

# Independent Reporting Mechanism

Results Report:  
United States 2019–2022

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Open  
Government  
Partnership



Independent  
Reporting  
Mechanism

## Executive Summary

The fourth National Action Plan for Open Government (NAP4) of the United States exhibited a higher degree of completion compared to its predecessors. However, it produced fewer substantial results due to its reduced level of ambition. The engagement of civil society, which had already been insufficient during the co-creation process, further declined during implementation. Consequently, civil society frequently encountered difficulties in obtaining basic information necessary for monitoring the progress of implementation and in offering input and feedback.

### Completion and Early Results

The NAP4 of the United States comprised a total of eight commitments, with seven of them focused on specific policy areas including but not limited to tackling health crises and enhancing the transparency of intelligence agencies. Commitment 8, however, took a procedural approach by aiming to restore the Open Government Partnership (OGP) process, acknowledging that the public participation during the co-creation of the plan had failed to meet the minimum standards. This deficiency in public engagement not only reflected but also exacerbated the unprecedented tension between the government and civil society.

Out of the seven commitments that were substantially completed, six of them aligned closely with the principles of open government. These commitments primarily focused on facilitating access to information, while also emphasizing the use of technology and innovation to enhance transparency and accountability across a range of areas.

However, apart from Commitment 8, which aimed to enhance the level and quality of participation in future action plans, only Commitment 6 included a component of public participation. Furthermore, none of the commitments specifically prioritized establishing or improving opportunities or mechanisms for public accountability. This indicates an area that requires attention in order to foster a more comprehensive and effective system of public accountability within the framework of open government initiatives.

Seven of the eight commitments included in the NAP4 were substantially or fully implemented. This represented a significant improvement compared to previous NAPs but did not necessarily translate into more significant results. One reason why a high proportion of commitments were implemented despite the absence of strong civil society pressure or oversight is that they were part of a preexisting government agenda rather than responses to civil society demands. The degree of completion of Commitment 2—the one commitment highlighted as “noteworthy” in the Design Report—could not be assessed due to insufficient information, and no early results could be traced back to it. This was at least in part because of the way the commitment was formulated: vaguely phrased, lacking clear outputs and outcomes, and therefore highly dependent on the ambition guiding its implementation.

## IMPLEMENTATION AT A GLANCE

### LEVEL OF COMPLETION

**7/8**

Complete or substantially complete commitments

### EARLY RESULTS

**6/8**

Commitments with early results

**2/8**

Commitments with major or outstanding early results

### COMPLIANCE WITH MINIMUM REQUIREMENTS

**Not acting according to OGP process.**

NAP4's level of early results is difficult to compare with that of NAP3. The plans had marked differences in volume—NAP3 contained 52 commitments, only eight of which were assessed as having made a major or outstanding contribution to opening government. And ambition was much lower for NAP4.

Out of NAP4's eight commitments, two yielded major early results (Commitments 3 and 6). Four showed results that were assessed as marginal (Commitments 1, 4, 7, and 8). Two had no early results to report (Commitments 2 and 5). Notably, Commitments 2 and 5 were initially assessed as having moderate or transformative potential impact but did not live up to their potential. Commitments 3 and 6 were assessed as having a minor potential impact but were implemented with a higher level of ambition than foreseen, yielding major early results.

Both commitments with significant early results (Commitments 3 and 6) were in some way connected to open science, which was also a strong suit of the previous NAP. Commitment 3 made sizeable progress in providing public access to federally funded research, with immediate positive repercussions on public health research in the pandemic context. That commitment will now be carried on to the next NAP, with its focus shifting from the offer of to the demand for data, aimed at enabling better access by final users.

Commitment 6 harnessed open data to crowdsource solutions for major public health problems involving key stakeholders, including patient advocacy groups and families. In this case, success resulted from the adoption of an open government approach, including radical transparency and openness to public participation. This approach brought together a diversity of stakeholders who did not trust each other or the government and would not have collaborated if a standard public health approach had been used instead.

### **Participation and Co-Creation**

The development of NAP4 involved multiple White House offices without clearly demarcated responsibilities working alongside the OpenGov Interagency and Civil Society Working Group, which composed the government's Multi-Stakeholder Forum (MSF). MSF was responsible for soliciting civil society input, and the White House was responsible for selecting the final commitments and publishing NAP4. Opportunities for civil society engagement in designing NAP4 were limited to regular meetings with the Interagency and Civil Society Working Group, plus a few stand-alone events, which civil society stakeholders assessed as insufficient. Critically, civil society had no control over which commitments were eventually included in the NAP4 and no say in the decision to exclude others.

The predictable result of this process was a NAP that mostly reflected government priorities and contained commitments that were part of ongoing or planned initiatives that were going to happen regardless. The commitments had low levels of ambition, ensuring that they would be easy to complete. The commitments were phrased vaguely, without clearly defined activities or deliverables, giving implementing agencies much leeway in defining precisely what would qualify as evidence of their completion.

NAP4 was published in 2019 after successive delays that resulted in the United States being temporarily placed under review by OGP's Criteria and Standards Subcommittee. Its protracted co-creation process took place at a time of heightened tension between government and civil society, which continued into the implementation period. Many civil society groups deserted the co-creation process due to concerns that their participation could help to legitimize an administration that they viewed as lacking any commitment to open government and behaving arbitrarily and unaccountably. Others left because they did not think it was a worthy investment, as conditions for civil society participation did not augur well for an ambitious plan capable of producing major improvements in government openness.

### **Implementation in Context**

In the implementation phase, leadership shifted to the General Services Administration (GSA). If public participation in NAP4’s co-creation process was lower than in previous NAPs, it declined further during implementation, for a variety of reasons. First, most commitments did not include participatory components enabling civil society to play an active role in the implementation process. Second, the administration failed to provide enough public information to allow civil society to even track implementation progress. Last but not least, many civil society groups remained discouraged by the NAP’s limited ambition and simply counted their losses, hoping that the co-creation of the next NAP would offer better opportunities to re-engage. The implementation of individual commitments moved forward relatively autonomously. This was thanks to the initiative of public officials trying to work inconspicuously in a rather challenging environment within an administration that did not favor open government principles.

It is worth noting that two major events had a significant impact on the implementation of NAP4: the COVID-19 pandemic that began in March 2020 and the change of government that followed the November 2020 presidential election. As pointed out by a government stakeholder, the pandemic “pulled government attention and funding away from implementation of the 4th NAP” and “required retooling engagements to virtual methods,” likely affecting public engagement efforts negatively.<sup>1</sup> The administration turnover, in turn, brought further uncertainties<sup>2</sup> but also new opportunities for engagement, particularly around individual commitments.

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<sup>1</sup> Cf. pre-publication comment from US government, June 9, 2023.

<sup>2</sup> During the transition, responsibility for supporting NAP efforts within the Executive Office changed multiple times from the Office of Science and Technology Policy (OSTP) to the Office of Management and Budget to the Office of American Innovation which no longer exists. Cf. “Release of the Equitable Data Working Group Report,” April 22, 2022, <https://www.whitehouse.gov/ostp/news-updates/2022/04/22/the-release-of-the-equitable-data-working-group-report/>; pre-publication comment from US government, June 9, 2023.

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## Section I: Key Observations

### **Observation 1: Process has substantial implications for results.**

Process matters. The form adopted by the co-creation process has implications on the quality of the resulting NAP. As became clear in NAP4, lack of engagement with a broad range of stakeholders is likely to lead to unambitious plans that do not reflect civil society priorities. Implementation of those plans does not result in positive change in priority areas. To enable engagement, the United States government should at the very least comply with co-creation standards. During implementation, the government should maintain a repository and provide appropriate information to allow the public to track the implementation of the NAP. A better practice to ensure results would be to meet OGP's Co-creation and Participation Standards at large.

### **Observation 2: There is no open government without trust.**

As the NAP4 process made abundantly clear, lack of trust is a one-way street leading to disengagement. The United States government must work to regain its civil society's trust. Fortunately, NAP4 also offers an example of how open government approaches to policy-making can help build trust when it is lacking. While opacity and secrecy breed mistrust, openness, transparency, and accountability may help bridge gaps and encourage diverse stakeholders to work together. This means there is no going back to “how things used to be” before the fallout. Participation needs to progress from consultation (allowing the public to provide input) toward collaboration (engaging the public in iterative dialogue to help set the agenda).

### **Observation 3: The OGP process needs accountable leadership.**

The open government process requires strong leadership to forge coalitions and keep them together, convene stakeholders and provide them with guidance, stay the course through countless obstacles, and ensure results are delivered in a timely manner. Accountability is a key element of open government leadership: it is important for the leading agency to have clearly demarcated responsibilities for which it can be held accountable. The OGP process in the United States is in dire need of such leadership. As a first step, the government should designate a government agency to lead the process, clarify its duties, and provide the tools that it needs to perform them effectively.

### **Observation 4: Action plans must be actual plans.**

A plan is a roadmap, not just a declaration of good intentions. It lays out what needs to be done, when, how, and by whom. NAP4 was particularly challenging for civil society to track and for the Independent Reporting Mechanism (IRM) to assess because its commitments were vague and unspecific. At a minimum, commitments should be based on the identification of a problem that can be addressed by an open government solution. They should be SMART—specific, measurable, achievable, relevant, and time-bound. They should contain activities, milestones, and expected outputs and results. Without a proper plan, there is no real accountability.

### **Observation 5: Unambitious commitments are wasted opportunities.**

Implementing open government commitments—even unambitious ones—consumes considerable amounts of scarce resources. A relevant and ambitious commitment is a good investment. Conversely, an irrelevant or inconsequential commitment is an unnecessary expense. NAP4 contained several commitments that were substantially or fully implemented but, due to low ambition, had little or no effect on government openness. It would therefore be advisable to set criteria to define minimum thresholds of ambition to be met before a commitment is included in the NAP. Incentives for higher ambition could be introduced, including resources earmarked for

the implementation of commitments that exceed a certain threshold of potential impact in key areas of policy-making.

## Section II: Implementation and Early Results

The following section looks at the two commitments that IRM identified as having the strongest results from implementation. To assess early results, the IRM referred to commitments or clusters identified as promising in the Design Report as a starting point. After verification of completion evidence, the IRM also took into account commitments or clusters that were not determined as promising but that, as implemented, yielded significant results.

### **Commitment 3: Provide Public Access to Federally Funded Research**

**Implementing Agency:** Office of Science and Technology Policy, National Science and Technology Council

#### **Context and Objectives**

The aim of this commitment was to produce a report with recommendations for improvements to existing federal open access policies and continued collaboration between agencies to provide open access of federally funded research. The commitment contained no further milestones.

This commitment built upon the results of another commitment included in the previous NAP, aimed at ensuring that all federal agencies that spend more than \$100 million per year on research and development design and implement policies to make scientific publications and digital data resulting from federally funded research “accessible to and usable by scientists, entrepreneurs, educators, students, and the general public.”<sup>1</sup> By the end of the NAP3’s reporting cycle, all 16 federal agencies subject to the commitment had released public access plans and created digital repositories, and 11 had implemented data management plans.

The sheer magnitude of federally funded research made this commitment relevant to the national context. According to data from the National Science Foundation, federal obligations for research and experimental development reached \$142.4 billion in FY 2019 and \$167.4 billion in FY 2020 and are estimated to have increased an additional 7% to \$179.5 billion in FY 2021.<sup>2</sup>

The IRM assessment did not foresee any obstacles that could negatively impact the commitment’s implementation. IRM rated the commitment as having a minor potential impact because its only planned output was a recommendations report. That report was not likely to have an impact unless its recommendations were made mandatory and implemented. The low ambition of the commitment contrasted unfavorably with its predecessor in NAP3, which had resulted in the development and implementation of policies that had made a difference in the public availability and accessibility of federally funded research.

#### **Did It Open Government? Major**

The commitment was implemented with a higher level of ambition than it originally had. As written in the NAP, the commitment did not include any milestones or specific activities beyond the publication of a recommendations report. Its implementation yielded not only such a report but also federal guidance mandating all federal agencies to update their public access policies before a certain date.

In May 2022, the National Science and Technology Council released a recommendations report.<sup>3</sup> The report aimed to improve consistency across federal departments and agencies in the instructions they provide to researchers about selecting repositories for data resulting from federally funded research. The report identifies the desirable characteristics of online public access data repositories to ensure that research data are FAIR—findable, accessible, interoperable, and reusable—while protecting privacy and security.



This was followed by a Memorandum for the Heads of Executive Departments and Agencies issued by the head of the Office of Science and Technology Policy, Dr. Alondra Nelson, in August 2022.<sup>4</sup> Aimed at making the results of taxpayer-supported research freely available, this update to federal policy guidance went further than a mere report with recommendations. It provided detailed guidance for federal agencies to update their public access policies to make federally funded research and publications publicly accessible. The update also mandated all federal agencies to have fully implemented updated policies by the end of 2025.

The guidelines drew from the lessons learned from the COVID-19 pandemic, stating that “when federally funded research is available to the public, it can improve lives, provide policy makers with important evidence with which to make critical decisions, accelerate the rates of discovery and translation, and drive more equitable outcomes across every sector of society.”<sup>5</sup>

The pandemic appears to have catalyzed the ambitious implementation of this commitment. As laid out in the commitment highlight posted on the USA.gov website,<sup>6</sup> “all 20+ US Federal science agencies have implemented policies to make published results of federally funded research and associated data freely available to the public.” And more than 2.4 million published articles were made publicly accessible through designated repositories. Partnerships with scholarly publishers made millions more articles freely available. This includes more than 7.3 million in the biomedical and life sciences, available in the online National Library of Medicine.<sup>7</sup>

These efforts by federal science agencies, coordinated through the National Science and Technology Council’s Subcommittee on Open Science, supported the response to the COVID-19 pandemic. Open access was in turn boosted by pandemic needs. Following a call to action by science policy leaders of the US and 11 other countries in March 2020, more than 50 scholarly publishers agreed to provide immediate free access to journal articles related to COVID-19 and coronaviruses through major open science platforms.<sup>8</sup> Within weeks, collaboration by public and private partners resulted in the establishment of the COVID-19 Open Research Dataset (CORD-19). CORD-19 initially contained 29,000 full-text articles and preprints and now encompasses more than 275,000. Artificial intelligence experts developed text and data mining techniques to help scientists working on COVID-19 respond to their questions using the information contained in the database. Two major text mining challenge competitions subsequently attracted more than 1,500 unique contributions, and the database has so far been downloaded more than 131,000 times.<sup>9</sup>

### Looking Ahead

This commitment was carried forward from the previous NAP. Contrary to expectations, it made substantial further contributions to opening government that are expected to have lasting results.

In turn, the commitment is also being carried forward under NAP5. The new commitment, “Broaden Public Access to Federally Funded Research Findings and Data,” acknowledges the persistence of barriers to access of federally funded science and data. Unlike its predecessor, which focused on the supply side, the new commitment puts the spotlight on users. It seeks to broaden access “through several mechanisms, including through the National Science and Technology Council’s Subcommittee on Open Science; by permitting researchers to include publication and data sharing costs in their research budget proposals to Federal grant programs; by launching programs aimed at awarding more grants to early-stage researchers as well as encouraging a diverse pool of award applicants; and by exploring new incentive structures to recognize institutions and researchers who are supporting public access to data and research.”<sup>10</sup>

To realize its potential, the new commitment should maintain the focus on easing access by the final users of the data.

## Commitment 6: Use Open Data to Fuel Innovation to Improve Public Health

**Implementing Agency:** Department of Health and Human Services (HHS)

### Context and Objectives

This was an innovative commitment that sought to use open data to improve public health outcomes. It had three broad components. The first was series of co-creation events to discover insights from a comprehensive set of federal, state, and private datasets related to the opioid crisis. The second was a series of Lyme Innovation events to leverage technologies and co-create solutions alongside patients and practitioners, followed by the launch of a new public-private collaboration, the Lyme and Tick-Borne Disease Innovation Accelerator. The third was the launch of a series of open innovation prize challenges to improve value-based healthcare with federal open data, patient-powered research, open science, open source, and open innovation.

The commitment’s dual focus on opioids and Lyme disease made it highly relevant for the national context. Tens of thousands of Americans die from drug overdoses every year. More than 90 people were dying from opioid overdoses every single day when HHS declared it a public health emergency in 2017—a declaration that was renewed in 2022.<sup>11</sup> Lyme disease, in turn, is the fastest-growing vector-borne disease in the country. Approximately 476,000 people get Lyme disease in the United States every year.<sup>12</sup> The disease entails billions of dollars in direct and indirect medical costs, on top of causing immense human suffering.

The commitment was originally assessed as having a minor potential impact. Some of the components that were found to be most promising—notably, the listening sessions meant to get feedback from Lyme stakeholders—were tainted by lack of determination of a clear and measurable output. Additionally, some of these had already taken place before the start of the NAP implementation period.

The commitment was implemented substantially: two out of three components were fully implemented. The Lyme disease portion was implemented in a more ambitious way than foreseen. The portion pertaining to the opioid crisis, on the other hand, appears to have lost steam when the official in charge, then-HHS Chief Data Officer, left in 2020. The official in charge of the Lyme initiative acknowledged that the opioid crisis was “in many ways a much bigger challenge, financially, because of the human toll and because of the many more players involved.”<sup>13</sup>

### Did It Open Government? Major

The process to develop a Lyme Innovation initiative was launched in late 2018, before the NAP kicked off. But most of its activities took place under the umbrella of the NAP.<sup>14</sup> Most importantly, the open government perspective gave it an unforeseen boost. That boost helped it evolve into a full-blown, ongoing initiative that is likely to have lasting results beyond the implementation period of the NAP.<sup>15</sup>

As part of Lyme Innovation, in 2020 HHS launched the LymeX Innovation Accelerator (LymeX), a partnership with the Steven & Alexandra Cohen Foundation. At \$25M, LymeX is the world’s largest public-private partnership for Lyme disease.<sup>16</sup> In 2021, the Lyme Initiative published Health+, a report distilling nearly 700 hours of human-centered research aimed at understanding this complex illness through the lived experiences of patients.<sup>17</sup> And in May 2022, it launched the LymeX Diagnostics Prize, offering \$10M in prizes for the next-generation Lyme diagnostics.<sup>18</sup>

The Lyme Innovation initiative is a patient-centered, data-driven approach to Lyme disease and other tick-borne illnesses. It views patients as not just the targets for prevention, diagnostics, and treatment but also the driving forces of innovation. In other words, the initiative is based on dialogue and consultation with its main stakeholders—patients and their families. This required a 180-degree turn in the understanding of the relationship between government and citizens.

The officer in charge of the commitment, HHS Chief Data Scientist Kristen Honey,<sup>19</sup> highlighted that the initiative was born from the ground up. It was included in the NAP in response to a demand expressed by patients and advocates who had urged the government to take action on Lyme disease for years, including through online petitions.

According to Honey, the fact that this commitment was included in the NAP made a difference because it gave her a “top cover” allowing to “cut through a lot of layers of bureaucracy.” Without it, the administration might not have formally agreed to allow the Lyme Innovation initiative to move forward. The explicit application of open government principles and practices—namely, transparency and participation—helped unblock a relationship that had long been plagued by resentment and distrust.

As Honey explained, “The open government approach helped tackle the challenge from a different perspective. For decades there was so much acrimony and bad blood between science and government on one side and the patients and advocates on the other. They did not want anything to do with each other. ... There was so much pent-up anger and hurt. These were moms who watched their kids die who would have been okay if they had proper treatment. ... We’d had 30 years of no constructive government, with maybe three minutes for public comment, a one-way checkbox without any dialogue.”<sup>20</sup>

The open government approach enabled an unusual level of public engagement. LymeX brought organizations like LymeDisease.org to the table, intent on bridging the gap between patients and policy makers.<sup>21</sup> Engagement was based on the acknowledgment that “people are the experts in their own experience. Emotions are going to be what they are, but if we can sit with that and acknowledge it and validate it and help people feel heard, then maybe there’s a hope that collectively the community could move through the anger, understanding the problem and trying to solve it together. It was hard in the beginning, but it worked.”<sup>22</sup>

In sum, this appears to have been a case in which it was important that the initiative unfolded within the framework of an open government NAP. Radical transparency—including holding open events and sharing recordings and full transcripts—and consultations followed by the provision of feedback helped overcome lack of trust in government and science. As Honey puts it, “I don’t think we could have done this behind closed doors. People were judging us on the prior 30 years, and we couldn’t have talked them into giving us a chance if we hadn’t done it this way.”<sup>23</sup>

## Looking Ahead

Commitment 6 has not been carried over to the next NAP. The participatory component is what made this commitment a success from the open government perspective. While the Lyme Initiative will continue long after the end of the NAP implementation, it is important to acknowledge that the participatory component is fragile. If that component is not put into practice on a permanent basis, it can dissipate.

<sup>1</sup> IRM and Jason I. McMann, *Independent Reporting Mechanism (IRM): United States Design Report 2019–2021* (Washington, DC: Open Government Partnership, 2021), [https://www.opengovpartnership.org/wp-content/uploads/2021/05/United-States\\_Design\\_Report\\_2019-2021.pdf](https://www.opengovpartnership.org/wp-content/uploads/2021/05/United-States_Design_Report_2019-2021.pdf).

<sup>2</sup> Christopher V. Pece, *Driven by Stimulus Funding, Federal R&D Obligations Increased 18% in 2020; Largest Year-to-Year Change since 1963* (Alexandria, VA: National Science Foundation), <https://nces.nsf.gov/pubs/nsf22324>.

<sup>3</sup> National Science and Technology Council, *Desirable Characteristics of Data Repositories for Federally Funded Research* (Washington, DC: National Science and Technology Council, 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/05/05-2022-Desirable-Characteristics-of-Data-Repositories.pdf>.

<sup>4</sup> Alondra Nelson, Memorandum for the Heads of Executive Departments and Agencies, August 25, 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/08/08-2022-OSTP-Public-Access-Memo.pdf>. As pointed out by a government official, “that guidance was built upon years of public feedback that indicated that the primary limitation of the 2013 Memorandum is the optional 12-month embargo from public access of any publication resulting from federally funded research”. Cf. pre-publication comment from US government, June 9, 2023.

<sup>5</sup> Nelson, memorandum.

<sup>6</sup> “U.S. Open Government Initiatives,” USA Gov, <https://open.usa.gov/>.

<sup>7</sup> “PubMed Central,” National Library of Medicine, <https://www.ncbi.nlm.nih.gov/pmc/>.

<sup>8</sup> The White House Office of Science and Technology Policy, “OSTP: President Trump’s Science Advisor and Government Science Leaders from Around the World Call on Publishers to Make All COVID-19-Related Research Publicly Available,” March 13, 2020, <https://www.imagwiki.nih.gov/content/ostp-president-trumps-science-advisor-and-government-science-leaders-around-world-call>.

<sup>9</sup> “Commitment Highlight.”

<sup>10</sup> The White House, *Fifth U.S. Open Government National Action Plan* (Washington, DC: The White House, 2022), [https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States\\_Action-Plan\\_2022-2024\\_December.pdf](https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022-2024_December.pdf).

<sup>11</sup> Administration for Strategic Preparedness and Response, “Renewal of Determination That A Public Health Emergency Exists,” April 4, 2022, <https://aspr.hhs.gov/legal/PHE/Pages/Opioid-4Apr22.aspx>.

<sup>12</sup> “Lyme Disease Data and Surveillance,” Centers for Disease Control and Prevention, <https://www.cdc.gov/lyme/datasurveillance/index.html>.

<sup>13</sup> Kristen Honey (Department of Health and Human Services Chief Data Scientist), interview by IRM, February 2023.

<sup>14</sup> “Lyme Innovation: Real-World Impact,” Department of Health and Human Services, <https://www.hhs.gov/ash/osm/innovationx/lyme-innovation/real-world-impact/index.html>.

<sup>15</sup> “Lyme Innovation,” Department of Health and Human Services, <https://www.hhs.gov/ash/osm/innovationx/lyme-innovation/index.html>.

<sup>16</sup> “LymeX,” Department of Health and Human Services, <https://www.hhs.gov/ash/osm/innovationx/lyme-innovation/lymex/index.html>.

<sup>17</sup> Ashleigh Axios et al., *Health+ Lyme Disease Human-Centered Design Report* (Washington DC: Coforma, 2021), <https://www.hhs.gov/sites/default/files/healthplus-lyme-disease-hcd-report.pdf>.

<sup>18</sup> “LymeX Diagnostics Prize Timeline,” LymeX Diagnostics Prize, <https://www.lymexdiagnosticsprize.com/>.

<sup>19</sup> Honey, interview.

<sup>20</sup> Honey, interview.

<sup>21</sup> LymeX, *LymeX Roundtable: Bridging the Trust Gap. Summary Report* (Washington, DC: Center for Open Data Enterprise, 2021), <http://reports.opendataenterprise.org/CODE-LymeX-Roundtable-Report.pdf#page=28>.

<sup>22</sup> Honey, interview.

<sup>23</sup> Honey, interview.

### Section III. Participation and Co-Creation

The tensions between government and civil society that plagued the NAP’s co-creation process continued to affect its implementation. Many organizations that had disengaged in protest at the former administration’s lack of commitment to open government did not return to the process. Those organizations were joined by others that were discouraged by the plan’s limited ambition, generally attributed to neglect of civil society demands during the co-creation process. Failure to comply with basic dissemination standards during implementation further hindered the ability of civil society to track progress, or lack thereof. Upon request from the government during the pre-publication review of this report, the IRM contacted representatives from Public Citizen and the Carter Center, civil society organizations (CSOs) involved in open government efforts, to request additional information about CSO participation during the implementation of the NAP. However, the IRM did not receive any inputs.

The official in charge of the Data and Analytics portfolio in the GSA’s Technology Transformation Services Division supervised the implementation of the NAP. That official also operated as the point of contact for OGP and IRM. According to a civil society source, under the Trump administration, responsibility for the NAP shifted to the GSA to “insulate it from the White House;”<sup>24</sup> government sources, however, point out that this was a positive shift because “the White House is not an appropriate home for sustained initiatives because of the high turnover of staff and lack of budget. There is also precedent for [other] high impact programs moving from the White House to GSA to institutionalize their work.”<sup>25</sup>

The NAP did not have a dedicated team or further resources invested in coordinating and monitoring its implementation. This resulted in lack of a proper repository meeting OGP requirements and any tools allowing the public to track progress, provide feedback, and demand accountability.<sup>26</sup>

Alex Howard, Director of the Digital Democracy Project and a long-standing civil society participant in open government processes in the United States, highlighted that “there’s been no progress reports, no real accountability for what happened. And I don’t think there’s a great deal of public scrutiny or awareness of what they have or haven’t done. ... The government has not even met the floor of expectations for co-creation: the publicity and transparency of the process. ... And they don’t expect any consequences.”<sup>27</sup>

National political developments negatively affected both the co-creation and implementation of the NAP. The US government should have submitted the NAP in June 2017, but the recently inaugurated Trump administration failed to complete the process in time. The NAP was not finalized and published until February 2019. The interrupted co-creation process saw growing discontent among civil society stakeholders, who distrusted a government that showed no commitment to the open government agenda. They expressed concerns about the quality and depth of participation allowed by the consultation formats used—one online forum and a couple of government-hosted events held in Washington, DC.<sup>28</sup>

Some chose to continue to participate in the process in an attempt to preserve a rare space where open government principles could still be somewhat advanced despite the regressive context. Many others chose to disengage in protest.<sup>29</sup> As a result, the NAP had some civil society participation, but the level of public engagement with the co-creation process sharply declined overall in comparison with previous NAPs.<sup>30</sup>

Civil society participation further declined during the NAP implementation process. Civil society is typically better able to dedicate resources to take part in intense but brief co-creation phases than to sustain participation over years-long implementation processes. On top of these usual



sustainability challenges, the unambitious and vaguely phrased commitments resulted in a lack of motivation. The commitments were mostly recycled from preexisting or ongoing government programs. They consisted of “technocratic reforms” that did not touch on “the big issues—ethics reforms, campaign finance reforms, beneficial ownership transparency.”<sup>31</sup>

Most of the commitments included in the NAP did not contain a participatory component. Out of seven commitments deemed relevant to open government principles, only two were assessed as relevant to the principle of public participation. Commitment 8 focused on expanding public participation in future NAPs. Commitment 6 focused on the use of open data to fuel innovation on public health, also relevant to the principle of access to information.

The one substantial (as opposed to instrumental to co-creating another NAP) commitment that had a prominent public participation element presented a quite different picture from the rest. As the official in charge explained, many civil society actors in the public health space, such as Lyme disease groups, do not necessarily “self-identify as part of civil society.” But they fit the description, being independent organized groups “actively asking for transparency.” In this case, participating civil society included “dozens of nonprofit Lyme disease organizations, dozens of health organizations, dozens of moms who founded groups to help their kids.” Many of these groups “would never have been in the same room if it wasn’t for [us] bringing them together. ... We asked them how we could move the needle on this disease: which actions in the next three to six months could change the trajectory. And what came out of that was partnerships and grand prize challenges and creative ways to democratize the solution space.” The interviewed official described this as a substantial learning process that proved to be useful. Therefore, the process continued in the form of ongoing engagement with the public through open data roundtables and hands-on events focused on delivering products.<sup>32</sup>

### Compliance with the Minimum Requirements

The IRM assesses whether member countries met the minimum requirements under OGP’s Participation and Co-Creation Standards for the purposes of procedural review.<sup>33</sup> During co-creation, the US did not act according to the OGP process. The two minimum requirements listed below must achieve at least the level of “in progress” for a country to have acted according to OGP process.

Key:

Green = Meets standard

Yellow = In progress (steps have been taken to meet this standard, but standard is not met)

Red = No evidence of action

Acted according to OGP process during the implementation period?	
Although the government has kept a dedicated website for its OGP process, <a href="https://open.usa.gov/">https://open.usa.gov/</a> , it lacked a proper repository that is online, updated at least once during the action plan cycle, and contains evidence of development and implementation of the action plan.	Red
The government did not provide the public with information on the action plan during the implementation period.	Red

<sup>24</sup> Alex Howard (Digital Democracy Project), interview by IRM, December 2022.

<sup>25</sup> Pre-publication comment from US government, June 9, 2023.

<sup>26</sup> This was also a major obstacle for the current investigation because data on commitment implementation was often difficult to locate and even more difficult to confirm. Most officials in charge of commitments failed to respond to IRM inquiries, and most civil society stakeholders had not tracked the implementation of the NAP.

<sup>27</sup> Howard, interview.

<sup>28</sup> For a more detailed description of the obstacles faced by the co-creation process, see *IRM and Jason I. McMann, Independent Reporting Mechanism (IRM): United States Design Report 2019–2021* (Washington, DC: Open Government Partnership, 2021), [https://www.opengovpartnership.org/wp-content/uploads/2021/05/United-States\\_Design\\_Report\\_2019-2021.pdf](https://www.opengovpartnership.org/wp-content/uploads/2021/05/United-States_Design_Report_2019-2021.pdf).

<sup>29</sup> As explained by Alex Howard, the rationale was that “the administration was outright violating laws. So why would you expect these voluntary commitments to a multistakeholder initiative to matter?” Howard also expressed disappointment in the OGP leadership for not providing a speedy response to avoid “legitimizing an administration that was obviously corrupt and even attempted a coup d’état.” Without that expected response, the space itself lost value to him. Howard, interview.

<sup>30</sup> Situations varied from one commitment to another, but they all saw a decline. In the words of Kirsten Honey, co-creation events “weren’t big. A lot of civil society had decided they were protesting the administration and not engaging. For me as a career civil servant who worked in the prior administration running the same portfolio, this was a bit of a shock because the data is the data no matter the politics; we should follow the data responsibly regardless of who sits in the White House. We had much leaner co-creation events because there was a choice by a lot of the open government community and civil society to protest by disengaging. There were others who were pragmatic (and participated). ... I remember going to (co-creation events of past NAPs) and they were massive. Ours were not, but were still pretty well-attended, ... probably somewhere around 40 people, but very active and hands-on.” Kristen Honey (Department of Health and Human Services Chief Data Scientist), interview by IRM, February 2023.

<sup>31</sup> Howard, interview.

<sup>32</sup> Honey, interview.

<sup>33</sup> Please note that future IRM assessment will focus on compliance with the updated OGP Co-Creation and Participation Standards that came into effect on January 1, 2022: <https://www.opengovpartnership.org/ogp-participation-co-creation-standards/>.

## Section IV. Methodology and IRM Indicators

This report supports members’ accountability and learning through assessment of (i) the level of completion for commitments’ implementation, (ii) early results for commitments with a high level of completion identified as promising or that yielded significant results through implementation, and (iii) participation and co-creation practices throughout the action plan cycle.<sup>34</sup> The IRM commenced the research process after the first year of implementation of the action plan with the development of a research plan, preliminary desk research, and verification of evidence provided in the country’s OGP repository.<sup>35</sup>

In 2022, OGP launched a consultation process to co-create a new strategy for 2023–2028.<sup>36</sup> The IRM will revisit its products, process, and indicators once the strategy co-creation is complete. Until then, Results Reports continue to assess the same indicators as previous IRM reports:

### Completion

The IRM assesses the level of completion for each commitment in the action plan, including commitments clustered in the Design Report.<sup>37</sup> The level of completion for all commitments is assessed as one of the following:

- *No evidence available*
- *Not started*
- *Limited*
- *Substantial*
- *Complete*

### Did It Open Government?

The IRM assesses changes to government practices that are relevant to OGP values, as defined in the OGP Articles of Governance, under the “Did it open government?” indicator.<sup>38</sup> To assess evidence of early results, the IRM refers to commitments or clusters identified as promising in the Design Report as a starting point. The IRM also takes into account commitments or clusters with a high level of completion that may not have been determined as “promising” but that, as implemented, yielded significant results. For commitments that are clustered, the assessment of “Did it open government?” is conducted at the cluster level, rather than the individual commitment level. Commitments or clusters without sufficient evidence of early results at the time of assessment are designated as “no early results to report yet.” For commitments or clusters with evidence of early results, the IRM assesses “Did it open government?” as one of the following:

- *Marginal*: Some change, but minor in terms of its effect on level of openness
- *Major*: A step forward for government openness in the relevant policy area but remains limited in scope or scale
- *Outstanding*: A reform that has transformed “business as usual” in the relevant policy area by opening government

This report was prepared by the IRM in collaboration with Inés M. Pousadela and was reviewed by Ernesto Velasco, IRM external expert. The IRM methodology, quality of IRM products and review process is overseen by the IRM’s International Experts Panel (IEP). The current IEP membership includes:

- Snjezana Bokulic
- Cesar Cruz-Rubio
- Mary Francoli
- Maha Jweid
- Rocio Moreno Lopez



This review process, including the procedure for incorporating comments received, is outlined in greater detail in Section III of the Procedures Manual<sup>39</sup> and in The United States Design Report 2019–2021.<sup>40</sup> For more information, refer to the “IRM Overview” section of the OGP website.<sup>41</sup> A glossary on IRM and OGP terms is available on the OGP website.<sup>42</sup>

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<sup>34</sup> For definitions of OGP terms, such as co-creation and promising commitments, see “Glossary,” OGP, <https://www.opengovpartnership.org/glossary/>.

<sup>35</sup> “U.S. Open Government Initiatives,” USA Gov, <https://open.usa.gov/>.

<sup>36</sup> See OGP, “Creating OGP’s Future Together: Strategic Planning 2023–2028,” <https://www.opengovpartnership.org/creating-ogps-future-together/>.

<sup>37</sup> The IRM clusters commitments that share a common policy objective during the Action Plan Review process. In these instances, the IRM assesses “potential for results” and “Did it open government?” at the cluster level. The level of completion is assessed at the commitment level. For more information on how the IRM clusters commitments, see Section IV on Methodology and IRM Indicators of the Action Plan Review.

<sup>38</sup> See OGP, *Open Government Partnership Articles of Governance*, published 17 June 2019, [https://www.opengovpartnership.org/wp-content/uploads/2019/06/OGP\\_Articles-of-Governance\\_2019.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/06/OGP_Articles-of-Governance_2019.pdf).

<sup>39</sup> Independent Reporting Mechanism, *IRM Procedures Manual*, V.3, 16 September 2017, <https://www.opengovpartnership.org/documents/irm-procedures-manual>.

<sup>40</sup> IRM and Jason I. McMann, *Independent Reporting Mechanism (IRM): United States Design Report 2019–2021* (Washington, DC: Open Government Partnership, 2021), [https://www.opengovpartnership.org/wp-content/uploads/2021/05/United-States\\_Design\\_Report\\_2019-2021.pdf](https://www.opengovpartnership.org/wp-content/uploads/2021/05/United-States_Design_Report_2019-2021.pdf).

<sup>41</sup> Open Government Partnership, *IRM Overview* <https://www.opengovpartnership.org/irm-guidance-overview/>.

<sup>42</sup> Open Government Partnership, OGP Glossary, <https://www.opengovpartnership.org/glossary/>.

## Annex I. Commitment Data<sup>3</sup>

### Commitment 1: Publish Federal Data Strategy

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• <b>Verifiable:</b> Yes</li> <li>• <b>Does it have an open government lens?</b> Yes</li> <li>• <b>Potential for results:</b> Minor</li> </ul> | <ul style="list-style-type: none"> <li>€ <b>Completion:</b> Complete</li> <li>€ <b>Did it open government?</b> Marginal</li> </ul> |
|---|--|

The commitment did not contain precise milestones or activities. It only stated that the government would “deliver a comprehensive Federal Data Strategy that encompasses Federal and Federally-sponsored program, statistical, and mission-support data.”<sup>43</sup> As pointed out by a civil society stakeholder, the text did not even promise to ensure open and transparent access, but merely “appropriate” access to federal data.<sup>44</sup>

The commitment’s implementation was complete. The process to develop a Federal Data Strategy started in March 2018, long before the NAP4 implementation period began. It was completed through a series of public consultations that started in June 2018, in which dozens of stakeholders took part.<sup>45</sup> The strategy was subsequently published in mid-2019.<sup>46</sup> Two successive annual action plans were produced as a means to implement the new Federal Data Strategy.<sup>47</sup>

An analysis of the two action plans suggests that many of the actions involved were inward-looking—focused on planning, design, governance, management, protection, and interagency sharing of data. Therefore, the actions have not had a significant effect in further opening government to citizen or civil society scrutiny or participation.<sup>48</sup> According to a civil society stakeholder, “the commitment’s impact is nebulous in the sense that it didn’t stop the administration from removing data or defunding agencies, or pushing scientists or researchers out of government or flat out actively delegitimizing the data itself.”<sup>49</sup>

### Commitment 2: Ensure Accountability for Grants

<sup>3</sup> Editorial notes:

1. For commitments that are clustered: The assessment of potential for results and “Did it open government?” is conducted at the cluster level, rather than the individual commitment level.
2. Commitments’ short titles may have been edited for brevity. For the complete text of commitments, please see the United States’ action plan: [https://www.opengovpartnership.org/wp-content/uploads/2019/02/United-States\\_Action-Plan\\_2019-2021.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/02/United-States_Action-Plan_2019-2021.pdf).
3. For more information on the assessment of the commitments’ design, see IRM and Jason I. McMann, *Independent Reporting Mechanism (IRM): United States Design Report 2019–2021* (Washington, DC: Open Government Partnership, 2021), [https://www.opengovpartnership.org/wp-content/uploads/2021/05/United-States\\_Design\\_Report\\_2019-2021.pdf](https://www.opengovpartnership.org/wp-content/uploads/2021/05/United-States_Design_Report_2019-2021.pdf).

<ul style="list-style-type: none"> <li>€ <b>Verifiable:</b> Yes</li> <li>€ <b>Does it have an open government lens?</b> Yes</li> <li>€ <b>Potential for results:</b> Transformative</li> </ul>	<ul style="list-style-type: none"> <li>€ <b>Completion:</b> No evidence available</li> <li>€ <b>Did it open government?</b> No early results to report yet</li> </ul>
<p>This commitment aimed to improve the transparency of federal grants by making the System for Award Management (SAM) the central platform for searches and applications.<sup>50</sup> Most of the activities listed as part of the commitment were internal to government. But its major objective of streamlining grant seekers’ ability to access information made it relevant to open government principles. Due to the magnitude of the funding to which it aimed to facilitate access, the commitment was rated as potentially transformative. The caveat was that the realization of its potential would be highly dependent on the scope of its implementation.</p> <p>As written into the NAP, this commitment lacked specificity. Most importantly, it did not provide a baseline. It provided no information about how many or precisely which agencies were excluded from the system at the time and would be subjected to improved standards. It also did not specify what proportion of the funding was being processed in or outside of the system. IRM was unable to obtain feedback from government officials or civil society representatives to help assess whether any progress was made in shifting additional grant opportunities to the SAM platform. IRM was also unable to obtain feedback about how much of a difference this made in terms of making grant-making processes more transparent. Therefore, IRM is unable to report any early results from this commitment’s implementation.<sup>51</sup></p>	
<p><b>Commitment 3: Provide Public Access to Federally Funded Research</b></p>	
<ul style="list-style-type: none"> <li>• <b>Verifiable:</b> Yes</li> <li>• <b>Does it have an open government lens?</b> Yes</li> <li>• <b>Potential for results:</b> Minor</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completion:</b> Complete</li> <li>• <b>Did it open government?</b> Major</li> </ul>
<p>This commitment is assessed in Section II.</p>	
<p><b>Commitment 4: Foster the Expansion of Workforce Data Standards</b></p>	
<ul style="list-style-type: none"> <li>• <b>Verifiable:</b> Yes</li> <li>• <b>Does it have an open government lens?</b> Yes</li> <li>• <b>Potential for results:</b> Minor</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completion:</b> Complete</li> <li>• <b>Did it open government?</b> Marginal</li> </ul>

Led by the National Council for the American Worker, this commitment aimed to make data on educational outcomes, job postings, and skills needed for family-sustaining jobs publicly available. It did not specify the scope of data to be published or the platform to be used.

The commitment was fully implemented: 57 datasets initially compiled on the website of the White House’s JobKit initiative were included in the Curated Datasets section of The Opportunity Project.<sup>52</sup> The Opportunity Project is an initiative bringing together the tech industry, government, and communities to create digital products using federal open data.<sup>53</sup>

The database currently includes 52 datasets that do not look particularly user-friendly.<sup>54</sup> Most importantly, IRM found no evidence of any effort to reach out to final users and make them aware of its existence.

**Commitment 5: Create Agency-Level Chief Data Officers**

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• <b>Verifiable:</b> Yes</li> <li>• <b>Does it have an open government lens?</b> No</li> <li>• <b>Potential for results:</b> Moderate</li> </ul> | <ul style="list-style-type: none"> <li>• <b>Completion:</b> Complete</li> <li>• <b>Did it open government?</b> No early results to report yet</li> </ul> |
|---|--|

This commitment had a clearly measurable deliverable, which was the appointment of a Chief Data Officer at each of the federal agencies covered by the 1990 Chief Financial Officers Act. These include all federal departments plus the Agency for International Development, the Federal Emergency Management Agency, GSA, the National Science Foundation, the Nuclear Regulatory Commission, the Office of Personnel Management, and the Small Business Administration.<sup>55</sup>

Although when they were appointed was not clear, the IRM researcher was able to verify that all but one of the above-mentioned government agencies currently have a Chief Data Officer.<sup>56</sup> (The exception was the Federal Emergency Management Agency, for which status could not be confirmed.) This, however, does not mean increased government openness. As internal-facing measures, these appointments are likely to result in better management of federal data and possibly in considerable savings for the public administration. But they do not necessarily translate into more transparency or better public access to federal data.

It should also be noted, as pointed out by a civil society stakeholder, that the appointment of agency-level Chief Data Officers “was mandated by the Open Government Data Act (passed in late 2018 and signed into law in January 2019). So, the reason that we actually have Chief Data Officers now is the law got passed. ... The government had to do it, so the commitment didn’t make any difference.”<sup>57</sup>

As reported by a government official, an outward-facing component was added to the commitment during its implementation: in October 2021 the Chief Data Officers Council held a public meeting to share updates and request feedback<sup>58</sup>, and subsequently (after the end of the NAP’s official implementation period) released a podcast<sup>59</sup> and launched a LinkedIn page<sup>60</sup> to interact with the public.<sup>61</sup>

Commitment 6: Use Open Data to Fuel Innovation to Improve Public Health	
<ul style="list-style-type: none"> <li>• <b>Verifiable:</b> Yes</li> <li>• <b>Does it have an open government lens?</b> Yes</li> <li>• <b>Potential for results:</b> Minor</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completion:</b> Substantial</li> <li>• <b>Did it open government?</b> Major</li> </ul>
<p>This commitment is assessed in Section II.</p>	
Commitment 7: Implement Intelligence Community Enterprise Objective	
<ul style="list-style-type: none"> <li>• <b>Verifiable:</b> Yes</li> <li>• <b>Does it have an open government lens?</b> Yes</li> <li>• <b>Potential for results:</b> Minor</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completion:</b> Substantial</li> <li>• <b>Did it open government?</b> Marginal</li> </ul>
<p>This commitment focused on the implementation of the intelligence community’s (IC’s) Enterprise Objective on privacy, civil liberties, and transparency, included in the 2019 National Security Strategy. It appeared to respond to a long-standing civil society demand concerning the need to increase transparency and accountability in this key policy area. The commitment’s potential for results, however, was assessed as minor due to the lack of specificity of its reach and scope. This assessment was supported by civil society feedback highlighting that “the wording—providing ‘appropriate’ transparency—created a guardrail that gave them complete discretion. It just looks like bureaucratic speak to me that doesn’t entail any meaningful outcome.”<sup>62</sup></p> <p>The commitment entailed three broad sets of actions. The first was incorporating privacy and civil liberties requirements into intelligence policy and programs. The second was engaging with oversight institutions and partners to enhance public understanding and trust in the IC. The third was making information publicly available without jeopardizing national security.</p> <p>The first and possibly most important component of this commitment was implemented in a very limited way. Several strategy documents were produced that acknowledge the need to incorporate privacy and civil liberties requirements into intelligence policy and programs but did not in themselves constitute such incorporation. Privacy and civil liberties considerations were included in the Artificial Intelligence Ethics Framework for the IC, issued in June 2020.<sup>63</sup> Additionally, two periodic reports of activities by the Office of the Director of National Intelligence Office of Civil Liberties, Privacy and Transparency were released during the NAP implementation period.<sup>64</sup></p> <p>As for the second component—enhancing public understanding and trust in the IC—information was provided to the public in accessible language about certain aspects of the IC’s work. This included the development of a multimedia website about the history of espionage in the US.<sup>65</sup> Another website with an overview of whistleblowing and whistleblower protections</p>	

was developed.<sup>66</sup> And the Foreign Intelligence Surveillance Act (FISA) Resource Library was published after the end of the implementation period.<sup>67</sup> It explains how the IC uses FISA Section 702, the ways privacy and civil liberties safeguards are built into its work, and the oversight mechanisms involved. The FISA Resource Library was specifically highlighted by the government official in charge of the commitment as “an unprecedented effort.”<sup>68</sup>

A Private Sector Engagement Portal was created to provide engagement opportunities for private sector partners, including contact information for each area or program.<sup>69</sup>

The most progress was achieved in the area of access to information. This included the release (starting at the very end of the NAP implementation period) of declassified National Intelligence Council coordinated intelligence assessments on various national security issues, including the conflict in Ukraine.<sup>70</sup> Additionally, 113 new items were published on the IC Record Database at Intelligence.gov, 22 of which were explanatory statements adding value to the declassified records released with them. Previously released records were reprocessed to make them fully searchable.<sup>71</sup>

Also released for the first time were the NSA SIGINT Annex, a 2016 manual of procedures governing the conduct of Department of Defense Intelligence Activities;<sup>72</sup> a 2018 FBI guidance for responding to requests for the identities of US persons in disseminated intelligence reports;<sup>73</sup> and 2020 Section 702 certifications, including the government’s package submitted to request authorization to use Section 702 of the FISA.<sup>74</sup>

Additionally, two online hubs were created.<sup>75</sup> One houses Annual Statistical Transparency Reports (currently available from 2014 to 2020), which account for the IC’s use of the FISA and other national security authorities. The other houses the Annual Threat Assessment reports (currently available from 2006 to 2023), which provide an unclassified summary of evaluations of current threats to US national security, including cyber and technological threats and terrorism.

In sum, numerous activities that fit the parameters of the commitment were carried out. Most were related to the publication of information. Consulted civil society stakeholders, however, pointed out limitations in the usefulness of the information that was released, particularly concerning the component aimed at enhancing trust in the IC. They noted that much of the information that was declassified would have been declassified regardless. They also commented on the lack of public awareness regarding the availability of any new information. Most importantly, not much progress appears to have been made toward the commitment’s most transformative aim of incorporating privacy and civil liberties requirements to guide intelligence policy and practice.

**Commitment 8: Expand Public Participation in Future Action Plans**

<ul style="list-style-type: none"> <li>• <b>Verifiable:</b> Yes</li> <li>• <b>Does it have an open government lens?</b> Yes</li> <li>• <b>Potential for results:</b> Minor</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Completion:</b> Substantial</li> <li>• <b>Did it open government?</b> Marginal</li> </ul>
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This commitment aimed to redress the process deficits that, in the eyes of civil society, delegitimized NAP4, alienated civil society organizations, and reduced the ambition of the resulting commitments. The commitment focused on expanding public participation in the next co-creation process. In particular, it stated the need to reach more diverse groups of citizens and organizations, including geographically, and conduct a variety of consultation events, both virtually and in person, to engage with the public.

In May 2022, the government kicked off engagement with stakeholders across civil society, government agencies, and the broader public to co-create NAP5,<sup>76</sup> which was submitted to OGP and published in December.<sup>77</sup> As stated in the official call for participation,<sup>78</sup> the process would take place in five phases. Roughly two of those phases were expected to take place within the period of implementation of NAP4, ending on August 31, 2022.

The first phase was dedicated to identifying and reaching out to diverse civil society and community stakeholders, providing information about the process and its participation mechanisms and collecting ideas.<sup>79</sup> The second phase was dedicated to organizing input into themes, problem statements, and proposed solutions. The rest of the process was expected to be completed after the end of the NAP implementation period. That included drafting, reviewing, providing feedback, obtaining clearance, publishing, announcing, and disseminating the new NAP.

According to a civil society stakeholder, however, after the launch meeting in May, it all went quiet for months. The co-creation timeline was “wiped off the internet” and then rescheduled, as a result of which two online workshops were held in October. The rest of the process was completed before the end of December.<sup>80</sup>

In normal circumstances, a commitment like this—containing a promise to meet the basic requirements of OGP’s co-creation standards—would not have been part of a NAP. Its inclusion amounted to an acknowledgment that a crucial element of the open government process had failed to materialize in NAP4. It was also an attempt at preserving the possibility of righting the process in the future. Its implementation is assessed as having had positive results because it succeeded in relaunching a process that many had practically given up for dead. Those results are assessed as marginal because they were limited to complying with the OGP process rather than opening government in any substantive area of policy-making. Additionally, concerns regarding the quality of the co-creation process and the resulting NAP remain.<sup>81</sup>

<sup>43</sup> See the United States’ action plan: [https://www.opengovpartnership.org/wp-content/uploads/2019/02/United-States\\_Action-Plan\\_2019-2021.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/02/United-States_Action-Plan_2019-2021.pdf).

<sup>44</sup> Alex Howard (Digital Democracy Project), interview by IRM, December 2022.

<sup>45</sup> As pointed out by a society stakeholder, however, journalists and good government watchdogs were not effectively brought into the process. Howard, interview.

<sup>46</sup> Federal Data Strategy, *Stakeholder Engagement in Developing the Federal Data Strategy and 2020 Action Plan* (Washington, DC: The White House Office of Management and Budget, n.d.), <https://strategy.data.gov/assets/docs/2019-2020-federal-data-strategy-revisions-based-on-feedback.pdf>.

<sup>47</sup> Federal Data Strategy, *Federal Data Strategy 2020 Action Plan* (Washington, DC: The White House Office of Management and Budget, n.d.), <https://strategy.data.gov/assets/docs/2020-federal-data-strategy-action-plan.pdf>; Federal Data Strategy, *Federal Data Strategy 2021 Action Plan* (Washington, DC: The White House Office of Management and Budget, n.d.), <https://strategy.data.gov/assets/docs/2021-Federal-Data-Strategy-Action-Plan.pdf>.

<sup>48</sup> 45/04/eo13985-vision-for-equitable-data.pdf; pre-publication comment from US government, June 9, 2023.

<sup>49</sup> Howard, interview.

<sup>50</sup> SAM.gov, <https://sam.gov/content/home>.

- <sup>51</sup> As reported by the US government in a pre-publication comment to the present report, some progress was made towards the establishment of new rules to ensure accountability for grants, although not necessarily in the terms laid out by the commitment included in the NAP: “In 2021 and 2022 the Treasury Department’s Financial Crimes Enforcement Network issued two Federal Register Notices to collect the public’s input on accountability measures related to beneficial ownership of entities receiving federal funding. The 2021 notice of proposed rulemaking focuses on regulations that require certain entities to file report to identify beneficial owners and individuals who filed an application to form the entity or register it to do business. The 2022 notice of proposed rulemaking focuses on sharing that data with specified recipients to prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity.” Cf. pre-publication comment from US government, June 9, 2023.
- <sup>52</sup> Philip Ashlock (General Services Administration Director of Data and Analytics), interview by IRM, November 2022.
- <sup>53</sup> For a presentation of The Opportunity Project, see <https://www.youtube.com/watch?v=JVYSCv09i-c>.
- <sup>54</sup> “Workforce,” The Opportunity Project, <https://opportunity.census.gov/data/workforce/>.
- <sup>55</sup> Chief Financial Officers Act of 1990, Pub. L. No. 101-576, Stat. 2838 (1990), <https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg2838.pdf>.
- <sup>56</sup> “Council Members,” Federal CDO Council, <https://www.cdo.gov/council-members/>.
- <sup>57</sup> Howard, interview.
- <sup>58</sup> “CDO Council Programs and Event: CDO Council Public Meeting,” <https://www.cdo.gov/public-meeting/>
- <sup>59</sup> “Unstructured Data\_EPS 1\_Dan Morgan - Paving the Road to the CDOC,” <https://vimeo.com/741193022>
- <sup>60</sup> “Federal Chief Data Officers Council,” <https://www.linkedin.com/company/federal-chief-data-officers-council/posts/?feedView=all>
- <sup>61</sup> Pre-publication comment from US government, June 9, 2023.
- <sup>62</sup> Howard, interview.
- <sup>63</sup> “Artificial Intelligence Ethics Framework for the Intelligence Community,” <https://www.intelligence.gov/artificial-intelligence-ethics-framework-for-the-intelligence-community>.
- <sup>64</sup> Office of the Director of National Intelligence, *Office of Civil Liberties, Privacy, and Transparency Activities* (Washington, DC: Office of the Director of National Intelligence, 2021), [https://www.dni.gov/files/documents/CLPO/ODNI\\_Section\\_803\\_report\\_2019\\_-\\_mid-2021.pdf](https://www.dni.gov/files/documents/CLPO/ODNI_Section_803_report_2019_-_mid-2021.pdf); Office of the Director of National Intelligence, *Office of Civil Liberties, Privacy, and Transparency Semiannual Report: 01 July 2021–31 December* (Washington, DC: Office of the Director of National Intelligence, 2022), [https://www.dni.gov/files/documents/CLPO/ODNI\\_Section\\_803\\_report\\_July\\_2021\\_Dec\\_2021.pdf](https://www.dni.gov/files/documents/CLPO/ODNI_Section_803_report_July_2021_Dec_2021.pdf).
- <sup>65</sup> “The evolution of espionage in America,” <https://www.intel.gov/evolution-of-espionage>.
- <sup>66</sup> “Introducing IC Whistleblowing: An overview of whistleblowing and whistleblower protections,” Office of the Director of National Intelligence, <https://www.dni.gov/ICIG-Whistleblower/>.
- <sup>67</sup> “Foreign Intelligence Surveillance Act Resource Library,” <https://www.intel.gov/foreign-intelligence-surveillance-act>.
- <sup>68</sup> Michael Thomas (Office of the Director of National Intelligence Deputy Transparency Officer), correspondence with IRM, March 7, 2023.
- <sup>69</sup> Available in <https://www.odni.gov/index.php/who-we-are/organizations/policy-capabilities/deisd/ps-engagement>.
- <sup>70</sup> “Intelligence Community Assessments & Reports,” Office of the Director of National Intelligence, <https://www.dni.gov/index.php/what-we-do/ic-assessments>.
- <sup>71</sup> “IC on the Record Database,” <https://www.intel.gov/ic-on-the-record-database/advanced-search?keyword=&date=9&sdate=02%2F01%2F2019&edate=08%2F30%2F2022&topic=&catid=#results>.
- <sup>72</sup> Office of the Deputy Chief Management Officer, *DoD manual 5240.01: Procedures governing the conduct of DoD Intelligence activities* (Washington DC: Department of Defense, 2016), [https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/524001\\_dodm\\_2016.pdf](https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/524001_dodm_2016.pdf).
- <sup>73</sup> Office of the Director of National Intelligence, *Requests for Identities of U.S. Persons In Disseminated Intelligence Reports* (Washington, DC: Office of the Director of National Intelligence, 2018), <https://www.dni.gov/files/documents/ICPG/ICPG-107.1.pdf>.
- <sup>74</sup> “Release of Documents Related to the 2020 FISA Section 702 Certifications,” <https://www.intel.gov/ic-on-the-record-database/results/1057-release-of-documents-related-to-the-2020-fisa-section-702-certifications>.
- <sup>75</sup> “Annual Statistical Transparency Report,” <https://www.intelligence.gov/annual-statistical-transparency-report>; “Annual Threat Assessment of the U.S. Intelligence Community,” <https://www.intel.gov/annual-threat-assessment>.
- <sup>76</sup> White House and General Services Administration, “Public Meeting for the US Open Government National Action Plan,” May 19, 2022, <https://open.usa.gov/assets/files/2022-05-19-open-gov-public-meeting-slides.pdf>.
- <sup>77</sup> The White House, *Fifth U.S. Open Government National Action Plan* (Washington, DC: The White House, 2022), [https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States\\_Action-Plan\\_2022-2024\\_December.pdf](https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022-2024_December.pdf).
- <sup>78</sup> “Help create the 5th U.S. National Action Plan for Open Government,” <https://open.usa.gov/national-action-plan/co-creation/>.
- <sup>79</sup> “Co-Creation Outreach - U.S. National Action Plan for Open Government,” <https://open.usa.gov/national-action-plan/co-creation/outreach/>.
- <sup>80</sup> Government stakeholders confirm that four “virtual public engagement sessions” were held in late 2022, on October 27 and 28 and on November 17 and 29. Holding them virtually was considered far from ideal but the only alternative allowing for fulfilling the goal of “a more inclusive co-creation process with opportunities to have engagement sessions



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outside of the DC area.” Cf. <https://open.usa.gov/meeting/october-2022-public-engagement/>; <https://open.usa.gov/meeting/november-2022-public-engagement-opening-the-federal-regulatory-process-to-more-voices/>; pre-publication comment from US government, June 9, 2023. The government’s pre-publication comment also highlights that “the OGWG also maintained a webpage for soliciting input and setup an email inbox (opengov@ostp.eop.gov) to collect comments from civil society and posted a summary of feedback received and the reasoned response in December 2022 for civil society and the public to comment on.”

<sup>81</sup> Among other concerns, Howard pointed out that, at least for the first few months, there were no media involvement, official press releases, or amplification of open government messaging by the White House social media accounts or website. The White House open government website was not restored, and barely any information about the process, plans, and commitments could be found online. Much of this changed in September, when the lead shifted to the White House Office of Science and Technology Policy. From then on, participating officials were civil society allies, often coming from the open government community or the civic tech world, but no senior officials took part. Neither did the heads of big civil society groups, who were disappointed with OGP for “undermining their work by enabling the US government to claim that it is open without being so.” As a result, according to Howard, the NAP5 yet another “gigantic missed opportunity.” It failed to include potentially impactful commitments on today’s big issues—the Freedom of Information Act, federal spending and beneficial ownership transparency, ending secret laws, and ethics reform and campaign finance reform. “They could have put these draft commitments on the White House e-petition software and asked people to vote on them. Or use this super cool software that’s made for deliberation and consensus. ... And acknowledge that we have a huge problem with disinformation and double down on scientific and information integrity policies and make sure all officials briefing the public and disclosing data are on the record. Instead, we’re going to get a plan that is going to do exactly what [government officials] had already decided they wanted to do.” Howard, interview.