassified. The government should provide, for example, a list of legal opinions relating to surveillance and their current declassification status.
- In the development and implementation of this commitment there has been regular government engagement with civil society, on both a formal and informal basis. At times, this engagement has been useful and productive, with officials willing to engage and to provide information on unclassified matters. However, the usefulness of this engagement is limited by the amount of information that is classified (often unnecessarily, in our view).

- Also, at other times, meetings have not been as effective as they could be because the right officials were not there and/or were not prepared to discuss recommendations or questions we submitted in advance. Too often, there is input from civil society but not enough response from government. In many cases, NGO's have made specific transparency requests and received no indication on what is being considered.
- In future meetings between civil society and government, it would be helpful to have an agenda prior to the meeting, a list of who from the government will be participating, and an idea of what measures are being considered for the next National Action Plan.

Commitment: Making Privacy Compliance More Accessible

- Civil society leads on privacy compliance highlight that the recommendations to fulfill this commitment are not an aspirational initiative intended to increase government openness; rather, they are intended to ensure agencies fulfill an existing statutory requirement.
- Civil society leads reported attending a meeting with Privacy and Civil Liberties Board (PCLOB) staff and other government representatives in February of this year to discuss this commitment. Following the meeting, civil society members provided feedback and recommendations on privacy compliance reporting, but received no response from government officials as to whether their recommendations were being considered. Similarly, following the OGP NAP 3.0 stakeholder meeting on privacy and surveillance commitments held July 20, 2015, civil society received little indication as to the status of their recommendations.
- The government reported advances in this commitment: The [March 2015 PCLOB semi-annual report](#) notes that Board staff analyzed the statutory requirements of Section 803 and surveyed existing reports to identify potential areas for improvement.
- The government's self-assessment report of March 2015 also indicates that PCLOB will issue guidance for agencies that file Section 803 reports and begin hosting completed reports on its website. As of August 2015, civil society is not aware of any reports that have been made publicly available on the PCLOB website.
- There are still unanswered questions as to what the guidance will specifically address, when the PCLOB guidance will be released, whether this guidance will be made public or distributed internally to agencies, whether there will be a timeline for agencies to adopt guidance, and what will happen if agencies do not incorporate the PCLOB guidance. The commitment lacks specificity and tangible benchmarks needed to clarify such questions.
- The commitment has some potential to be an ambitious commitment. It would be a substantial step forward if the guidance specifically emphasizes that Section 803 compliance reports must include civil liberties compliance activities, not only privacy compliance, and if this guidance were made publicly available.

- Civil society leads emphasize that, by its terms, Section 803 *requires* both reporting on civil liberties compliance as well as privacy compliance, and note that Section 803 does not limit the reports to counterterrorism-related matters. As part of this commitment, agencies should be provided the resources necessary to enhance and improve their reporting beyond counterterrorism-related issues.
- So far, there are no tangible outputs that civil society can point to as a result of this commitment with respect to increased public access to privacy compliance information.

Commitment: Strengthen and Expand Whistleblower Protections for Government Personnel

- The commitment on whistleblower protections demonstrates potential for strengthening and expanding protections for government personnel to report on waste, fraud, and abuse.
- In reality, however, the commitments have lacked the resources and leadership needed to advance the initiatives laid out in the commitment.
- For example, the commitment mandating agency participation in the Office of Special Counsel Whistleblower Certification Program has been completed by only a small portion of agency heads (~5 percent). While Administration has required completion, there is no clear enforcement mechanism to ensure agencies register to begin certification. Nonetheless, the Administration has “completed” this commitment, according to its own self-assessment report.
- This is an example of the Administration prematurely taking credit for fulfilling a commitment, when it is clear that the intended measure has not actually been carried out.
- In order to give this commitment authority, the Administration should enforce participation in training, and could issue a memo to department heads mandating compliance with the certification program.
- In terms of the commitment to advocate for legislative solutions, there have been opportunities where the Administration could have supported important whistleblower protections in legislation, but remained silent. They have yet to *actively* advocate for such legislation.
- Civil society is advocating for the Administration to issue a Statement of Administration Policy (SAP) on whistleblower protection legislation, specifically S. 794 to restore rights for Intelligence Community contractor whistleblowers. So far, the Administration has not done so.
- For the PPD 19 training, the Administration should make available information on the percentage of federal employees that are actually receiving the training. Without this information, it is difficult for civil society to give an accurate assessment of the progress of this commitment.
- Overall, this commitment has had a low-to-moderate level of impact in terms of enhancing protections for whistleblowers. While the language of the commitment shows potential, implementation is lacking in enforcement.

- As the commitment stands, civil society does not expect a large impact on whistleblowing practices and policies to come from the current efforts.
- Lastly, it is important to note that civil society leaders spend a sizable amount of resources on the OGP process compared to its returns. When the leading experts on whistleblower protections, for example, write model OGP commitments, evaluate progress on the commitments, and provide regular feedback at stakeholder meetings, there need to be greater results.

Commitment: Implement the Extractive Industries Transparency Initiative

- The government is on track to publish the EITI report in 2015, and has taken measures that go beyond the publication of the report, and go further than its EITI obligations.
- However, only 11 of the 45 companies that the government, civil society, and industry chose to participate in revenue reconciliation for the first U.S. EITI report have cooperated in allowing their tax information to be publicly reported, as required by the EITI Standard. Civil society leads recommend the government explore ways to compel companies that lease federal lands to publicly report their tax information.
- The government still needs to prioritize data collection beyond the federal level by gathering data on the extractive industry's impact at the state, county, and tribal levels.
- Civil society groups have seen some success getting information at the state and county level. Such information has been useful in indicating positive and negative fiscal impacts of extractive projects. The government should expand the scope to include non-fiscal impacts, such as environmental impacts.
- The commitment could have a greater impact if more agencies were involved, beyond the Department of the Interior's Office of Natural Resources Revenue, which has been the lead office involved so far. More offices and bureaus in Interior, as well as other agencies, such as the Energy Department, and the Department of Agriculture should become more actively involved.
- The President included timber in his 2nd National Action Plan commitment, and the Department of Interior should add representatives from that sector to the Multi-Stakeholder Group in order to accomplish adding information from this sector for the next report.
- In preparation for the second U.S EITI report, the government should support the beneficial ownership requirement in the EITI. Additionally, the SEC should implement a rule that mandates reporting at the project level. Finally, the White House should incorporate fossil fuels subsidy reporting into EITI reporting.

Commitment: Increase Transparency of Foreign Assistance

- According to Publish What You Fund's latest report, the 2015 U.S. Aid Transparency Review, agencies such as the Millennium Challenge Corporation are carrying out steady and high quality

publication of data in line with the International Aid Transparency Initiative (IATI). USAID has improved its publication, moving into the “good category” of the ranking for the first time.

- The Department of State remains stagnant, and both Treasury and Defense have become less transparent. Treasury’s scores represent a decline in the quality of the information available. The White House, with the exception of its OGP work, has done little to move the agenda forward.
- According to the findings of the Review only two of the six U.S. donor agencies are on track to meet the December 2015 deadline to make their aid transparent. This means establishing a sustainable process to publish their foreign assistance information in a timely, comprehensive, and comparable way.
- There is also concern among civil society regarding the quality of the data published, which often provides aggregate data and lacks data at the activity level, making it difficult to assess how funding is actually being used. The financial information published lacks context or project information and sometimes the basic components such as project descriptions or dates are missing.
- Moving forward, it would be beneficial to ensure that ForeignAssistance.gov improves the quality and coverage of the information published. As per the [USG implementation schedule](#), by 2015 Official Development Assistance (ODA) coverage published in line with IATI should be 100%.
- Additionally all agencies should develop and publicly release a cost management plan that lays out the specific activities and resources needed to fulfill the commitment made in Busan and under OGP NAP 1 and 2. USAID has recently published its plan, which can be accessed here: [USAID IATI Cost Management Plan](#).
- Only 10 out of 22 U.S. agencies administering foreign assistance have reported some data to the Dashboard, and data quality, comprehensiveness, and usability remain significant issues.
- The 2015 U.S. Aid Transparency Review highlights challenges, such as instances where internal systems were not designed to collect and publish comprehensive, disaggregated data. To overcome these challenges, agencies will have to make transparency a priority, identify leaders to move the agenda forward, and acquire the level of expertise and resources needed to carry out their obligations to publish aid data.

Commitment: Open Data to the Public

- There have been significant advances in access to open data as a result of this commitment. Additionally, the initiatives associated with this commitment have opened up access to information that goes beyond the scope of the commitment and would otherwise not be available, such as data related to criminal justice. The OMB [public dashboard](#) is a good and useful tool that helps OMB and other agencies make data available.
- Data.gov could still benefit from more improvements. In its current format, the platform does not allow for data consumers to make determinations about what data is missing, and make requests for what data they would find useful. As it stands now, government decides what they make public, and that is a problem.

- Moving forward, civil society would like to see the Administration promote legislation to support data programs and further advance the measures laid out in the commitment.
- Civil society also recommends that the Administration consider a commitment to publish Inspector General (IG) reports in open data format. IG's are a vital piece of the transparency and accountability ecosystem. Most IGs do their best to publish and disseminate their reports, but many have not taken the steps necessary to make them truly open. Interested individuals have stepped in to turn IG reports from documents into data, but the IGs themselves could work together to modernize their publication practices. Individual IGs along with the Council of Inspectors General on Integrity and Efficiency should move towards publishing documents in a variety of machine-readable, open formats.

Commitment: Increase Transparency of Legal Entities Formed in the United States

- The government's March 2014 mid-term self-assessment report states that the Administration completed its commitment to support legislation by proposing legislation in the President's 2015 budget and working with Congress throughout 2014 on that proposed legislation.
- Civil society has voiced concern over the Administration's proposal on beneficial ownership transparency legislation. The legislation, if passed, would not actually lead to comprehensive information on "beneficial owners," but rather it would lead to the collection of "responsible party" information. Additionally, the information it does collect will not be made public; rather, it would be collected and kept by the IRS.
- The U.S. IRM report, released in August 2015, points out that supporting legislation that leads to the collection of information that is not accessible by the public is inconsistent with the principles of OGP and is not in line with the Administration's stated support for financial transparency.
- Civil society leads note that the Treasury Department's customer due-diligence rulemaking had been scheduled to come out in August, and there are doubts that it will be published before the end of the year. Moreover, a number of civil society concerns over the rules remain (addressed in the [civil society NAP evaluation of January 2015](#)).
- The Financial Accountability & Corporate Transparency (FACT) Coalition issued a comment on the Treasury Department's Financial Crimes Enforcement Network (FinCEN) notice of proposed rulemaking with respect to Customer Due Diligence Procedures for Financial Institutions in October 2014. It can be found [here](#).
- Civil society leads on this commitment point to an IMF [report](#) published in July 2015 on the U.S. anti-money laundering and combating the financing of terrorism (AML/CFT) programs. Among other issues, the report highlighted notable shortcoming with respect to recommendations to address customer due diligence (CDD).

Commitment: Increase Transparency in Federal Spending

- The Administration added a commitment in September 2014 to expand the government's work on spending transparency, including the implementation of the Data Act. The January 2015 civil society progress report pointed out that, while the Administration carried out outreach efforts to collect input, host workshops, and keep civil society stakeholders informed of progress, much of the progress on this commitment remained internal.
- Civil society leads have pointed out overall problems with slow and inconsistent implementation, lack of information and deadlines, and inconsistent public outreach and follow up. The vague wording of the initiatives associated with this commitment has made it difficult to assess whether or not government agencies are on-track for completion. The public needs an expected timeframe for completion in order to hold the government to account for fulfilling this commitment.
- The government's self-assessment from March 2015 reported that the Office of Management and Budget (OMB) and the Department of Treasury met with external stakeholders in October 2014 and February 2015 to seek input from civil society and other government representatives on ways to improve USASpending.gov.
- In response to the feedback, Treasury launched a "refreshed" USASpending.gov in April 2015. While the revisions led to improvements in user ability, the quality of the data published on the site remains poor. In addition to slow efforts to address data quality and other issues have been slow, no clear list is public of items being addressed or deadlines for completion of the ongoing necessary improvements to the site.
- Similarly, civil society leads are concerned over the pace of the implementation of the Data Act. The Act, passed in May 2014, gave Treasury and OMB a 1-year deadline to issue guidance to federal agencies on established data standards. Some data standards were released in May 2015, but there are no pending deadlines for issuing guidance on other required data standards.
- The government's self-assessment reported on data pilots and ongoing collaborative efforts to standardize data element definitions; however, the Administration has yet to finalize the list of data fields for which standards still need to be developed. As above, as there appear to be no clear deadlines for producing these standards.
- The government's self-assessment reported on advances in the implementation of the Data Act, as well as multiple meetings and public events, including a September 2014 Data Transparency Town Hall and stakeholder meetings. Civil society leads note inconsistent stakeholder engagement on this commitment: long periods of time pass without any update from government leads, and other times stakeholders are given only a few hours' notice before a new policy or website change is launched. Where the government has carried out outreach with stakeholders, little follow-through has occurred. Some of the challenges appear to stem from the dual leadership role that OMB and Treasury carry out on this commitment.
- Civil society leads emphasize that agencies should establish a standing call, or some form of permanent dialogue mechanism – with advanced agendas -- with CSO's, rather than relying on an ad-hoc and inconsistent process.

Commitment: Modernize Management of Government Records

- As part of this commitment, NARA pledged to work with federal agencies to implement new guidance for managing email as well as to implement the [2012 Presidential Policy Directive \(PPD\) on Records Management](#), enacted as a result of the first NAP. The PPD gives a December 31, 2016 deadline for Federal agencies to manage all email records in an appropriate electronic system that supports records management and litigation requirements. At the time, civil society had expressed concern over the lengthy timelines set for implementation.
- In August 2013, NARA introduced the Capstone approach for managing federal record emails electronically. NARA's bulletin on the Capstone approach was an important measure, as it encouraged agencies to develop a rational, practical approach to email management, and ensure that email records are appropriately preserved in electronic format.
- Open government groups have emphasized the need for additional guidance to ensure that the Capstone schedule works as intended, and does not inadvertently authorize destruction of permanent email records. The civil society check-in report of January 2015 highlighted problems with the Capstone approach, citing as an example the [CIA's proposal](#) to implement the Capstone program, which excluded the email records of a large majority of CIA officials.
- The previously-expressed concern over lengthy timelines for implementation have been replaced for civil society with a concern that agencies are not on track to meet the 2016 deadlines. NARA needs to issue guidance with clearer definitions and success indicators for agencies to fulfill the December 2016 deadline to manage both permanent and temporary email records in an accessible electronic format.
- NARA's proposed records schedule states that agencies' use of the Capstone General Records Schedule to manage email is optional, but makes clear that managing email is not. For agencies that decline to adopt a Capstone approach, as well as those that opt for Capstone, NARA will need to monitor compliance with laws and Presidential directives requiring that emails be preserved and managed electronically. To do this, NARA should maintain a single list of agencies that are participating in Capstone, partially participating, or not using the Capstone approach. Agencies not using Capstone or only partially using Capstone should be required to specify what NARA-approved disposition authorities they are using to manage email, and this information should be readily accessible to the public.
- Civil society has submitted to a number of specific [recommendations](#) for the next commitment on records management.

Commitment: Implement the controlled Unclassified Program

- As part of this commitment, in 2014, NARA circulated a draft regulation with implementation guidance and a CUI registry for interagency review in 2014, and in May 2015 the Information Security Oversight Office (ISOO) published a draft document on the Federal Register outlining how

agencies should designate, mark and manage dissemination of controlled unclassified information (CUI). The draft document explained what data qualifies as CUI, procedures for transmitting, safeguarding, and “decontrolling” the information, and establishing a management structure around CUI policies. The new rule will apply to all executive branch agencies, as well as information regularly disseminated to organizations outside the executive branch.

- The proposed regulations are intended to standardize the way the Executive Branch handles information that requires protection but is not classified. The rules note that “Prior to the CUI Program, agencies often employed ad hoc, agency-specific policies, procedures and markings to handle this information...This patchwork approach caused agencies to mark and handle information inconsistently, implement unclear or unnecessarily restrictive disseminating policies and create obstacles to sharing information.”
- ISOO has coordinated closely with open government organizations on the implementation of the CUI framework, and incorporated suggestions from civil society into the proposed rules on CUI. NARA held a stakeholder meeting with civil society leads on this commitment in June 2015 after publishing the proposed rules on the Federal Register.
- During the meeting, civil society representatives expressed concern over the long time frame expected for agencies to adopt the new regulations on CUI markings. There are a number of technical requirements that agencies need to adopt to create a standardized marking system for information that requires safeguarding or dissemination controls, and there are not clearly defined deadlines for agencies to implement all aspects of the new regulations. This raises concern that it could take years before agencies complete the requirements needed to fully adopt and implement the new rules governing CUI.
- On July 7, open government groups submitted a [letter](#) with comments on the CUI proposed rules. The letter expressed gratitude for the responsiveness of ISOO to civil society concerns and suggestions, while highlighting remaining concerns that certain provisions of the proposed rule could discourage legitimate information-sharing, both internally and outside the government. The submitted comments included specific recommendations on changes to the proposed rules to ensure CUI does not become a fourth level of classification, contrary to the spirit and intent of Executive Order 13556, or hinder public access to government records pursuant to the Freedom of Information Act.

Commitment: Transform the Security Classification System

- The first part of this commitment (create a Security Classification Reform Committee) indicates that the Committee would “meet periodically with external stakeholders to obtain their input as appropriate.” However, there have been no meetings to report since September 2014, when civil society groups met with members of the Committee. After this meeting, civil society representatives followed up with a letter recommending specific steps for the Committee to take. There has been no indication that any of these recommendations have been accepted and/or implemented.

- While this commitment was technically fulfilled with the creation of the SCRC, there are no visible outcomes that have resulted from the Committee's work.
- The second part of this commitment (systematically review and declassify historical data and nuclear activities) has led to some incremental advances in declassification. The government's self-assessment of March 2015 reported that 8 of 10 FRD topics identified during a June 2014 public meeting were reviewed, declassified and made available on the DOD website. There has not been a systematic review to declassify FRD public interest information, however. There has not been any noticeable wave of declassified FRD documents appearing at NARA or anywhere else.
- Part three of this commitment (pilot technological tools to analyze classified presidential records) has led to some progress, but it appears to be hindered by funding issues. On June 25, 2015, the Public Interest Declassification Board hosted a public meeting to discuss the recommendations included in its 2012 Report to the President on Transforming the Security Classification System, and its recommendation to employ existing technologies and develop and pilot new methods to modernize classification and declassification. The meeting included a briefing on the results of the technology pilot projects completed at UT Austin, co-sponsored by the CIA and NARA to pilot tools to provide classification reviewers with search capability for unstructured data and automate initial document analysis, beginning with the Presidential Records from the Reagan Administration's classified emails system.
- During the presentation, there were issues raised regarding funding for ongoing projects, and since the meeting there has been indication that the CIA has cut back funding for the UT Austin pilot project. It is unclear whether the project will continue or if it will be significantly reduced in scope. This is representative of a need for clearer communication regarding the status and progress of this commitment. The government's self-assessment indicates that there will be a final report produced analyzing the technology and its potential use for classification and declassification, but gives no timeline.
- The last part of this commitment (to implement monitoring and tracking of declassification reviews) has been implemented by the National Declassification Center (NDC) at NARA, according to the government's self-assessment. The improvements that NDC has made to its referral and tracking system have streamlined the process of declassifying historic documents. There is no way to know, however, if this has led to any internal changes in agency practices. The automated system for presidential records has not yet been implemented.
- The NDC has made some tangible progress fulfilling the overall commitment to "declassify as much material as possible." The NDC's "indexing on demand" process has led to meaningful progress by allowing the public to select which documents NARA devote resources to declassifying. However, wasteful multiple re-reviews of old documents and an inefficient "pass-fail" review process are still resulting in far too much information remaining classified at the NDC. According to the most recent data, the NDC's release rate for *historic* documents is a startlingly low 59 percent. The release rate for *current* historic documents requested under mandatory declassification review is more than 92 percent.

- It is worth noting that original classification activity is down to record low levels, and that derivative classification activity also declined last year (although still at high levels), so there is measurable progress in the right direction. However, the available metrics do not make it possible to identify the factors driving this decrease in classification or whether it can be attributed in part to OGP-related initiatives.
- Generally, the nature of this commitment focuses on form over substance. The title of the commitment is; “Transform the National Security Classification System,” but the measures that are part of this commitment are not transformative. Civil society has urged the Administration to develop very specific initiatives in the 3rd NAP that live up to the title of this commitment and actually aspires to “transform” the national security classification system.