

September 8, 2011

Cass R. Sunstein, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW Washington, DC 20503

Aneesh Chopra
United States Chief Technology Officer
Office of Science and Technology Policy
Executive Office of the President
725 17th Street
Room 5228
Washington, DC 20502

Dear Mr. Sunstein and Mr. Chopra:

We, the undersigned civil society organizations, appreciate your commitment to engage with the public on developing the United States government's action plan for the Open Government Partnership (OGP). We are pleased to participate in this exciting initiative and applaud President Obama for raising the profile of open government on the international stage and throughout the U.S. federal government. We seek to ensure that this heightened attention yields real dividends for the public as the U.S. and other governments become demonstrably more open.

Thus, we urge you to include the establishment of a Presidential Advisory Committee on Open Government under the Federal Advisory Committee Act of 1972 (or FACA, Public Law 92-463) as a key objective in the initial U.S. OGP Action Plan to be unveiled September 20.

We believe a Presidential advisory committee is exactly the type of forum envisioned by the OGP. According to the OGP Roadmap, the U.S. and other countries are supposed to "identify a forum to enable regular multi-stakeholder consultation on OGP implementation—this can be an existing entity or a new one." While we have not identified an existing forum appropriate for meeting this objective, FACA is precisely suited for creating just such a forum. We believe that establishing an advisory committee is the best way to ensure that the government receives unbiased recommendations from a variety of experts and stakeholders in a manner that is transparent and accessible to the public.

FACA is one of our hallmark "sunshine laws"—using it to meet OGP goals would allow the United States to showcase a foundational open government policy for other nations. Importantly, there also is an opportunity to substantially enhance and expand openness throughout the U.S. both through the work and practices of the Presidential Advisory Committee on Open Government (PACOG).

The requirements for Presidential and other advisory committees under FACA provide for many of the features we consider essential to fulfilling OGP principles:

- A body of experts is tasked with providing advice that is relevant, objective and open to the public;
- Committees must be “fairly balanced in terms of the points of view represented and the functions to be performed”;
- The advice and recommendations of the committee are not to be unduly influenced by the appointing authority or any special interest;
- Public participation is ensured through open access to meetings (with some exceptions under the Government in the Sunshine Act), announced in advance in the Federal Register, with flexibility for utilizing tools and technology to expand public participation; and
- Committee papers and records are maintained for availability to the public, including detailed minutes of each meeting—again there is also flexibility in using tools to meet this requirement and go beyond.

In addition, it is only fitting that an advisory committee working on open government issues would itself be a model of open government. By going beyond the basic statutory requirements of FACA, this body could serve as a shining example of how 21st-century advisory committees should operate. The PACOG’s practices and utilization of technology could enhance open government not only through its products, but also through its practice.

We believe the PACOG could greatly enhance the U.S. open government efforts and serve as a model by adopting policies such as the following:

- **Reducing Conflicts:** Prohibiting the appointment of any individuals with financial conflicts of interests to advisory committees unless the need for the individual’s services outweighs the potential conflict. Social media and blogging could be used to cast a wider net and solicit public suggestions for committee member nominees.
- **Increasing Transparency:** Hosting a website for posting webcasts, transcripts and records of meetings, information about current members, the process used to select members, committee charters, official actions taken in response to committee recommendations, and other important information such as meeting notices and reports.
- **Boosting Public Participation:** Webcasting meetings and hosting virtual online meetings and discussions to complement and supplement in-person and phone meetings. A blog on the website and other social media also should be used to increase public participation. Utilizing other innovations for opening meetings, increasing collaboration, and soliciting input from the public and providing mechanisms for the public to express support or opposition to proposals being considered by the committee or to the committee's recommendations.

It also seems most appropriate for the President to establish this advisory committee, given the OGP’s international prominence and its breadth across the federal government. It would not be sensible to task a single agency with establishing and managing the OGP advisory committee as the White House and the President will be crafting and implementing the U.S. Action Plan. It therefore is the White House that should receive the expert advice and public input on the OGP. However, successfully opening the government will require work beyond any single presidential administration or action plan. Indeed, the establishing charter for the PACOG should stipulate

that it will be in existence for a five-year period, with an option for renewal if the government identifies a continuing need for advice, reporting or public participation on the implementation of OGP or on other open government initiatives. The PACOG also could be tasked with providing annual or biannual reports to the President. These reports could include regular updates on the implementation of the U.S. Action Plan, recommendations for new milestones, and in-depth analysis of open government ideas, initiatives, and best practices.

Additionally, the OGP Roadmap states: “Countries will report on their consultation efforts as part of the self-assessment, and the independent reporting mechanism will also examine the application of these principles in practice.” The PACOG also could potentially fulfill this objective.

Finally, the PACOG could help to ensure the public that openness principles are truly being applied in the government’s initiatives. This forum also would relieve many of the frustrations civil society groups and citizens have had with limited public awareness of the opportunities for participation and collaboration on the Open Government Directive and the OGP process. Providing experts and the public with an official, structured, and ongoing forum to discuss open government initiatives would go a long way to help fulfill President Obama’s promise to create “unprecedented level of openness in government.”

We thank you for considering this proposal, and for your work to advance open government both in the U.S. and abroad. We would be very pleased to discuss this proposal with you in more depth. If you would like to reach any of our groups, please contact Angela Canterbury of the Project On Government Oversight at acanterbury@pogo.org or 202-347-1122, or Patrice McDermott at OpenTheGovernment.org at pmcdermott@openthegovernment.org or 202-332-6736.

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American Federation of Government Employees - AFGE
American Library Association
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Association of Research Libraries
Center for Responsive Politics
Citizens for Responsibility and Ethics in Washington – CREW
Electronic Frontier Foundation - EFF
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Essential Information
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International Association for Public Participation — United States of America (IAP2 USA)
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Liberty Coalition
National Coalition for History
National Freedom of Information Coalition

National Security Archive
Northern California Association of Law Libraries
OMB Watch
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Project On Government Oversight – POGO
Public Citizen
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