



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

**Union of Concerned Scientists**  
**Comments on the Open Government Directive**  
June 18, 2009

On his first full day in office, President Barack Obama issued a memorandum to the heads of the executive departments and agencies calling for an “unprecedented level of openness in Government.” In that memo, President Obama emphasized three crucial open government principles—transparency, participation and collaboration—and directed the Chief Technology Officer to coordinate recommendations for an Open Government Directive. This directive would instruct the “executive departments and agencies to take specific actions implementing the principles set forth in this memorandum.”<sup>1</sup>

The Union of Concerned Scientists (UCS) wholeheartedly supports this broad institutional emphasis on transparency and considers it to be a necessary condition for restoring scientific integrity to government decision making. Opening up federal science and policymaking to scrutiny from Congress and the public is an important, and cost-effective, means of exposing and preventing political interference in science.

Thus far the administration has taken several notable steps toward a more open government. For example, Attorney General Eric Holder issued a memo calling for a presumption of openness when responding to Freedom of Information Act (FOIA) requests. In a memo to EPA staff on her first day on the job, Administrator Lisa Jackson clearly stated her commitment to transparency by pledging to govern that agency as if “in a fishbowl.”

On May 21, the White House launched an ambitious, online process to solicit public transparency recommendations and collaboratively draft open government policies.<sup>2</sup> This is a bold attempt to put words into action, but the success of this initiative will be measured by its implementation and real-world impact on both the policies and the practices of government agencies.

In partnership with OMBWatch and a diverse group of organizations working for the public interest, UCS helped draft and endorsed the 2008 report, *Moving Toward a 21<sup>st</sup> Century Right-To-Know Agenda*.<sup>3</sup> The report’s recommendations were introduced during the initial “Brainstorming” section of the Open Government Initiative. Those recommendations represent a thoughtful, bipartisan and comprehensive look at the ways in which the workings of government could be opened up to public scrutiny; we hope that they will figure prominently in the final recommendations to the President.

In addition, several complementary proposals are discussed in the 2008 UCS report *Federal Science and the Public Good*,<sup>4</sup> which lays out steps the Obama administration and Congress should take to restore scientific integrity to federal policymaking. Several of these recommendations were also introduced during the “Brainstorming” section of the Initiative, and we will continue to engage with the online process to ensure that they receive sufficient consideration during the “Drafting” phase.

Drawing on these two reports, we identify eight areas where increased transparency and government openness are needed:

1. Media and Communications Policies
2. Publication and Clearance Policies

3. Enhanced Use of Information Technology
4. Meetings with Outside Entities
5. Freedom of Information Act Reforms
6. Classification Reforms
7. Transparency in rule-making
8. Transparency in Scientific Advisory Committees

## **1. Media and Communications Policies**

In the online discussion, Robynn Sturm, Assistant Deputy CTO for Open Government, asks: “How do we provide citizens with meaningful insights about how their government works rather than deluging everyone in overwhelming detail?”<sup>5</sup>

Federal government scientists represent a tremendous resource for the public to understand our world and the information on which policy decisions are made. The best way for government to provide meaningful insights is to encourage free and open communication between scientists and experts working in the federal agencies and the public. To encourage this scientific openness, OSTP should work with the agencies to reform their media and communications policies. Indeed, the America COMPETES Act, enacted in August 2007, requires the OSTP to consult with all federal agencies that conduct scientific research, and to develop principles and guidelines for agencies for disseminating scientific information.

Such “open” communications policies are already in place at some federal agencies. Following widely reported incidents of scientific censorship, the National Aeronautics and Space Administration (NASA) and the National Oceanic and Atmospheric Administration (NOAA) instituted improved media policies that allow scientists to speak more freely. While the new policies are not perfect, they are a step in the right direction, and show that scientific openness is an achievable goal. Unfortunately, there is considerable room for improvement across the government. Our report card grading 15 federal agency media policies found wide variations in scientific openness in both the policies themselves and their implementation.<sup>6</sup>

While the guidelines released by OSTP in May 2008 are a step in the right direction, the OSTP should take this opportunity to improve upon them to conform to the principles of scientific openness outlined below. These guidelines should incorporate the following principles:

- **Scientists and researchers may freely express their personal views.** All federal employees, have a right to express their personal views outside of a few narrow restrictions (such as releasing classified or proprietary information), provided that he or she makes an explicit disclaimer that he or she is speaking as a private citizen and is not seeking to represent official agency policy. He or she should be allowed to speak freely about his or her research and to offer his or her scientific analysis—even in situations where the research may be controversial or have implications for government policy. Agency policies governing communication with the media should make this option clear and explicit to employees.
- **A scientist or researcher has the right to review, amend, and comment publicly on the final version of any document or publication that significantly relies on his or her research, identifies him or her as an author or contributor, or purports to represent his or her scientific opinion.** While editing by non-scientists is often necessary and useful, final

review by scientific experts is essential to ensuring that accuracy has been maintained in the clearance process.

- **Agency employees have clearly defined responsibilities in working with the media.** Employees are responsible for the accuracy and integrity of their communications and should not represent the agency on issues of politics or policy without prior approval from the agency’s public affairs officer (PAO). Employees are also responsible for working with the PAO to make significant research developments accessible and comprehensible to the public.
- **PAOs have clearly defined roles, such as responding promptly to media inquiries and providing journalists and agency staff with accurate information, but not acting as “gatekeepers” of information.** Scientists and researchers should not be required to obtain pre-approval from the PAO before responding to a media request about their research. However, it is appropriate to require scientists and researchers to give the PAO prior notice of such interactions when possible, and to recap the interview afterward..
- **Public affairs staff should have a plan for disseminating the media policy to agency scientists and researchers and should conduct trainings in effective media communication that emphasize scientific openness.** The official agency media policy should be publicly available on the agency website.

## 2. Publication and Clearance Policies

A related set of issues involves agency policies on the review and release of both official and non-official scientific reports. OSTP should review these agency policies to best promote scientific openness, and timely and appropriate review processes.

Information sharing is an essential component of the scientific process. While the broad direction of federal research is dictated by agency missions and funding priorities, federal scientists and researchers should be free to conduct that research and publish findings without fear of retaliation. The presidential science adviser should develop minimum guidelines to ensure the free flow of scientific information and the president should encourage agency heads to adopt policies (or modify existing policies) consistent with these guidelines. The guidelines should address the following topics:

- **Agencies should affirm that scientific peer review is the appropriate standard for ensuring the quality of agency scientific information, and agencies should require that only qualified and non-conflicted scientists are involved in peer review of scientific publications.** Agencies are responsible to the public for providing accurate information and may adopt stricter peer review standards than those found in the private sector—including requirements that both official and non-official materials (e.g., papers submitted to scientific journals by agency employees) be peer reviewed. However, agencies should also have the flexibility to adopt peer review processes that best fit their needs. OSTP should consult with the Office of Management and Budget (OMB) to prevent the adoption of over-prescriptive “one-size-fits-all” policies on peer review.
- **For non-official materials, authors should have the option of bypassing any policy review and publishing the work with a disclaimer that it does not represent agency policy.** A timely and transparent policy review is appropriate and recommended for official agency

documents and reports.

- **Agencies should set reasonable time limits for review and clearance of scientific publications and presentations.** The supervisor or other reviewing official shall provide to the author written clearance on the condition of specified changes being made, not later than 30 days after submission. If this deadline is not met, the author may proceed to submit the article for publication or presentation with an appropriate disclaimer stating that the article does not represent agency views or policies.
- **Draft versions of official agency documents or scientific reports should periodically be made available to the public.** A draft version should be released if a document has been completed by agency technical staff yet held up in the policy or interagency review process for longer than six months.
- **Scientific work done on an employee's personal time should not be required to be submitted to an internal review process, even if the employee identifies his or her employer, provided that the work includes an appropriate disclaimer.**

**The science adviser should also review existing legal barriers to the public release of scientific information held by the government, and work with Congress to close loopholes that keep valuable information out of the public record.** In particular, the administration should:

- Rein in the use of information control markings.
- Shift the burden of proving that scientific information falls under the “confidential business information” exemption from the federal government onto those requesting the exemption.
- Work with Congress to require the disclosure of privately funded research that is used in crafting regulation.

### **3. Enhanced Use of Information Technology**

The administration should radically improve its use of technology to share information with the public, with the goal of making all government information searchable, shareable, and usable. To achieve this goal, there are a large number of excellent technical recommendations that have been introduced in the online discussion regarding the use of technology to enhance transparency, increase civic participation, improve records management and expand the scope of [data.gov](http://data.gov).

In response to Chief Information Officer Vivek Kundra's call for “feedback on how to improve and grow [Data.gov](http://Data.gov) over time”<sup>7</sup> we highlight a few of the broader goals and principles that should be taken into consideration:

- Redesign [science.gov](http://science.gov) to be a comprehensive source for the government's scientific reports and other scientific products not covered by [data.gov](http://data.gov). Currently, [science.gov](http://science.gov) serves as a curated list of bookmarks to other agency websites, sorted by broad topic categories. This is undoubtedly a useful service, but the site should be re-envisioned as “one-stop shopping” for government scientific information. The site could help citizens identify agency subject-matter experts, scientific activities and research programs by topic and geographic area, so that they do not need to know in advance which agency has the information they seek.
- In continuing to expand [data.gov](http://data.gov), there should be a particular emphasis on making scientific monitoring data easily available to the public and to policy makers. Examples of such

monitoring programs include air pollution monitoring networks, satellite observations of Earth systems, and the collection of workplace injury statistics.

We also endorse the following general principles for government information:

- Government websites should be searchable by major public search engines and government data should be distributed in open formats.
- The government should encourage syndication of all releasable government data through [data.gov](http://data.gov).
- The government should review of government standards for the use of metadata (information about the content of a document, such as keywords or tags, that are not part of the document text) and issue recommendations for improving the use of metadata to improve the usability of the data.
- Older materials should be digitized and made available online in an accessible format.
- The use of open-source software by federal agencies should be encouraged.
- The government should move toward universal electronic reporting of scientific and other information, so the data can be quickly made available to the public.
- The government should work with the national network of libraries, including government libraries, to educate the public about resources to access government information.

#### **4. Meetings with Outside Entities**

All federal agencies should institute a transparency policy for meetings with outside entities. This policy should require that the agency post on its website a complete record of all meetings with outside entities including for-profit and not-for-profit organizations, other agencies, and individuals (with the exception of meetings related to national security). The database should include the names and affiliations of meeting attendees as well as the date, time, location, and subject of the meeting.

In her post on “Open Government Operations,” Robynn Sturm asks two questions about balancing the benefits of transparency against both operational costs and the need for candid discussions among policy makers.<sup>8</sup> A transparency policy for outside meetings need not be burdensome to agency staff, as the external participants could enter the required information directly into a database before the start of any meeting. Such a policy would also strike a beneficial balance between the public’s right to know and the need for deliberative conversations; indeed, OIRA has adopted a similar policy over the past several years and EPA Administrator Lisa Jackson posts her daily schedule on the EPA website.

#### **5. Freedom of Information Act Reforms**

Attorney General Eric Holder instructed the various department and agency heads that their default position with regards to Freedom of Information Act (FOIA) requests should be one of disclosure rather than secrecy. While this is a marked improvement over past policy, there are still several needed reforms to ensure FOIA remains an effective force for transparency:

- The government should implement a centralized digital system for FOIA requests that interacts with the individual agency FOIA offices. Such a system could make the FOIA process more efficient by reducing duplication of requests and by providing comprehensive public access to FOIA information, including:

- online links to the text of FOIA requests and electronic versions of responsive documents that FOIA requesters have permitted to be made available to the public (responsive documents would be posted six months after the request is filled)
  - a list (known as a Vaughn index) of all requested documents being withheld under FOIA
- The administration should identify specific areas where supplemental funding would help agencies reduce their backlog of FOIA requests.

## **6. Classification Reforms**

The administration should reform the classification process at federal agencies by establishing clear guidelines and a transparent appeal process. Certain government information may merit classification for national security and other reasons, but classification of information not essential to national security can prevent flawed analyses from being reviewed and corrected. The process by which information is labeled “classified” should be subject to independent oversight.

- The president should issue a memo directing agencies to reduce the use of information control markings, such as “Controlled Unclassified Information.” The memo should emphasize that such markings should be used sparingly when directed by statute or presidential policy, and that such markings should not be used to undermine the FOIA process.
- Agencies should establish safeguards to protect against overclassification. These should include independent oversight and declassification advisory boards, regular auditing of classification decisions, and a transparent appeals process.

## **7. Transparency in Rulemaking**

In the online discussion, John Moses, the e-Rulemaking Program Director, asks “3. Understanding the Substance of Proposed Action – In addition to what is presented in Regulations.gov (Federal Register documents; supporting scientific, technical, legal and economic analyses; and public comments), would multimedia presentations aid public understanding of a proposed action? Would a simple, plain-language abstract describing rulemakings and other actions assist public understanding? What else would aid public understanding of the substance of a proposed rulemaking or other action?”<sup>9</sup>

To address the problem of political interference in the scientific content of rule-making, we propose that an explicit scientific rationale for any regulatory decision informed by science must be included in the public docket. This document would be a plain-language description of what pieces of scientific evidence were influential in the decision, and/or an explanation of why relevant science was not considered in adopting a particular policy. In short, OSTP should work with OMB to provide more information to the public on how science is used in regulatory decision making.

- **The rule-making docket should contain:**
  - A stated scientific rationale for any decision informed by science.
  - All scientific studies in an agency’s possession related to a proposed regulation, regardless of whether the study was directly cited or whether it directly informed the ultimate proposal.

- Completed and peer-reviewed drafts of agency documents prepared by scientific or technical staff before they are subjected to White House or interagency review. In recent years, inappropriate editing of scientific assessments at agencies such as the EPA during interagency review has damaged the scientific integrity of agency decisions. Release of agency drafts prior to review would allow the public to assess any interagency edits or comments and would likely prevent the most egregious abuses.
- A minority report voicing any significant dissenting scientific evidence or opinions and an explanation of how the agency resolved such differences of opinion.
- All official interagency communications regarding rules under review, including those from the White House.
- Identification by name and position of each official and employee who participated in the decision.

(Similar transparency requirements have already been incorporated into the FDA Amendments Act of 2007, and should be adapted for other federal agencies.)

- **The OMB should overhaul [regulations.gov](http://www.regulations.gov) to make it a truly consumer-oriented and user-friendly portal for information about proposed, pending and final regulations.** This website is a first step toward bringing rulemaking into the information age; improving the website's search and browsing functionality will help it live up to its full potential.
- **The OMB should encourage the use of interactive technology to engage the public in the regulatory process.** Individual agencies should be allowed to innovate better methods for communicating information to the public and receiving feedback on proposed regulations.
- **The OMB should also develop a regulatory tracking system that provides information on regulatory proposals earlier in the rule-making process.** The OMB currently only produces twice-yearly reports on the president's regulatory agenda and the status of any rules in preparation. A regularly updated tracking system would provide the public with more accurate and timely information about pending regulations and any associated paperwork requirements.

## 8. Transparency in Scientific Advisory Committees

The process for selecting advisory committee members should be made more transparent through the following reforms:

- Agencies should publicly announce their intent to form a new scientific advisory committee, or to select a new member for an existing committee.
- Agencies should publish criteria for selecting committee members and should solicit nominations for committee membership.
- Agencies should call for public comment on the charge to the committee.
- After the selection process is complete, agencies should make basic information on committee members easily available to the public. This information should describe each member's qualifications and background, and disclose past employers and funding sources.
- Agencies should specify which advisory committees are expressly scientific and which are designed to gather stakeholder input.
- Agencies should clarify their criteria for appointing advisory committee members as "special government employees" (SGEs) or "representatives," and ensure that the proper level of

scrutiny of conflicts of interest occurs (SGEs are subject to greater scrutiny than representatives, who are assumed to be stakeholders with special interests.)

Sincerely,

Francesca T. Grifo, Ph.D.  
Director and Senior Scientist  
Scientific Integrity Program  
Union of Concerned Scientists

Timothy Q. Donaghy, Ph.D.<sup>10</sup>  
Analyst  
Scientific Integrity Program  
Union of Concerned Scientists

Michael Halpern  
Program Manager  
Scientific Integrity Program  
Union of Concerned Scientists

Celia Wexler  
Washington Representative  
Scientific Integrity Program  
Union of Concerned Scientists

---

<sup>1</sup> Obama, B. 2009. Memorandum for the Heads of Executive Departments and Agencies, Subject: Transparency and Open Government. January 21. Online at [http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment/](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/).

<sup>2</sup> Open Government Initiative. Online at <http://www.whitehouse.gov/open/>.

<sup>3</sup> Right To Know Community. 2008. *Moving toward a 21<sup>st</sup> Century Right-To-Know Agenda*. Washington, DC. Online at <http://www.ombwatch.org/21strtkreccs.pdf>.

<sup>4</sup> Union of Concerned Scientists. 2008. *Federal Science and the Public Good*. Washington, DC. Online at <http://www.ucsusa.org/federalscience>.

<sup>5</sup> Sturm, R. 2009. Transparency: Open Government Operations. U.S. Office of Science and Technology Policy: Washington, DC. Online at <http://blog.ostp.gov/2009/06/08/transparency-open-government-operations/>

<sup>6</sup> Union of Concerned Scientists. 2008b. *Freedom to Speak? A Report Card on Federal Agency Media Policies*. Washington, DC. Online at [www.ucsusa.org/mediapolicies](http://www.ucsusa.org/mediapolicies)

<sup>7</sup> Kundra, V. 2009. Data Transparency via Data.gov. U.S. Office of Science and Technology Policy: Washington, DC. Online at <http://blog.ostp.gov/2009/06/08/data-transparency-via-datagov/>

<sup>8</sup> Sturm 2009.

<sup>9</sup> Moses, J. 2009. Improving Online Public Participation in Agency Rulemaking. U.S. Office of Science and Technology Policy: Washington, DC. Online at <http://blog.ostp.gov/2009/06/12/improving-online-public-participation-in-agency-rulemaking/>

<sup>10</sup> For further information contact [tdonaghy@ucsusa.org](mailto:tdonaghy@ucsusa.org) or visit [www.ucsusa.org/rsi](http://www.ucsusa.org/rsi).