Independent Reporting Mechanism

Action Plan Review: United States 2022–2024

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Introduction

In January 2021, the Independent Reporting Mechanism (IRM) rolled out the new products that resulted from the IRM Refresh process.[1] The new approach builds on the lessons learned after more than 350 robust, independent, evidence-based assessments conducted by the IRM and inputs from the OGP community. The IRM seeks to put forth simple, timely, fit for purpose, and results-oriented products that contribute to learning and accountability in key moments of the OGP action plan cycle.

IRM products are:

- **Co-Creation Brief:** Brings in lessons from previous action plans, serves a learning purpose, and informs co-creation planning and design.
- **Action Plan Review:** A quick, independent technical review of the characteristics of the action plan and the strengths and challenges IRM identifies to inform a stronger implementation process.
- **Results Report:** An overall implementation assessment that focuses on policy-level results and how changes happen. It also checks compliance with OGP rules and informs accountability and longer-term learning. This product was rolled out in a transition phase in 2022, beginning with action plans ending implementation on 31 August 2022. Results Reports are delivered up to four months after the end of the implementation cycle.

This product consists of an IRM review of the United States 5th action plan. The action plan comprises 36 commitments organized in five broad policy areas. Commitments were not clustered for analysis because, even when sharing a theme, they appeared to have different scope or lacked sufficient detail for an assessment of whether they could really be implemented as one. This review emphasizes its analysis on the strength of the action plan to contribute to implementation and results. For the commitment-by-commitment data, see Annex 1. For details regarding the methodology and indicators used by the IRM for this Action Plan Review, see Section III.

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[1] "IRM Refresh," Open Government Partnership, https://www.opengovpartnership.org/process/accountability/about-the-irm/irm-refresh.

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Section I: Overview of the 2022–2024 Action Plan

The United States fifth national action plan is extensive; addressing a wide range of relevant public policy issues. However, it has overall limited potential to achieve significant change in government practices. Developed primarily through a top-down approach, it largely reflects government priorities rather than those of civil society. Many commitments are part of ongoing government initiatives or mandated by legislation. Going forward, the government should establish a collaborative relationship with civil society to jointly develop, implement, and track commitments in line with OGP Participation and Co-Creation Standards.

The U.S. fifth national action plan (NAP5) comprises 36 commitments organized into five areas: enhancing access to government data, research, and information (eight commitments); engaging the public (four commitments); improving government service delivery (five commitments); countering corruption and ensuring integrity and accountability (thirteen commitments); and ensuring equal access to justice (six commitments).

The plan encompasses several policy areas that were not in NAP4, which was shorter and primarily focused on open science and open data. These new areas focus on pressing issues such as environmental rights, access to justice and freedom of information (the latter considered by civil society stakeholders an area of strategic concern). The policy area of open data and open science, carried over from NAP4, is now focused on social and racial equity.

The commitments are overall vague, making it challenging to understand how their implementation will contribute to achieving their intended aims. The action plan design process did not follow a logic model that included the identification of a problem to be addressed with an open government solution, a baseline, and clear demarcation of activities, milestones, deliverables, and responsibilities for implementation. As a result, of the 36 commitments, 6 are not relevant to open government, 19 lack specific activities or sufficient detail to determine their ambition and expected results, and only 4 have substantial potential for results.[1] Those that are relevant to open government focus mostly on making information more transparent, with half seeking to improve public participation.

The development of NAP5 was led by an Open Government Working Group which included officials from the General Services Administration (GSA), the Executive Office of the President, the U.S. Department of State, and the U.S. Agency for International Development. Points of contact were designated for each of the NAP's five themes.[2] The working group obtained input and feedback

AT A GLANCE

Participating since: 2011
Action plan under review: 2022–2024
IRM product: Action plan review
Number of commitments: 36

Overview of commitments:
Commitments with an open government lens: 30 (83%)
Commitments with substantial potential for results: 4 (11%)
Promising commitments: 6

Policy areas:
Carried over from previous action plan:
- Open science and open data

Emerging in this action plan:
- Access to justice
- Anti-corruption and integrity
- Environment
- Freedom of information
- Policing and criminal justice
- Procurement
- Service delivery
- Whistleblower protection

Compliance with OGP minimum requirements for co-creation:
No

from agencies on proposed commitments and selected the commitments that made it into the plan. The GSA was responsible for soliciting civil society input and publishing the action plan.

The NAP5 co-creation process was expected to help restore relations between civil society stakeholders and the federal government after years of significant tension during the previous administration and OGP action plan cycle.[3] Several CSOs had disengaged, expressing their loss of trust in the federal government's commitment to open government principles and in the OGP process itself. The lack of engagement during the process to develop this plan exacerbated this position.[4] The Open Government Working Group did not include CSOs and had no designated multistakeholder forum.[5] According to consulted government officials, this was the result of legal restrictions that was not within their power to overcome.[6]

CSOs had limited opportunities for engagement. They primarily participated through responding to public requests for information and government-led virtual consultations referred to as "listening sessions". CSOs largely perceived these opportunities as inadequate.[7] They emphasized that they had no say in determining which commitments should be included or excluded and did not play a role in defining the objectives, scope, activities, or milestones of the commitments ultimately included in the plan. They also pointed out that they received no reasoned response to their contributions. As a result, they disagreed with the government's characterization of NAP5 as co-created with civil society. Some refused to re-engage stating they had so far seen no returns to their investment in the OGP process.[8]

The process did not address the majority of recommendations proposed by the IRM during the previous action plan cycle, which included to engage more fully and with a broader range of key stakeholders during the co-creation process, and systematically respond to all proposed commitments and feedback on draft commitments; to designate a government agency to lead the process, clarify its duties, provide the tools that it needs to perform them effectively; to use a logic model to produce specific, measurable, achievable, relevant, and time-bound (SMART) commitments; and to demarcate responsibilities for their implementation to foster accountability.

Limited civil society engagement had implications on the quality and depth of the resulting NAP. The plan places more emphasis on government priorities, many of which are often part of previously planned or ongoing initiatives—some of them even approaching completion by the projected start of implementation. Commitments lack concrete activities, milestones, and expected outputs and results, and there is no tracking mechanism enabling civil society to monitor progress and hold the government accountable.

Going forward, the IRM recommends that the government collaborates with civil society to identify commitments with the most potential and transform them into SMART commitments. Given its size and scope, NAP5 lends itself to a filtering process that can yield a reasonable number of reformulated commitments with enhanced ambition and potential to generate significant results.

To that effect, Section II presents a selection of verifiable commitments with an open government lens that have been identified as promising due to their relevance to key stakeholders and to the national context as well as their potential to produce binding, institutionalized, or lasting change.

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[1] For the full list of commitments and IRM coding, please see below Annex 1: Commitment by Commitment Data. For the full text of commitments, see: "Fifth U.S. Open Government National Action Plan," White House, 29 December 2022, https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022-2024_December.pdf, p. 8.

[2] Anonymous government official, interview by IRM researcher, 6 June 2023.

[3] The U.S. was found to be acting contrary to the OGP process for not meeting the minimum participation requirements during the co creation of their fourth action plan. See: "United States – Contrary to Process Letter (March 2021)," Open Government Partnership, 22 March 2021, https://www.opengovpartnership.org/documents/united-states-contrary-to-process-letter-march-2021.

[4] Alex Howard (Digital Democracy Project), interview by IRM researcher, July 2023; Anonymous civil society stakeholders, interview by IRM researcher, July 2023. Note: during the research process, several civil society organizations declined to respond to the IRM request for information stating their discouragement, fatigue, and lack of trust in the government and in the OGP process.

[5] Government representatives acknowledged the need to establish one. See: Philip Ashlock (General Services Administration), Presentation in virtual public meeting for the U.S. Open Government National Action Plan, 12 April 2022, https://open.usa.gov/meeting/april-2022-public-meeting.

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[6] By law, recommendations from the public can only be requested and received in compliance with the requirements of the Federal Advisory Committee Act, which emphasizes public involvement through open meetings and reporting. According to government sources, since the publication of NAP5, GSA began to explore setting up a federal advisory committee to be able to solicit recommendations directly from public stakeholders, but the committee was not formed.
[7] Articulated by several members of civil society through interview, as well as in exchanges among civil society stakeholders in the online U.S. Open Government group.
[8] Anonymous civil society stakeholder 1, email correspondent with IRM researcher, 29 July 2023; Anonymous civil society stakeholder 2, email correspondence with IRM researcher, 31 July 2023.

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Section II: Promising Commitments in the U.S. 2022–2024 Action Plan

The following review looks at six commitments that the IRM identified as having the potential to realize the most promising results. Promising commitments address a policy area that is important to stakeholders or the national context. They must be verifiable, have a relevant open government lens, and have modest or substantial potential for results. This review also provides an analysis of challenges, opportunities, and recommendations to contribute to the learning and implementation process of this action plan.

Table 1. Promising commitments

Promising Commitments
Commitment 1: Production, dissemination, and use of equitable data
Commitment 4: Public access to federally funded research
Commitment 8: Data for environmental justice
Commitment 18: Government-wide anti-corruption strategy
Commitment 27: Access to government information through FOIA
Commitment 35: Effective and accountable policing and criminal justice

Commitment 1. Production, dissemination, and use of equitable data
Implementing agency: National Science and Technology Council, Office of Science and Technology Policy.

For a complete description of the commitment, see pages 4–5 in the U.S. 2022–2024 action plan: https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022-2024_December.pdf.

Context and objectives
This commitment originated in the administration and is aimed at ensuring thorough implementation of its equitable data policy. Its point of departure is Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities through the Federal Government—the first one signed by President Joe Biden upon his inauguration on 20 January 2021. The executive order resulted in the formation of a cross-agency Equitable Data Working Group to map existing federal data collection policies, programs, and infrastructure. In April 2022, the working group issued a report with recommendations.

This commitment involves implementing those recommendations, which boil down to:[1]
1. Making collection and analysis of disaggregated data the norm while protecting privacy.
2. Building on existing federal infrastructure to leverage underused data, including through interagency data sharing.
3. Building capacity for robust equity assessment for policymaking and program implementation, including by investing in statistical, evaluation, and data science expertise.
4. Galvanizing diverse partnerships across levels of government and the research community, especially through opportunities for mutually beneficial uses of data.
5. Being accountable to the American public by providing tools that allow civil society organizations and communities to use and visualize government data and chart progress towards more equitable outcomes.

The text of the commitment, by far the most detailed in the NAP, implies that implementation had already begun by the time the commitment was written. The government rechartered the Equitable Data Working Group as a subcommittee of the National Science and Technology Council, which issued two requests for information from the public and conducted a series of "listening sessions" with city Chief Data Officers and local data practitioners. As part of the commitment, the government plans to widen these consultations, assess the responses received, and feed them into new strategies for equitable data collection and distribution.

Potential for results: Substantial
The commitment's focus on data about and for marginalized groups makes it relevant in the current national context, as well as a centerpiece in the administration's equity agenda. Its elements of public consultation and data publication make it relevant to the OGP principles of civic participation and transparency. It makes a point of listening to civic society and other stakeholders, although the working group and the subcommittee do not appear to include any formal civil society participation. It is promising in that it could produce significant change in the ways of working with data of multiple federal agencies. While lacking an explicit baseline, the Working Group Report highlights clear weaknesses of the data generated or stored by the federal government, which the commitment aims to address.

Its main immediate outputs will be a report summarizing findings on how to better collaborate with members the public, especially from underserved communities, plus a report assessing data practices related to sexual orientation and gender identity (SOGI) and LGBTQI+ people's data needs. The report will also provide guidelines and recommendations of best practices for collecting SOGI data on administrative forms and statistical surveys, the publication of recommendations to individual federal agencies received through requests for information and of data regarding whether those agencies are implementing those recommendations, and the establishment of a government-wide community of practice, including a listserv, learning assets such as "how to" guides, and webinars to share lessons learned across agencies.

Opportunities, challenges, and recommendations during implementation
While this is a flagship commitment for the government, consulted civil society representatives view it as another commitment that consists in "keep doing what they're already doing."[2] Several steps could be taken to make it more ambitious and help fulfill its potential.

First, implementation could be done jointly with that of Commitment 2, which seems very close in language, values, and proposed actions. The two commitments were not clustered by the IRM because they appear to differ in scope, are led by different implementing agencies, and crucially, there is insufficient information about the activities, milestones, and deliverables of Commitment 2. But if it were possible to bring them together, the commitment would acquire more substance in that it would not only expand the production, dissemination, and use of data on SOGI and race, but would also review the federal data standards, ideally for both.

Second, it would be advisable to integrate the civil society data community into a steady collaboration throughout the process instead of just requesting discrete user feedback.

Third, based on the fifth recommendation of the Equitable Data Working Group, it would be key to dedicate resources to designing, piloting, and promoting the use of "tools that allow for civil society organizations and communities to use and visualize government data and chart progress towards more equitable outcomes."[3]

Commitment 4: Public access to federally funded research
Implementing agency: National Science and Technology Council, Office of Science and Technology Policy.

For a complete description of the commitment, see pages 5–6 in the U.S. 2022–2024 action plan: https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022-2024_December.pdf.

Context and objectives
The point of departure for this commitment is the status quo in which the results of much of the federally funded research—that is, the scientific and technological knowledge built thanks to taxpayer support—stays out of reach of most students and academics, who can only access it if they pay for it or after unnecessary delays. These barriers further deepen existing inequalities, as they are greatest for those in under-resourced institutions such as minority-serving universities and community colleges. Some measures have already been taken to tackle them, including the publication of federal guidance for agencies to develop plans to widen public access.

On these bases, this commitment—clearly relevant to the OGP principle of transparency—seeks to ensure that both publications and the associated data resulting from federally funded research are freely and publicly available without delay once they are published. In other words, it seeks to

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end the usual embargo that allows journals or aggregators to own articles and related data for 12 months, after which they are charged to gain immediate access.

The commitment states that it will seek to achieve this objective through several mechanisms, including by permitting researchers to include publication and data sharing costs in their research budget proposals to federal grant programs, launching programs aimed at awarding more grants to early stage researchers as well as encouraging a diverse pool of award applicants, and exploring new incentive structures to recognize institutions and researchers who support public access to data and research. The first mechanism seems to be the main point of the commitment, with the second more focused on equity than data transparency, and the third relatively unclear as to what the new incentive structures would be like.

This commitment was carried over from the previous NAP, which in turn carried it over from its predecessor. NAP4's commitment on public access to federally funded research was implemented with a much higher level of ambition than it had as written, becoming what a civil society stakeholder characterized as "a bright spot in the IRM report on the 4ᵗʰ national action plan."[4] Beyond the publication of the promised recommendations report, it yielded federal guidance mandating all federal agencies to update their public access policies before a certain date.

Potential for results: Substantial
An interviewed civil society stakeholder agreed that there is much value in continuing this longstanding effort to open science, now shifting the spotlight towards users, while its predecessors tended to focus on the supply side. In particular, they pointed out the need to undo some of the damage caused by the previous administration, which "censored information, politicized information, [and] defunded relevant scientific research." In contrast, "under the Biden administration, there was a sea change from day one in terms of access to COVID data, along with explicit discussions of science, scientific integrity, etc.; so the commitment to broaden public access to federally funded research findings and data builds on previous work […] It's a real commitment that's backed by people who believe in it and are working on it and are accountable for it."[5]

Opportunities, challenges, and recommendations during implementation
To realize its potential, the commitment should be implemented boldly, in partnership with the academic community, and with a clear focus on easing access by the final users of published articles and related data.

The text of the commitment does not specify whether its implementation will include academic or civil society stakeholders. It is strongly advisable that it does.

The main solution provided to open up access to the public—allowing researchers to include publication and data sharing costs in their research budget proposals to federal grant programs—will achieve its goal by further subsidizing the rent-seeking academic publishing industry. It is key for consultation with the wider academic community to include discussion of the implications of the approach chosen and the possible existence of supplementary or alternative ways to tackle the issue at hand. An additional consideration would be to establish an open federal repository of all research outputs produced with federal funding.

Commitment 8: Data for environmental justice
Implementing agencies: Office of Management and Budget, Council on Environmental Quality, U.S. Digital Service.

For a complete description of the commitment, see pages 6–7 in the U.S. 2022–2024 action plan: https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022-2024_December.pdf.

Context and objectives
This commitment builds on more than a decade of work in introducing environmental risk screening tools. These allow law enforcement officers and scientists to carry out inspections and enforcement in areas where communities are at high risk—including pre-existing vulnerabilities as well as high exposure and hazard.

The commitment is backed by Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, signed on 27 January 2021.[6] Its main goal is to produce a performance scorecard to be implemented in agencies across the administration and be made available to the public so it can monitor the progress being made in tackling environmental issues and keep the government accountable for it. The new tool is meant to supplement the recently released Climate and Economic Justice Screening Tool,[7] aimed at helping federal agencies identify disadvantaged communities for the Justice40 Initiative, that is, as recipients of 40% of the overall benefits of investments in climate and related areas.

The commitment has a strong transparency focus, but also contains components of civic participation and accountability.

Potential for results: Substantial
The commitment seeks to build an Environmental Justice Scorecard to track advances in environmental justice across the administration. This scorecard is meant to be the first government-wide assessment of federal agencies' efforts to advance environmental justice. It is viewed as a tool that will evolve over time, building up a robust and comprehensive assessment of the government's efforts in this policy area. As explained in an August 2022 request for information, it will eventually be located on a public, web-based, user-friendly platform.[8]

This commitment is framed as a long-time effort. The first version of the scorecard will provide a baseline assessment with data collected starting in 2021 and will then be built upon over subsequent years. Initially, it will focus on three main activities: those aimed at reducing harms and burdens borne disproportionately by communities, those focused on delivering investment benefits, and those undertaking institutional reform to center community voices in decision making. It will also measure progress made towards the Justice40 Initiative, aimed at ensuring that 40% of the overall benefits of certain federal investments—those made in climate, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, the remediation and reduction of legacy pollution, and the development of critical clean water infrastructure—go to disadvantaged, marginalized, and overburdened communities.

The commitment has potential to yield substantial results even considering that major connected activities—such as a request for information to feed into its design, carried out between August and October 2022—were completed before the start of the action plan implementation period. The Phase One Scorecard had also been fully or nearly completed for 24 agencies, including data reflecting progress made in 2021 and 2022, at the beginning of the implementation period.[9]

Although it has some metrics, the Phase One Scorecard is not a scorecard yet—it reads more like a repository of information or a summary report for each agency rather than a scorecard allowing users to pull out, compare, and visualize data to track progress. There is a lot to be done to turn this into a user-friendly tool, integrate it with the existing screening tool, and promote their use by communities and civil society organizations.

Opportunities, challenges, and recommendations during implementation
For the commitment to yield substantial results, efforts should now focus on turning the Environmental Justice Scorecard platform, already populated with valuable information, into an actual scorecard with interactive features making it useful for communities and civil society, while continuing to update it with new information produced during the two-year action plan cycle. Such accessible data would be useful for stakeholders to advance legal strategies such as class action and strategic litigation cases.

To ensure the platform evolves into a data tool that is genuinely useful, target users should be included in the next stages of the process. It will be key to understand not just what data that communities and organizations are most interested in and what they are going to use it for, but also to identify the web functionalities they would need to get the most out of the available information. To make it a proper monitoring and accountability tool, it is also advisable to include interactive features allowing users to provide feedback and request responses from the agencies in question.

It is also key for the scorecard to be not just usable but also actually used. To ensure this, serious efforts should be made to disseminate the new tools and promote their use. Including civil

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society stakeholders from the get-go will facilitate this by producing more ownership among potential users.

Commitment 18: Government-wide anti-corruption strategy
Implementing agency: Not specified.

For a complete description of the commitment, see page 12 in the U.S. 2022–2024 action plan: https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022-2024_December.pdf.

Context and objectives
The commitment consists in implementing the open government components of the U.S. Government's Strategy on Countering Corruption, launched in December 2021.[10]

The strategy encompasses five pillars: modernizing, coordinating, and resourcing U.S. Government efforts to better fight corruption, curbing illicit finance, holding corrupt actors accountable, preserving, and strengthening the multilateral anti-corruption architecture, as well as improving diplomatic engagement and leveraging foreign assistance resources to advance policy goals.

While the commitment itself does not contain specific activities and milestones, the strategy does provide some concrete objectives for its open government components, contained in pillars 2, 3 and 4.

Pillar 2 includes several activities on beneficial ownership transparency, an issue that has long been on the civil society agenda. Main goals include publishing regulations and building a beneficial ownership database in compliance with the 2021 Corporate Transparency Act (CTA). The CTA requires the U.S. Department of Treasury to create a beneficial ownership registry that collects information of the true owners of certain companies and make it accessible to a variety of federal agencies.

Disclosure of beneficial ownership is also required in connection with government procurement transparency. Section 885 of the 2021 National Defense Authorization Act (NDAA) requires prospective federal contractors and grantees to disclose beneficial ownership for inclusion in the Federal Awardee Performance and Integrity Information System database. A goal in this regard is the publication of effective regulations to implement this legislation. Pillar 2 also calls for additional measures to protect U.S. real estate markets and other vulnerable sectors against illicit finance, all while working with international partners to make further improvements to U.S. anti-corruption efforts.

Pillar 3 intensifies the U.S. commitment to combat corruption through multifaceted strategies, including enhancing support for investigative journalists and civil society actors, as well as recognizing the crucial role of the private sector in anti-corruption efforts.

Under pillar 4, the strategy seeks to "expand and enhance its engagement with and support for key global partnerships and platforms that aim to enhance transparency and combat corruption," and notably OGP. In this regard, it commits the U.S.—as a founding member—to "further institutionalize OGP implementation domestically, solidify channels of collaboration with civil society, and expand existing support both directly to OGP and to international partners working to advance OGP processes."[11]

While this is a welcome expression of good intentions regarding the revitalization of the OGP process, including the establishment of a permanent forum for joint work with civil society, which has yet to materialize, the focus of this commitment is on beneficial ownership disclosure. This makes the commitment relevant to the OGP principle of transparency.

Potential for results: Substantial
This commitment is part of a sequence of corporate transparency reforms that were initiated in 2021, with their roots tracing back to NAP2 in 2013. As Thom Townsend, Executive Director of Open Ownership, explained in reaction to the approval of the NDAA, the establishment of a beneficial ownership registry "is a huge leap, and several decades in the making. When the world's largest economy finally decides to end anonymity for shell companies, it is a cause for

celebration and its impact will be felt across the world. With this new act, the U.S. will become a far less attractive destination for those wishing to hide assets."[12]

The primary legislation was passed long before NAP5 was even developed and a regulatory phase followed. It focuses on sorting out issues as operational definitions of beneficial ownership, the scope and detail of annual reporting requirements, the range of competent authorities with access to the data, domestically and internationally, and the range of acceptable exceptions.[13] In September 2022, the U.S. Department of the Treasury published a series of beneficial ownership information reporting requirements.[14] What remains to be done under the NAP is to, first, finalize regulations in order to implement these reporting requirements and, second, build the beneficial ownership database.

A consulted civil society stakeholder highlighted the importance of this commitment, acknowledging that civil society groups had advocated for it for a decade. However, he lamented the way the beneficial ownership registry is taking shape as it is unlikely to yield the expected results. Specifically, civil society advocated for an open registry that could be consulted by journalists and watchdog organizations, and not just a confidential one for exclusive use by law enforcement agencies.[15]

Opportunities, challenges, and recommendations during implementation
As pointed out by civil society, the registry that is shaping up falls short of offering citizens a tool to "follow the money". However, comparative evidence appears to show that central registries of the kind that the U.S. is currently setting up can be "an important steppingstone toward beneficial ownership transparency and will allow for easier information sharing across borders as well as broadening access to citizens."[16]

To ensure the resulting registry is as fit for purpose as it can be, the government should engage with civil society in what remains of the regulatory process, and its input—regarding definitions, thresholds, and exceptions—should be seriously considered. Steps should also be taken to ensure the registry complies with international standards adopted or recommended by longstanding multistakeholder initiatives and multilateral organizations.

Commitment 27: Access to government information through FOIA
Implementing agency: U.S. Department of Justice.

For a complete description of the commitment, see pages 15–16 in the U.S. 2022–2024 action plan: https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022–2024_December.pdf.

Context and objectives
The commitment responds to a longstanding civil society demand as stated in the Blueprint for Accountability document, which was developed by a civil society coalition and reiterated by civil society groups throughout the co-creation process.

Published in 2021, Blueprint for Accountability included two recommendations regarding the Freedom of Information Act (FOIA). The first one consisted in directing the attorney general to issue a memorandum to all agencies updating the guidance on implementing FOIA to, for example, limit discretionary redactions and withholdings. Such guidance was defined as "critical to addressing obstacles to public records requests, including hindrances that agencies impose on FOIA requesters that have contributed to an increasing volume of FOIA litigation." The second—more radical—focused on reforming FOIA; stating that "the president should publicly voice his support for amending FOIA to increase access to information by establishing a public interest balancing test, limiting exemption abuses, and mandating proactive disclosure, among other improvements." [17] In November 2022, with the co-creation process seemingly stalled, a civil society stakeholder insisted that NAP5 should at least include "a flagship commitment to modernize and improve compliance with the Freedom of Information Act" to adequately reflect civil society priorities.[18]

The first recommendation was in fact addressed in March 2022—before NAP5 was drafted—when the Attorney General issued new FOIA guidelines directing agencies to apply the FOIA with a presumption of openness and focus on proactive disclosures, remove barriers to access and reduce backlogs, and ensure fair and effective FOIA administration.

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The new guidelines are the point of departure for the commitment. By the time it was written into the plan, implementation was already underway. The principles it laid out translated into FOIA trainings for government professionals and the production of three separate FOIA training modules for the federal workforce.

The commitment states that as next steps, the U.S. Department of Justice will issue additional implementation guidance and work to keep agencies accountable through their publicly filed Chief FOIA Officer Reports, but it is not clear whether this is offered as part of the package.

As written, the commitment has three components. The first one is to update the 2017 FOIA Self-Assessment Toolkit to reflect additional milestones for proactive disclosures, use of technology, and other requirements included in the new guidelines.

The second consists in leading a Chief FOIA Officer Council Working Group to develop shared FOIA business standards through collaboration between the Office of Government Information Services at the National Archives and Records Administration, the GSA Office of Shared Services and Performance Improvement, and the Business Standards Council. These standards "will make it easier for agencies to acquire FOIA technology and, in turn, improve efficiency and consistency in processing requests across the federal government. Having established standards will also help industry create new solutions to meet agencies' needs."[19]

Finally, the third element concerns the user experience with the federal government's FOIA.gov central website. In fulfilling this commitment, an interactive tool will be developed to make it easier to locate records that are already available online or find the right agency to submit FOIA requests for information not publicly available.

The commitment has a clear open government lens, is relevant in the national context, and reflects civil society priorities.

Potential for results: Modest
As with other NAP5 commitments, some significant work related to this commitment had already been completed, as part of the administration's priorities, before the beginning of the NAP implementation period.

The commitment is also less ambitious than civil society had pushed for because it focuses on effectively implementing FOIA as is, rather than working to strengthen the legislation itself. As written, it boils down to the publication of an updated self-assessment toolkit for federal agencies—already updated and launched by March 2023,[20] the development of a set of Shared Agency FOIA Business Standards seemingly focused on the incorporation of technology for the processing of requests, and a revamp of the FOIA.gov website to make it more user friendly.

Notwithstanding, this commitment is still relevant and could bring positive results, not least because its technology focus could help solve a real problem of effective access, reflected in a huge and growing backlog[21] of FOIA requests. In mid-2022, the Department Justice's Office of Information Policy reported that federal agencies received 838,164 FOIA requests in 2021, during which the backlog increased by over 8% to a total of 153,227. Delayed requests in the department made up 33% of the backlog, followed by the Department of Homeland Security (16%) who typically receives the highest number of requests, and the Department of Defense (11%). The backlog grew again in 2022, which saw record numbers of both requests received (928,353) and processed (878,420).[22]

Opportunities, challenges, and recommendations during implementation
From a civil society perspective, the U.S. FOIA needs strengthening because it "ranks in the middle of the world's freedom of information laws. There are no sanctions, penalties, or fines for agencies and officials who violate the FOIA."[23] The commitment will not be able to do anything in this regard. There are, however, other things that it could do, particularly in terms of addressing the other major issue that the same civil society source listed as a FOIA deficit; the fact that "agency FOIA offices need more people and resources to keep up with demand. Neither NARA nor the Office of Government Information Services are funded at levels that enable them to act as a federal FOIA ombudsman for the U.S. Government as Congress intended. Legacy technology continues to be a challenge, even as the number of records being generated by agencies continues to increase."[24]

In other words, there is room to strengthen FOIA implementation to ensure greater access to public information. For the commitment to make a contribution in this regard, it should focus on two things. First, translating the new guidelines' emphasis on the presumption of openness and proactive disclosure into actionable protocols and actual practice. Second, properly equipping the responsible offices—including, but not exclusively, with the appropriate technology—to respond in a timely manner and significantly reduce the backlog.

Additionally, to ensure that input from key stakeholders is considered moving forward, measures can be taken to broaden participation. This could be done through an open innovation challenge, which would not require new legislation to be passed.

Commitment 35: Effective and accountable policing and criminal justice
Implementing agency: National Science and Technology Council, Office of Science and Technology Policy.

For a complete description of the commitment, see page 19 in the U.S. 2022–2024 action plan: https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022-2024_December.pdf.

Context and objectives
As with several others in NAP5, the point of departure of this commitment is an executive order. Issued in May 2022, Executive Order 14074 on Advancing Effective, Accountable Policing, and Criminal Justice Practices to Enhance Public Trust and Public Safety directed the Attorney General to establish the National Law Enforcement Accountability Database, a centralized repository of official records documenting instances of law enforcement officer misconduct.[25]

The text of the commitment specifies that the Department of Justice "will also encourage state, tribal, territorial, local, and other law enforcement agencies to contribute to and use the database." Additionally, it states that "in coming years, the federal government commits to assessing the feasibility of what database records may be accessible to the public, taking into account the critical need for public trust, transparency, and accountability, as well as safety, privacy, and due process concerns. This includes publishing regular public reports based on anonymized data from the database once the database is established."[26]

These two long-term goals, however, do not seem to be part of what the commitment proposes to accomplish over the next two years. What the text explicitly commits to is "meeting the data-related objectives of Executive Order 14074."[27] In practice, this translates into the establishment of an inter-agency working group on criminal justice statistics that will go on to issue a report assessing current data collection, use, and transparency practices with respect to law enforcement activities, including calls for service, searches, stops, frisks, seizures, arrests, complaints, law enforcement demographics, and civil asset forfeiture.

The commitment's main output will therefore be a report that will be submitted to the president and made available to the public, making it relevant to the OGP value of transparency. The text specifies that, to inform the report, the working group will seek input from the public, which also makes the commitment relevant to the value of civic participation.

The subject matter of the commitment is very important in the present national context, and this has been readily acknowledged by civil society groups that have been monitoring the implementation of Executive Order 14074 since it was issued.[28]

Potential for results: Modest
While the theme is important, the proposed steps to be taken are relatively modest. The commitment does not concern the contents of Executive Order 14074—which are more extensive, or the database itself, which in fact should already be in place—but the production of a diagnostics report. In that sense, it is only a preliminary step meant to kick off a process that could—or could not—produce any further results.

Opportunities, challenges, and recommendations during implementation
For the commitment to achieve substantial results, its implementation should move beyond the proposed diagnosis report and refocus on the database mandated by Executive Order 14074. Specifically, the commitment should recenter on the goals that were put aside for future

consideration, and particularly that of making database records accessible to the public to the greatest extent possible. In setting up and populating the database, determining which data need to be made public, how and what to anonymize, and how to make it available, the administration should work jointly with civil society organizations working on government transparency and seeking police accountability, who are best positioned to ensure that the information that is collected and shared is the one that the public needs.

Other commitments
This section discusses additional commitments that the IRM did not identify as promising but that could yield positive results if implemented with a certain degree of ambition.

Some commitments in NAP5 could be boosted by incorporating an additional component. For instance, a commitment focused on transparency could add an element of accountability or civic participation. Among these is Commitment 7, aimed at setting government-wide federal sustainability goals and establish agency plans, targets, and reporting. This commitment calls for actions to achieve carbon-free energy and net zero emissions. It is a continuation of an Obama-era initiative as well as a priority policy area for the Biden administration.

The commitment—and the executive order—requires annual plans with sustainability targets that the public can use to track progress. However, the approach appears to be top-down, with no element of civic society participation embedded.

As with several other commitments in NAP5, it appears that the work implied in this commitment was already underway when NAP5 began to be implemented. The sustainability.gov website includes reports for 2021 and 2022 and there are multiple graphs that show agency-specific progress towards the goals.[29] Therefore, the commitment could become more impactful if existing data is repackaged into a tracking mechanism that citizens and civil society can use for monitoring purposes—and which is actively promoted so it is actually used. In other words, the commitment could become more impactful if it moved beyond its initial transparency goal and was implemented with civic participation and public accountability components.

Other commitments to watch are those that are written into the plan in terms that are too vague for them to be verifiable. Some of these focus on important policy areas and could be salvaged if they were reformulated with clear goals, activities, and milestones.

Such is the case of Commitment 9, which seeks to improve public engagement with the regulatory process. The text of the commitment acknowledges that regulations are a critical way in which the government makes and implements policy, and that the regulatory process must provide opportunities for members of the public to offer their perspectives, including through written comments and meetings during regulatory review. However, it recognizes that federal agencies do not always hear from communities that might be affected by proposed regulatory actions, especially historically underserved communities.

The importance of the subject matter of this commitment was emphasized by consulted civil society stakeholders. They highlighted the transparency of the White House Office of Information and Regulatory Affairs—which, unlike other agencies, disclosed the input received from the public during consultations—as a "bright spot" in the process.[30]

However, the text of the commitment goes on to describe the actions already taken to improve public engagement in the regulatory process and, as a way forward, only states that the federal government commits to "supporting greater community engagement in the rulemaking process, including through its efforts to modernize the regulatory review process, through tools, guidance, and other resources."[31] The commitment is coded as unverifiable because it does not provide any clue as of the activities or milestones that would be completed in implementation.

Another unverifiable commitment is Commitment 10, which is focused on civic participation and aimed at supporting community engagement in agency equity action plans. Like many others that reflect a priority of the present administration, this commitment is backed by an executive order—in this case, one calling for agencies to develop and implement equity plans.

The commitment states that several agencies' action plans "include efforts that go beyond passive collection of public input to propose more proactive community engagement across all agency functions"[32] and provides several examples of civic engagement commitments by various

agencies—some concrete, others quite vague. But the commitment itself is quite vague; it only states that the federal government "commits to supporting agencies as they pursue additional community engagement efforts as part of implementation of their equity action plans."[33] It is not clear how the commitment will deliver on its promise of producing "new ways of engaging with the public" or even what actions can be expected and what would need to happen for the commitment to be considered to have been implemented.

Lastly, it should be noted that Commitment 13, which as worded in the plan has been rated as unverifiable, was highlighted as particularly interesting by an interviewed civil society stakeholder. The commitment seeks to continue implementing Executive Order 14058 of December 2021, aimed at "transforming federal customer experience and service delivery". According to this executive order, government agencies should "put people at the center of everything the government does." It encompasses "36 customer experience improvement commitments across 17 federal agencies, all of which aim to improve people's lives and the delivery of government services."

Although he acknowledges that the commitment lacks baselines or metrics and "it's one of those things that they were already doing," the interviewee explains that "customer experience surveys can help the government figure out what and how it can improve. When people see the word 'customer', they see this as purely transactional, but it doesn't have to be that way. [...] You're being consulted, asked what was missing, how can it be made better. You are the ultimate judge of whether you are happy [with the process and the results]. It allows for continuous improvement; so the chief public engagement officers that are going to be at every federal agency at some point will likely [...] decide there is [a] need to have the same standard exit survey and ask the same questions, [...] you know, where you [are] happy or did you feel like you were being listened to?"[34]

Regarding the implementation of this commitment, the same interviewee points out that channels of communications should be opened between civil society and the Open Government Working Group so that feedback can be provided on the survey. While not disregarding the importance of improving the communication between civil society and the working group, government stakeholders point out that for this commitment, the federal agencies charged with its implementation would be better positioned for administering said survey.[35]

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[1] See: "Fifth U.S. Open Government National Action Plan," White House, 29 December 2022, https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022-2024_December.pdf, p. 4.

[2] Alex Howard (Digital Democracy Project), interview by IRM researcher, 24 May 2023.

[3] See: "Fifth U.S. Open Government National Action Plan," White House, p. 4.

[4] Howard, interview.

[5] Howard, interview.

[6] "Executive Order on Tackling the Climate Crisis at Home and Abroad," White House, 27 January 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad.

[7] See: "Climate and Economic Justice Screening Tool," Council on Environmental Quality, https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5.

[8] "Environmental Justice Scorecard Feedback," Council on Environmental Quality, 3 August 2022, https://www.federalregister.gov/documents/2022/08/03/2022-16635/environmental-justice-scorecard-feedback.

[9] See: "Environmental Justice Scorecard," Council on Environmental Quality, https://ejscorecard.geoplatform.gov/scorecard.

[10] "United States Strategy on Countering Corruption," White House, December 2021, https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf.

[11] "United States Strategy on Countering Corruption," White House, p. 33.

[12] "USA adopts a central beneficial ownership register," Open Ownership, 14 January 2021, https://www.openownership.org/en/news/usa-adopts-a-central-beneficial-ownership-register.

[13] "USA adopts a central beneficial ownership register," Open Ownership.

[14] "Beneficial Ownership Information Reporting Requirements," Financial Crimes Enforcement Network & U.S. Department of the Treasury, 30 September 2022, https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements.

[15] Howard, interview: "The rule [the Treasury] made is fatally flawed. It allows entities to basically check a box which doesn't identify themselves. We would have asked them to commit to an open beneficial ownership registry like Canada's. [...] The U.S. could have committed to making it open by default, not something that just law enforcement gets to look at. This is something that journalists and watchdogs are going to want to look at. That would have been a flagship commitment."

[16] "USA adopts a central beneficial ownership register," Open Ownership.
[17] See: "Blueprint for Accountability," Open the Government, https://blueprintforaccountability.us/about-the-accountability-2021-project.
[18] Alex Howard, message to U.S. Open Government group, 16 November 2022.
[19] See: "Fifth U.S. Open Government National Action Plan," White House, p. 16.
[20] Available on: "FOIA self-assessment toolkit," U.S. Department of Justice, February 2023, https://www.justice.gov/oip/page/file/1574281/download. The updated toolkit, which appears to be already in use, has a module specifically dedicated to proactive disclosure, although its emphasis is on being systematic about disclosing information that is frequently requested rather than proactively publishing information that could be useful even if no one requests it.
[21] A request is considered backlogged when it has been pending at an agency longer than the statutory time to respond, which is typically 20 working days, but can be up to 30. See: "The FOIA backlog continued to grow last year," Federal News Network, 22 July 2022, https://federalnewsnetwork.com/agency-oversight/2022/07/the-foia-backlog-continued-to-grow-last-year.
[22] "FOIA backlogs on the rise after record number of requests," Federal News Network, 3 March 2023, https://federalnewsnetwork.com/agency-oversight/2023/03/foia-backlogs-on-the-rise-after-record-number-of-requests.
[23] "Getting to Know the FOIA Advisory Committee: Alex Howard," FOIA Ombudsman, 8 June 2023, https://foia.blogs.archives.gov/2023/06/08/getting-to-know-the-foia-advisory-committee-alex-howard.
[24] "Getting to Know the FOIA Advisory Committee: Alex Howard," FOIA Ombudsman.
[25] See: "Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety," White House, 25 May 2022, https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety.
[26] See: "Fifth U.S. Open Government National Action Plan," White House, p. 19.
[27] See: "Fifth U.S. Open Government National Action Plan," White House, p. 19.
[28] Alex Howard, messages to U.S. Open Government group, 30 January, 23 February, and 13 March 2023; "Civil society letter to U.S. Attorney General Merrick Garland," U.S. Civil Society Open Government Coalition, 14 March 2023, https://www.citizensforethics.org/wp-content/uploads/2023/03/Coalition-letter-Law-enforcement-database-1.pdf: According to the executive order, the database had to be established within 240 days—that is, in January 2023. When the deadline passed without the database being launched, civil society groups sent an inquiry to the Department of Justice but got no response.
[29] See: "Federal progress, plans, and performance," Council on Environmental Quality, https://www.sustainability.gov/progress.html.
[30] Alex Howard, message to U.S. Open Government group, 25 April 2023: White House OIRA publishes comments on broadening public participation in the regulatory process; The comments that the agency received online were published with permission of the people and organizations who submitted them, see: "Public submitted material posting versions," White House, https://www.whitehouse.gov/wp-content/uploads/2023/04/Public-Submitted-Material-Posting-Versions.zip.
[31] See: "Fifth U.S. Open Government National Action Plan," White House, p. 8.
[32] See: "Fifth U.S. Open Government National Action Plan," White House, p. 9.
[33] See: "Fifth U.S. Open Government National Action Plan," White House, p. 9.
[34] Stephen Buckley (International Association for Public Participation), interview by IRM researcher, 3 August 2023.
[35] Comment from the government during pre-publication review, 3 November 2023.

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Section III. Methodology and IRM Indicators

The purpose of this review is not an evaluation. It is intended as a quick, independent, technical review of the characteristics of the action plan and the strengths and challenges the IRM identifies to inform a stronger implementation process. The IRM highlights commitments that have the highest potential for results, a high priority for country stakeholders, a priority in the national open government context, or a combination of these factors.

The IRM follows a filtering and clustering process to identify promising reforms or commitments:

> **Step 1:** Determine what is reviewable based on the <u>verifiability</u> of the commitment as written in the action plan.
>
> **Step 2:** Determine if the commitment has an <u>open government lens</u>. Is it relevant to OGP values?
>
> **Step 3:** Review commitments that are verifiable and have an open government lens to identify if certain commitments need to be clustered. Commitments that have a common policy objective or contribute to the same reform or policy issue should be clustered. The potential for results of clustered commitments should be reviewed as a whole. IRM staff follow these steps to cluster commitments:
> a. Determine overarching themes. If the action plan is not already grouped by themes, IRM staff may use OGP's thematic tagging as reference.
> b. Review commitment objectives to identify commitments that address the same policy issue or contribute to the same broader policy or government reform.
> c. Organize commitments into clusters as needed. Commitments may already be organized in the action plan under specific policy or government reforms.
>
> **Step 4:** Assess the <u>potential for results</u> of the clustered or standalone commitment.

Filtering is an internal process. Data for individual commitments is available in Annex 1. In addition, during the internal review process of this product, the IRM verifies the accuracy of findings and collects further input through peer review, OGP Support Unit feedback as needed, interviews and validation with country stakeholders, an external expert review, and oversight by IRM's International Experts Panel (IEP).

As described earlier, IRM relies on **three key indicators** for this review:

I. Verifiability

- **Yes, specific enough to review:** As written in the action plan, the stated objectives and proposed actions are sufficiently clear and include objectively verifiable activities to assess implementation.
- **No, not specific enough to review:** As written in the action plan, the stated objectives and proposed actions lack clarity and do not include explicitly verifiable activities to assess implementation.

Commitments that are not verifiable will be considered not reviewable, and further assessment will not be carried out.

II. Open government lens
This indicator determines if the commitment relates to the open government values of transparency, civic participation, or public accountability as defined by the Open Government Declaration and the OGP Articles of Governance by responding to the following guiding questions. Based on a close reading of the commitment text, the IRM first determines whether the commitment has an open government lens:
- **Yes/No:** Does the commitment set out to make a policy area, institution, or decision-making process more transparent, participatory, or accountable to the public?

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The IRM uses the OGP values as defined in the Articles of Governance. In addition, the following questions for each OGP value may be used as a reference to identify the specific open government lens in commitment analysis:

- **Transparency:** Will the government disclose more information, improve the legal or institutional frameworks to guarantee the right to information, improve the quality of the information disclosed to the public, or improve the transparency of government decision-making processes or institutions?
- **Civic Participation:** Will the government create or improve opportunities, processes, or mechanisms for the public to inform or influence decisions? Will the government create, enable, or improve participatory mechanisms for minorities or underrepresented groups? Will the government enable a legal environment to guarantee freedoms of assembly, association, and peaceful protest?
- **Public Accountability:** Will the government create or improve opportunities to hold officials answerable for their actions? Will the government enable legal, policy, or institutional frameworks to foster accountability of public officials?

III. Potential for results

The IRM adjusted this indicator—formerly known as the "potential impact" indicator—to take into account the feedback from the IRM Refresh consultation process with the OGP community. With the new results-oriented strategic focus of IRM products, the IRM modified this indicator to lay out the expected results and potential that would be verified in the IRM Results Report after implementation. Given the purpose of this Action Plan Review, the assessment of potential for results is only an early indication of the possibility the commitment has to yield meaningful results based on its articulation in the action plan in contrast with the state of play in the respective policy area.

The scale of the indicator is defined as:

- **Unclear:** The commitment is aimed at continuing ongoing practices in line with existing legislation, requirements, or policies without indication of the added value or enhanced open government approach in contrast with existing practice.
- **Modest:** A positive but standalone initiative or change to processes, practices, or policies. The commitment does not generate binding or institutionalized changes across government or institutions that govern a policy area. Examples are tools (e.g., websites) or data release, training, or pilot projects.
- **Substantial:** A possible game changer for practices, policies, or institutions that govern a policy area, public sector, or the relationship between citizens and state. The commitment generates binding and institutionalized changes across government.

This review was prepared by the IRM in collaboration with Inés M. Pousadela and was externally expert reviewed by Ernesto Velasco Sánchez. The IRM methodology, quality of IRM products, and review process are overseen by IRM's IEP. For more information, see the IRM Overview section of the OGP website.[1]

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[1] "IRM Overview," Open Government Partnership, https://www.opengovpartnership.org/irm-guidance-overview.

Annex 1. Commitment by Commitment Data[1]

Commitment 1: Production, dissemination, and use of equitable data
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Substantial

Commitment 2: Standards for collecting data and reporting on race and ethnicity
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 3: Transparency in federal procurement
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 4: Public access to federally funded research
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Substantial

Commitment 5: Researcher access to confidential federal data
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 6: Online access to the National Archives
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 7: Federal sustainability goals
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 8: Data for environmental justice
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Substantial

Commitment 9: Public engagement on agency regulatory actions
- Verifiable: No
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 10: Community engagement in agency Equity Action Plans
- Verifiable: No
- Does it have an open government lens? Yes
- Potential for results: Unclear

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Commitment 11: Public participation in science
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 12: Public engagement in federal procurement policymaking
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 13: Rebuilding trust in government
- Verifiable: No
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 14: Accountability of high impact service providers
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 15: Reduction of administrative burdens
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 16: Agency Equity Action Plans
- Verifiable: No
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 17: Public engagement with policy and program implementation
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 18: Government-wide anti-corruption strategy
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Substantial

Commitment 19: Responsible business conduct
- Verifiable: No
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 20: Scientific integrity and evidence-based policymaking
- Verifiable: No
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 21: Independence of federal statistical agencies

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 22: Federal payment integrity
- Verifiable: Yes
- Does it have an open government lens? No
- Potential for results: Unclear

Commitment 23: Accountable federal funding management
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 24: Independence of Federal Inspectors General
- Verifiable: No
- Does it have an open government lens? No
- Potential for results: Unclear

Commitment 25: Collaboration with Inspectors General and oversight community
- Verifiable: Yes
- Does it have an open government lens? No
- Potential for results: Unclear

Commitment 26: Whistleblower protections
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 27: Access to government information through FOIA
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 28: Transparency and accountability of federal officials
- Verifiable: No
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 29: Agency procurement forecasts
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 30: Presidential initiative for democratic renewal
- Verifiable: No
- Does it have an open government lens? No
- Potential for results: Unclear

Commitment 31: Community violence intervention
- Verifiable: No

● Does it have an open government lens? Yes ● Potential for results: Modest
Commitment 32: Sentencing and confinement conditions
● Verifiable: No ● Does it have an open government lens? No ● Potential for results: Unclear
Commitment 33: Support for justice-impacted individuals
● Verifiable: No ● Does it have an open government lens? No ● Potential for results: Unclear
Commitment 34: Marijuana-related federal offense
● Verifiable: Yes ● Does it have an open government lens? Yes ● Potential for results: Modest
Commitment 35: Effective and accountable policing and criminal justice
● Verifiable: Yes ● Does it have an open government lens? Yes ● Potential for results: Modest
Commitment 36: Access to justice
● Verifiable: Yes ● Does it have an open government lens? Yes ● Potential for results: Unclear

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[1] **Editorial notes:**
  1. The commitments in NAP5 are not numbered so the IRM has assigned them the number that corresponds to the order in which they appear in the NAP.
  2. Titles have been edited for brevity. For the complete text of commitments, please see: "Fifth U.S. Open Government National Action Plan," White House, https://www.opengovpartnership.org/wp-content/uploads/2023/01/United-States_Action-Plan_2022-2024_December.pdf.

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Annex 2: Action Plan Co-Creation

OGP member countries are encouraged to aim for the full ambition of the updated OGP Participation and Co-Creation Standards that came into force on 1 January 2022.[1] IRM assesses all countries that submitted action plans from 2022 onward under the updated standards. OGP instituted a 24-month grace period to ensure a fair and transparent transition to the updated standards. During this time, IRM will assess countries' alignment with the standards and compliance with their minimum requirements.[2] However, countries will only be found to be acting contrary to the OGP process if they do not meet the minimum requirements, starting with action plans submitted to begin in 2024 and onward. Table 2 outlines the extent to which the countries' participation and co-creation practices meet the minimum requirements that apply during development of the action plan.

Table 2. Compliance with minimum requirements

Minimum requirement	Met during co-creation?	Met during implementation?
1.1 Space for dialogue: There were some virtual opportunities for engagement in co-creation, with publicly available invitation to participate. However, there were no clear, published rules on participation.	No	*To be assessed in the Results Report*
2.1 OGP website: The publicly accessible open.usa.gov website contained current and past action plans, a link to subscribe to open government mailing lists, as well as some updates about the country's OGP process.	Yes	*To be assessed in the Results Report*
2.2 Repository: The open.usa.gov website contained documents related to a recent virtual co-creation meeting and a link to the co-creation timeline. It highlighted one "star" commitment of the previous national action plan.	Yes	*To be assessed in the Results Report*
3.1 Advanced notice: The co-creation timeline and overview of opportunities for stakeholders to participate were published on the open.usa.gov website at least two weeks before the start of the co-creation process. However, the timetable was not adhered to, and civil society was not appropriately informed of the changes.	Yes	Not applicable
3.2 Outreach: Introductory meetings were held to provide information about OGP and share a schedule and next steps in the co-creation process, although civil society complained that the events were not well attended due to insufficient publication.[3]	Yes	Not applicable
3.3 Feedback mechanism: Inputs were gathered through public requests for information, online forms, and government-led virtual consultations publicized as "listening sessions".	Yes	Not applicable
4.1 Reasoned response: A report titled "Making government more inclusive and responsive: What we heard—and what we're exploring" and later an accompanying report were published prior to action plan submission, giving a general explanation of how public feedback collected during the co-creation process guided the drafting of the action plan.[4] [5] The reports summarize contributions from the public collected through various means, including public Requests for Information, web forms, and public engagement sessions. While the IRM was able to verify the documentation of these contributions, civil society expressed dissatisfaction with the lack of disclosure regarding the inputs and the absence of granularity in explaining how the inputs were considered.	Yes	Not applicable
5.1 Open implementation: The IRM will assess whether meetings were held with civil society stakeholders to present implementation results and enable civil society to provide comments in the Results Report.	Not applicable	*To be assessed in the Results Report*

During the development of NAP5, the U.S. did not comply with all minimum requirements by failing to establish a space for dialogue. While there were some virtual opportunities for civil society engagement during the process, there was no publicly available information about its basic rules on participation (e.g. a description of the space's mandate, composition, or structure of the process). Civil society repeatedly advocated for the establishment of a permanent space such as the quarterly #OpenGov during the first action plans, emphasizing a desire for increased openness and accessibility. But the space was never reinstated. Additionally, although it met the remaining minimum requirements stipulated by the OGP Co-Creation and Participation Standards, it did so only minimally, falling short of achieving the ambition of the standards.[6]

Minimum requirement 3.1 pertains to whether information about the action plan development process was made available to key stakeholders at least two weeks before it started. While the U.S. initially met this minimum by making the timeline public in advance, subsequent delays in the process left civil society uniformed for prolonged periods.[7]

Compliance with minimum requirement 3.3 could have facilitated authentic co-creation, as feedback was collected through online forms and virtual listening sessions. Despite being viewed as an inadequate substitute for collaborative workshops,[8] civil society recognized that these sessions allowed for broader participation, especially from those outside the Washington D.C. area. However, concerns were raised about the lack of agenda, adherence to Chatham House rules, absence of livestreaming on YouTube, and inability to access recordings online.[9]

One significant obstacle in the development of the plan was the lack of substantive follow-up. Civil society stakeholders expressed dissatisfaction with the absence of readouts and the lack of disclosure of the inputs received. In December 2022, prior to the submission of the action plan, the government posted a summary of what they heard from the public, meeting minimum 4.1. Nevertheless, the government did not publish the actual contributions collected[10]. This led civil society stakeholders to question the accuracy of the summary and the alignment of proposed commitments with their priorities.[11] The government subsequently published another document that it called a "reasoned response,"[12] but did not disclose the input it had received and did not offer explanation of how any specific proposal had or had not been included in the NAP.[13] Civil society stakeholders who had submitted detailed comments did not find them reflected in the government's feedback.

Crucially, the government did not publish or circulate the draft commitments for public comment before publishing the final version of the NAP that it submitted to OGP. Consequently, civil society did not have the opportunity to contribute to commitments' refinement to ensure they tackled certain issues or included deliverables and timelines so that the government could be held accountable for their implementation.[14] The NAP was subsequently announced by the White House on 28 December 2022.[15]

As a result, consulted civil society stakeholders did not perceive NAP5 as a product of co-creation. They characterized the process as inherently opaque and its result as a plan guided by the priorities of the administration, reflecting ongoing programs and statutory requirements rather than civil society's contributions. Most of the concerns raised by civil society were either omitted from the NAP or rendered ineffectual.[16] This, from their perspective, helps explain why the NAP contains some commitments that lack an open government perspective and specificity of activities, and have a low level of ambition.[17]

Some members of civil society have opted to disengage permanently from the OGP process stating their concerns over the lack of meaningful engagement and disappointment stemming from their belief that the United States has not rectified or faced consequences despite acting contrary to the established process within the OGP framework. Nevertheless, civil society members have indicated their willingness to contribute to open government initiatives provided that the government displays a genuine commitment to authentic co-creation and a willingness to share leadership responsibilities with civil society.

Moving forward, the IRM recommends for the U.S. to create a multistakeholder forum that ensures meaningful dialogue and co-leadership of the OGP process. To improve the implementation of the action plan, the IRM recommends each commitment to have a clearly designated lead to help ensure accountability. It is recommended that civil society monitoring be facilitated through the establishment of an online dashboard containing real-time evidence of

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milestone completion, capable of receiving feedback and providing responses. Furthermore, for the next co-creation process, it is advisable for the U.S. to assess and address the challenges that have hindered engagement and ambition thus far. This approach could help regain trust and resume the path of open government.

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[1] "OGP Participation and Co-Creation Standards," Open Government Partnership, https://www.opengovpartnership.org/ogp-participation-co-creation-standards.

[2] "IRM Guidelines for the Assessment of Minimum Requirements," Open Government Partnership, 31 May 2022, https://www.opengovpartnership.org/documents/irm-guidelines-for-the-assessment-of-minimum-requirements.

[3] Alex Howard, interview by IRM researcher, 24 May 2023.

[4] "Making government more inclusive and responsive: What we heard—and what we're exploring," U.S. Open Government Working Group, https://open.usa.gov/national-action-plan/co-creation/making-government-more-inclusive-and-responsive.

[5] "Fifth U.S. Open Government National Action Plan Reasoned Response," U.S. Open Government Working Group, https://open.usa.gov/national-action-plan/reasonsed-response/

[6] "OGP Participation and Co-Creation Standards," Open Government Partnership.

[7] A launch meeting was held in November 2021, in which a timeline was provided, but after that society groups didn't hear anything else until April 2022, by which time the government hadn't done. Howard, interview: "any of the things that we asked. No multi-stakeholder network, no publicity with the press, no restoration of the _open at the White House website. They gave a timeline and said they were gonna [sic] put up some forms for people to input stuff and then over the course of the summer, we were going to iteratively co-create commitments—so we meet up in May. […] They say we're gonna [sic] engage with us over the summer and guess what happens next? Nothing. They put up forms on open.usa.gov and then we heard nothing. There was no activity on the listserv. I wrote to them repeatedly asking what's going on, why aren't you guys disclosing the inputs you're getting? Where's the follow up? By August I'm getting frustrated. By September I'm starting to write pretty angry messages to them. […] I cried foul and all of a sudden OGP gets moved from the GSA into the White House's Office of Science and Technology Policy, and we get new meetings in October, November 2022, initially two, then they add a couple more."

[8] Alex Howard, message to U.S. Open Government group, 17 November 2022.

[9] Howard, interview.

[10] "Making government more inclusive and responsive: What we heard—and what we're exploring," U.S. Open Government Working Group identified four broad areas of work:
1. Engaging the Public in the Regulatory Process.
2. Broadening Access to Data to Improve Government Accountability.
3. Making Government Records More Accessible to the Public.
4. Transforming Government Service Delivery.

[10] Alex Howard, message to U.S. Open Government group, 6 December 2022.

[11] Alex Howard, message to U.S. Open Government group, 6 December 2022.

[12] "Fifth U.S. Open Government National Action Plan Reasoned Response," U.S. Open Government, https://open.usa.gov/national-action-plan/reasonsed-response.

[13] See: "The White House's 'reasoned response' omitted key civil society priorities," Governing Digital, 18 January 2023, https://governing.digital/2023/01/18/the-white-houses-reasoned-response-dismissed-civil-society-priorities-and-undermined-the-open-government-partnership. In lieu of a reasoned response, the open government website included a list of very general "considerations for selecting commitments, which included: solving a problem, demand, feasibility, alignment, and openness. See: "Help create the 5th U.S. National Action Plan for Open Government," USAGov, https://web.archive.org/web/20220522082655/https://open.usa.gov/national-action-plan/co-creation.

[14] Alex Howard, message to U.S. Open Government group, 16 November 2022.

[15] See: "White House releases fifth Open Government National Action Plan to advance a more inclusive, responsive, and accountable Government," White House, 28 December 2022, https://www.whitehouse.gov/ostp/news-updates/2022/12/28/white-house-releases-fifth-open-government-national-action-plan-to-advance-a-more-inclusive-responsive-and-accountable-government/#:~:text=The%20plan%20includes%20commitments%20to,of%20government%20services%20and%20benefits.

[16] These included modernizing and improving compliance with FOIA, establishing a public beneficial ownership registry, reforming campaign finance, ending secret laws, ensuring federal spending transparency, putting up a police misconduct database, and modernizing the classification system and investing in a declassification engine, among others. Some of these were laid out in a letter sent to the president in June 2022 on occasion of the Summit for Democracy, which also stated that civil society would "no longer engage in conversations with U.S. government officials that are in 'listening mode' only". It was endorsed by the following organizations: Americans for Prosperity, Center for Media and Democracy, Citizens for Responsibility and Ethics in Washington, Demand Progress Education Fund, Digital Democracy Project, Government Accountability Project, Government Information Watch, National Freedom of Information Coalition, National Security Archive, New England First Amendment Coalition, Open the Government, and Project on Government Oversight. These priorities were distilled from a document, Blueprint for Accountability, developed by a civil society open government coalition. See: "Transparency commitments for the Summit for Democracy that relate to the rule of law," U.S. Civil Society Open Government Coalition, 17 June 2022, https://s3.amazonaws.com/demandprogress/letters/Letter_on_White_House_Transparency_Commitments_for_the_Summit_for_Democracy_That_Relate_To_the_Rule_of_Law_2022-06-17.pdf; "Blueprint for Accountability," Open the Government, https://blueprintforaccountability.us/about-the-accountability-2021-project.

[17] Howard, interview.

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