



November 7, 2024

Alexis Masterson
Open Government Secretariat
Office of Government-Wide Policy
General Services Administration
opengovernmentsecretariat@gsa.gov

Via electronic submission: www.regulations.gov

Subject: Docket ID: GSA-GSA-2024-0016

Dear Alexis Masterson:

The Project On Government Oversight (POGO) is a nonpartisan, independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

In 2022, POGO became the successor of the Open the Government (OTG) coalition, further strengthening its leadership in this space. And in 2024, POGO Policy Associate Janice Luong was sworn onto the Open Government Federal Advisory Committee. This marks a new chapter in our work and continues POGO's longstanding commitment to sharing its broad expertise in good governance with policymakers. We believe the federal government can make significant improvements to demonstrate its commitment to openness, accountability, and transparency.

POGO submits the attached recommendations to inform the Sixth National Action Plan. They are also summarized below.

- **Issue a strong ethics executive order.**

The president must begin their administration with a strong public commitment to ethics that incorporates best practices from previous administrations' ethics orders and memoranda. This order should include a strong ethics pledge to follow ethical principles in all aspects of government decision-making.

- **Strengthen implementation of the Freedom of Information Act.**

The Freedom of Information Act (FOIA) continues to be an integral tool for the public to access public and private government records and documents. The administration must address issues that prevent FOIA from working as intended, such as scarce agency resources, backlogs, and inconsistent disclosure through FOIA's "Rule of Three" — a

rule that requires agencies to proactively make public any information that's been requested and released three or more times — as established by the 2016 FOIA Improvement Act.¹

- **Improve federal spending transparency.**

USAspending.gov bills itself as “the official open data source of federal spending information,” yet it is riddled with data gaps and inaccuracies.² The Department of the Treasury, the Office of Management and Budget, and the General Services Administration must work together to improve USAspending.gov’s data quality and usability to help the public understand how taxpayer dollars are being spent. In addition, the Defense Department and the Office of Management and Budget must implement laws requiring the disclosure of the beneficial owners of federal contractors.

- **Strengthen the National Archives and Records Administration.**

The National Archives and Records Administration is an invaluable repository of government records. However, investment in the agency is not commensurate with its significance, and it has perpetually been underfunded and understaffed. By increasing resources, the administration and agency itself can better preserve important government records to guarantee individual rights and entitlements, and to hold the government accountable.

- **Direct the Department of Justice’s Office of Legal Counsel to release all legal opinions to the public.**

The Department of Justice’s Office of Legal Counsel issues binding interpretations of law advising executive branch agencies and the president on the legality of proposed actions. Yet its legal opinions are inconsistently released to the public despite specific directives from Congress. Without this critical transparency, Congress cannot perform robust oversight, and the public cannot assess the impact of the office’s decisions.

- **Reaffirm that criminal laws apply to federal officials and the president.**

The president should endorse a constitutional amendment that would specify that presidents don’t have criminal immunity from acts undertaken while in office. Presidents and the Office of Legal Counsel should abandon any claims that federal laws only apply to presidents if the law explicitly states the president is bound by it.

- **Expand whistleblower protections.**

¹ “S.337 - FOIA Improvement Act of 2016,” Congress.gov, legislation passed on March 2016, <https://www.congress.gov/bill/114th-congress/senate-bill/337>.

² Sean Moulton, “Blueprint to Fix Reporting of Federal Spending,” August 2, 2021, <https://www.pogo.org/analysis/blueprint-to-fix-reporting-of-federal-spending>; “Federal Spending Transparency: Opportunities to Improve USAspending.gov Data,” U.S. Government Accountability Office, November 2023, <https://www.gao.gov/products/gao-24-106214>; USAspending.gov, <https://www.usaspending.gov/>.

Whistleblowers are uniquely positioned to expose illegal activity and abuse of power. But federal employees need stronger and more enforceable whistleblower protections to ensure that they can safely expose wrongdoing without the risk of becoming a target themselves. The president should issue an updated presidential policy directive concerning intelligence and national security whistleblowers. The administration should also provide training to political appointees on their subordinates' whistleblowing rights to better understand the ramifications of retaliating against employees for lawful activity. Additionally, agencies should be liable for holding whistleblower retaliators to account.

- **Improve the federal rulemaking process by prioritizing health, safety, justice, democracy, and equity.**

Currently, analyses for effective rulemaking prioritize the economy rather than other values important to the public, such as health or democracy. The president should direct the Office of Management and Budget to inform agencies to incorporate social needs such as health, safety, the environment, and well-being when analyzing and promulgating rules. The administration should also support Congress adopting legislation that clarifies judges should not impose cost-benefit standards where not required to by statute.

POGO commends the U.S. government for offering the public the opportunity to submit input for the Sixth U.S. Open Government National Action Plan. We hope to see unequivocal commitment and tangible progress in this space. If you have any questions about these recommendations, please contact Janice Luong at janice.luong@pogo.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Janice Luong', with a stylized flourish at the end.

Janice Luong
Policy Associate