

A More Social Open Government

Expert Labs Recommendations, August 2011

In August 2011, Federal CTO Aneesh Chopra and OIRA Administrator Cass Sunstein jointly released an inquiry about the future of open government— specifically, they asked for insight on three things:

1. How can regulations.gov, one of the primary mechanisms for government transparency and public participation, be made more useful to the public rulemaking process?
2. OMB is beginning the process of reviewing and potentially updating its Federal Web Policy. What policy updates should be included in this revision to make Federal websites more user-friendly and pertinent to the needs of the public?
3. How can we build on the success of Data.Gov and encourage the use of democratized data to build new consumer-oriented products and services?

4.

We have specific, detailed responses to each of these questions, based on our experiences in encouraging public engagement, but first, it's worth talking about how far we've come. Just two and a half years ago, *the White House didn't even have a blog*. The White House asking the public for input via a blog may have been an idea in some people's minds, but this administration has brought that concept to fruition. Just 26 months into this administration, we too often take for granted that this administration has consistently been willing to play ball with the public, even though that movement forward has often caused them as much grief as celebration. It's this kind of movement that underpins our democracy.

If government does not take input from its citizens seriously, we do not have a democracy at all.

In that spirit, we present thoughts about the inquiries itself, and how things can be made better. We're eager to share these ideas with the administration, but also with the public and our open government community, in the hopes of inspiring even more ideas and innovation around these challenges.

1. On Regulations.gov

Before answering the question about regulations.gov we have to translate it a bit. What the government is asking here is, “How can we use a website, in this case, regulations.gov to get more public input from citizens about the rules and regulations that get made by government agencies like the USDA or the EPA?”

I wonder if it’s intentional that Chopra and Sunstein crafted such a fantastic inquiry here in order to contrast it with how citizens are usually asked for input. With this question, our government is making an inquiry that most people can read and understand (though yes, it does still requires some minor translation). And that question has clear instructions on how to respond, along with a promise to produce a document after the process is over with a summary of everyone’s input. That’s great, clear, and smart.

An Experiment: How well do public comments usually work?

We decided to contrast this new method of asking for feedback with the way that public comment proceedings are typically run. Here at Expert Labs, we used UserTesting.com to get three “Advanced Web Users” (their classification) to try and post a public comment to a prominent and important policy question: the FCC call for comment on the AT&T and T-Mobile merger. These three users attempted to respond to the FCC’s call, and recorded a video of their attempts so that we could see the results. Here’s what we asked them to do:

1. Go to FCC.gov
2. Find the public commenting system
3. Find where to comment on the AT&T and T-Mobile Merger
4. Find other people’s comments on the AT&T and T-Mobile Merger

You can see the results of that user-testing for yourself:

- [Test 1](http://accounts.usertesting.com/ViewVideo.aspx?file=d0NhLQExF%2fA%3d): http://accounts.usertesting.com/ViewVideo.aspx?file=d0NhLQExF%2fA%3d
- [Test 2](http://accounts.usertesting.com/ViewVideo.aspx?file=L0Q6tZObqPo%3d): http://accounts.usertesting.com/ViewVideo.aspx?file=L0Q6tZObqPo%3d
- [Test 3](http://accounts.usertesting.com/ViewVideo.aspx?file=yJg%2fh0OrR5w%3d): http://accounts.usertesting.com/ViewVideo.aspx?file=yJg%2fh0OrR5w%3d

We selected the FCC because they've produced the newest website of any large regulatory agency, and because they've made significant investments in new media. Those investments have paid off -- much of this process is painless. Painless is not perfect. From all three videos, we can see some clear lessons about filing a public comment:

- The process of discovering where to file a comment is not particularly difficult
The user is significantly frustrated with the requirements for filing a comment
- Two out of the three users expressed confusion, and all were frustrated about having to submit a postal address as a requirement
- All three found it confusing and difficult to find other people's comments

While this is a limited sample group of just three people, and certainly not representative of the entire nation, it's worth noting that this is the experience of people that UserTesting has classified as advanced users. In these tests, we're able to see that, at least at the FCC, the methods for collecting comments on something as critical as a merger that affects tens of millions of American wireless consumers is not as great as it could be. There are several things that a new regulations.gov can do to improve the situation:

Improve the language

The language inviting people to comment on the future of regulations.gov is clear, and to the point. The question is obvious, and it's clear where to send comments and how to expect those comments to be treated. Contrast these two solicitations:

Blog Solicitation	Regulation Solicitation
<p>Today, we are asking for your thoughts on ideas related to two of the key challenges – improving public services and increasing public integrity: How can regulations.gov, one of the primary</p>	<p>In order to better inform the Agency, the Agency seeks comment on the following questions, although any additional comments that can inform the guidelines are welcome. A. Is a fee reduction or</p>

mechanisms for government transparency and public participation, be made more useful to the public rulemaking process? OMB is beginning the process of reviewing and potentially updating its Federal Web Policy. What policy updates should be included in this revision to make Federal websites more user-friendly and pertinent to the needs of the public? How can we build on the success of Data.Gov and encourage the use of democratized data to build new consumer-oriented products and services? Please think about these questions and send your thoughts to opengov@ostp.gov. We will post a summary of your submissions online in the future. Your ideas will be carefully considered as we produce our National Plan and continue to engage with you over the next month in future posts on this blog.

other consideration for small business appropriate? Please explain Section 743(b)(2)(B)(iii) of the FD&C Act states that the proposed set of guidelines may include consideration of reduced fee amounts for small business, but consideration of reduced fee amounts is not required. 1. What is the impact, if any, of fee amounts on small business, in general, or to specific types of small businesses, that FDA should consider in the proposed set of guidelines? Please explain. 2. Should the Agency consider the type of fee collected when considering the burdens to small business? For example, do the types of activities for which a fee is collected for reinspection have a different impact to a small business than those collected based on a failure to comply with a recall order? Please explain. 3. Assuming there is an impact of fee amounts to small business, or certain types of small businesses, should the Agency consider a reduction in the fees for such small businesses in the proposed set of guidelines? If so, should the Agency consider the reduction in fees to all small businesses, or for only those small businesses that have a demonstrated need for reduced fees? Please explain. If the Agency should not consider a reduction in the fees for small business, why not? Please explain. 4. Are there ways to alleviate any burden on small

business other than a fee reduction?
Please explain. B. How should small business be defined or recognized for the purpose of the proposed guidelines? Several provisions in FSMA require FDA to define small and very small business. For example, section 103(a) of FSMA amends the FD&C Act by adding section 418 (21 U.S.C. 350g) regarding "Hazard Analysis and Risk-Based Preventive Controls." Section 418(n)(1)(B) of the FD&C Act requires FDA to define "small business" and "very small business" for the purpose of the preventive control regulations for facilities. Similarly, FSMA section 105(a) amends the FD&C Act by adding section 419 (21 U.S.C. 350h) regarding standards for produce safety. Section 419(a)(3)(F) of the FD&C Act requires FDA to define "small business" and "very small business" for the purpose of the produce safety regulations. In addition, the Agency has issued a number of final rules where the Agency considered business size when considering the regulatory impact of the rule to industry, including the following final rules: "Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products" (60 FR 65096, December 18, 1995) (Docket No. FDA-1993-N-0065 (formerly Docket No. 1993N-0195)); "Hazard Analysis and Critical Control Point (HAACP); Procedures for the Safe and Sanitary

Processing and Importing of Juice'' (66 FR 6138, January 19, 2001) (Docket No. FDA-1997-N-0505 (formerly Docket No. 1997N-0511)); ``Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements'' (72 FR 34752, June 25, 2007) (Docket No. FDA-1996-N-0028 (formerly Docket No. 1996N-0417 or 97N-0417)); ``Food Labeling, Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution'' (65 FR 76092, December 5, 2000) (Docket No. FDA-1998-N-0087 (formerly Docket No. 1998N-1230); Docket No. FDA-1996-P-0025 (formerly Docket No. 96P-0418); and Docket No. FDA-1997-P-0017 (formerly Docket No. 1997P- 0197)); ``Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation'' (74 FR 33030, July 9, 2009) (Docket No. FDA-2000-N-0190 (formerly Docket No. 2000N-0504)). FDA seeks comment on how a small business should be defined or recognized for purposes of the proposed set of guidelines in consideration of the burden of fee amounts on small business. More specifically, the Agency requests comment on the following questions. 1. If FDA has defined, by regulation under other FSMA or non-FSMA authorities, an entity as a small or a very small business, should such a definition be considered in

the proposed set of guidelines to identify the businesses that may be burdened by the fee amounts under section 743 of the FD&C Act or should the Agency consider a separate definition of small business for purposes of considering the burden of fee amounts? Please explain. 2. If the Agency relies on an existing regulatory definition of small or very small business that the Agency established under other FSMA or non-FSMA authorities, should any such definition apply in any circumstance where a fee is imposed or only where the fee derives from the rule where such business is defined as a small business? For example, if a facility is reinspected for a violation of the preventive controls regulations, should the Agency consider adjustments to the fee only if the facility meets the definition of small business under the preventive controls regulations, or should the Agency consider such adjustments if the facility meets any definition of small business under any FDA regulation? Please explain. 3. There may be circumstances where no regulatory definition of small business exists for a given facility. Under these circumstances, what factors or characteristics should FDA use to identify small businesses for which FDA may consider the burden of fee amounts? Please explain. Factors to consider could include, but are not limited to, the segment of the food supply chain to

which the entity belongs (e.g., growers, processors, importers and distributors, retailers, etc.); the sector to which the entity belongs (e.g., seafood, produce, dairy, eggs, juice, dietary supplements, etc.); the number of employees; the gross revenue, net income, net assets, market liquidity, or other financial measures or ratios; and whether the entity has a subsidiary or is a subsidiary of a parent company. [[Page 45820]] C. If FDA considers reduced fee amounts in the proposed set of guidelines, what factors should FDA consider in establishing the amount by which fees could be reduced?

1. Should FDA consider the following: A waiver of all of the fees; A percentage reduction of the fees; or A fixed dollar reduction of the fees?
2. Are there circumstances that justify one approach over another? Please explain.
3. Are there other approaches that should be considered? Please explain.

III. Comments Interested persons may submit to the Division of Dockets Management (see ADDRESSES) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m.

and 4 p.m., Monday through Friday.

160 words

1143 words

In both cases, we've stripped introductory language and context setting language out of the document and focused on the actual request and the instructions for submitting that request. We've ended up with 1094 words in the request on regulations.gov vs 158 words in the request for input about regulations.gov. We think that the sample federal regulation comment solicitation is too long and too burdensome for anyone to make a decent comment on the regulation.

But more than its length, it's also about the language. While the average American may read at 250 words per minute, the level of language and required cross-checking to other regulations makes it difficult to understand what the solicitation is about. The language of government is a difficult one to understand as many plain language activists will tell you, but in the realm of public solicitations, plain, human appealing language is required.

Also a difficult requirement is viewing comments from others. In the case of the FDA regulation above, the only way indicated to see comments is by visiting the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. We think that seeing comments from other entities is an important part of the rulemaking and public comment process, and these comments should be placed online.

Furthermore, a citizen-centric approach to the problem is required. We'd suggest, humbly, that ordinary citizens do not want to interact with regulations, they want to give input. We think that naming the primary method by which citizens provide their input "regulations.gov" will limit the audience and people's capacity for sharing online. Input.gov would be a much better, more citizen focused name.

Work with Social Media

Improving public input today can't be done without thinking of the existence and impact of social media. Much online sharing now happens through these social networks -- Facebook represents millions of posts and "likes" and shares per day, and Twitter represents millions of "tweets" per day, generated by ordinary people who may want to comment.

People see institutions such as government agencies as monoliths, and as those agencies have chosen to interact with the public online in these venues, no normal citizen is aware of the distinction between the new media directors -- expert communicators who run these social media accounts -- and the regulatory agents who are soliciting comments. As a result, people already comment about issues to the agencies via these social media outlets, in a completely reasonable assumption that they're speaking to one unified organization.

There shouldn't be a penalty or disregard for people who choose to participate with an agency via social media, especially when the agency is asking for that participation in the first place.

If an agency, for instance, has a Facebook page and interacts with the public using Facebook, then the agency should obviously also be equipped to take public comments on regulations through that same Facebook page. And the same goes for every other social media outlet that an agency uses for soliciting information from the public. Government should not presume that the public knows that the formal channel of the regulation solicitation is the only way to provide official feedback, especially when the public may not be aware of those obscure channels.

There are ways to do this using regulations.gov (or input.gov) as a hub to consolidate this information. Because the public social networks are largely open and indexable, very simple tools can be used to pull in feedback about regulations and display them alongside all the public comments submitted through conventional methods. In using social media, we'd recommend something that looks like the illustrative figure here, in which the public has the ability to see public comments provided via social media and via a web form appear alongside each other:

Comment on the AT&T and T-Mobile Merger

On March 20th, T-Mobile accepted a bid from AT&T to merge the two wireless subscribers. As the agency in charge of regulating wireless companies in the United States, the FCC is seeking comments about this merger, including whether or not the FCC should allow it. Please let us know your thoughts about the merger below. Before your comment, please take a look at these resources:

- Item One
- Item Two
- Item Three


Your Name:


Address


City State Zip


Your Comment

Comments from Social Media

 @jimwalsh on Twitter:
I think AT&T is great! #d1165

 Eli Kaplan on Facebook:
T-Mobile is awesome. Don't let them merge

 @jimwalsh on Twitter:
I think AT&T is great! #d1165

 Eli Kaplan on Facebook:
T-Mobile is awesome. Don't let them merge

If agencies are going to communicate with citizens using social media, then social media must become a first-class citizen in the e-rulemaking and regulatory process.

From what we understand today, this recommendation may cause some conflicts with the Administrative Procedures Act (APA). The concerns revolve primarily around physical identity -- the ability to verify that the person is a bona-fide person, the ability to verify that they are eligible to make comments, and the ability to request more information from the person should the agency need clarification.

While we understand the concern because the technology is new, if you look at the actual systems in place, social media provides all of these capabilities, and they're baked into the platform and come for free. Presently on regulations.gov, one is asked

for their first, middle, and last name-- their country and state, the organization that they are representing, the representative of the submitter, and to categorize themselves.

Social media provides a superior way to pull all of these things, and to perhaps provide even more context to a comment. If a comment is submitted through Facebook, it's easy to tell what that person's name is. You're able to get a picture of that person, and you're likely able to get their occupational and educational information as well. With appropriate systems (many of which exist and are low cost) regulators could, instead of looking upon piles of comments submitted haphazardly and automatically through web forms, say "show me what all the people who work at T-Mobile have to say about the proposed merger" or "show me all of the people who have received advanced degrees in telecommunications."

Build for Search

The primary method of navigation on the web is not the search bar, but search engines like Bing and Google. People expect to find regulations and rules to comment on in the same way.

Presently, regulations.gov does not rank in the top ten search results for its "hottest" regulation solicitation: "Burden of Food and Drug Administration Food Safety Modernization Act Fee Amounts on Small Business." This regulation is not only not findable because of the language used in the title ("Does charging a small tax on food to modernize food safety create too much of a burden on small businesses?" would be more appropriate), but also because of the technical systems in place on regulations.gov. In fact, Google does not return the request for input even if you search specifically for "fee food modernize small business" only within regulations.gov (using the site:regulations.gov parameter). We believe that if it is truly the government's wishes that regulations be commented on by the public, then those solicitations for comment ought to be discoverable through search engines like Google and Bing using plain English queries.

2. Federal Web Policy

"OMB is beginning the process of reviewing and potentially updating its Federal Web Policy. What policy updates should be included in this revision to make Federal websites more user-friendly and pertinent to the needs of the public?"

In addition to the recommendations above, which may involve some changes to the Federal Web Policy (as well as some new interpretations of the Administrative Procedures Act), we believe a change to Federal Web Policy is necessary. Presently, Federal Web Policy dictates that public agency websites must be searchable, and that the principal public website and major entry points must include a search function or, in the case of smaller websites, a sitemap or search indices.

We believe that Federal Web Policy should also dictate that public information on government websites ought to be indexable by search engines such as Bing and Google. As with regulations, if a document on a federal website cannot be discovered through search in these search engines, then it might as well not exist. People's primary method of discovery and navigation online is through search, and it is critical that Federal Web Policy dictate that agencies must have search in mind. This largely revolves around the robots.txt file, which can prohibit search engines from indexing or archiving certain portions of a site.

Up until the Obama administration, large portions of even WhiteHouse.gov were prohibited from search indexing by these robots.txt files, and it's our hope that the administration continue its leadership by requiring all public data on all Federal agency websites to be indexable by search engines.

3. Data.gov

How can we build on the success of Data.Gov and encourage the use of democratized data to build new consumer-oriented products and services? While Data.gov is a tremendous resource, to date it's hard to for the public to calculate a return on investment. Not only is the total cost of Data.gov an unknown to the public, but it's hard to see which companies, if any, have been set up because Data.gov exists.

The administration sometimes claims BrightScope to be building a solution on top of Data.gov and to have created jobs because of Data.gov, but the data being on the site was a reaction to them going through burdensome processes to get those datasets from the relevant agencies in the first place. Also, one must not only factor in the revenue data.gov may create through the release of public data, but also the cost-savings that occur via having a public repository of data. This makes data.gov a likely success, but it's not for certain. More stories of economic success are needed before we can claim that Data.gov is a sure win.

Bring FOIA to the Table

In order to build upon the success of Data.gov, we believe that FOIA processes and Data.gov should be linked. To our knowledge, FOIA officers are not working hand in hand with the same agents inside of federal agencies. In the Open Government Directive Memo, President Obama required agencies to publish three "high-value" datasets defining high-value as datasets that improve the accountability, transparency of an agency, or create economic impact.

We believe that high-value datasets can likely be identified by the FOIA process as well. The fact that a document is requested through the FOIA process should be used as a strong indicator that it is of high value, and this can also help reduce the costs of repeat FOIA requests. Should a FOIA request be made more than three times by three different entities, it's likely that the agency should just release that data as disaggregated, post it online, and keep it maintained. Relying on the current FOIA process and FOIA reading rooms creates additional bureaucratic cost, reduces citizen satisfaction, and harms discoverability.

Educate and Engage Developers

The primary audience for Data.gov should be developers. While it may be the case that other people may be capable of using new technology (like the recently deployed

Socrata technology) to glean insights from the data, no other professional class of people can do more with data on data.gov than developers. Efforts to reach out to non-developers, while noble, may not reap the same kinds of rewards as reaching out to Developers.

While at the Sunlight Foundation, I ran the first contest on top of Data.gov data: Apps for America. Launching in conjunction with Data.gov, we drove significant adoption and the end result was over 40 apps in two months being developed on top of the platform. The real result though was not the apps, though -- it was the community. Over 1,000 developers joined the Sunlight Labs email list that were interested in these datasets.

To date, nobody from Data.gov's team has publicly commented on that list and engaged with those developers. We believe this is an unfortunate oversight by the data.gov team. The data.gov team should rebuild that community of developers, and create a publicly subscribable mailing list (through Google Groups or another similar tool) to maintain an engagement with the community.

Data.gov must narrow the gap between the developers eager to work on the data, and the experts who know about the data. Moreover, developers ought to be linked to one another based upon their common interest in a dataset. If developers can form communities around these datasets, then adoption will grow, and improve the quality of the data being released. Github.com made waves in the open source world by acknowledging that every source code repository could be a community. We suggest that Data.gov build a developer engagement plan that helps create communities around every dataset on data.gov, linking in the people responsible for those datasets inside of government.

Besides having the ability to post comments back on data.gov, every data.gov dataset should have an associated mailing list that requires the individual responsible for maintaining that data to subscribe to that list. The present topical "community" strategy around data.gov engagement may make sense, but my concern is that with the limited staff to support it, it may spread resources too thin to reap the rewards of verticalization. In addition, every dataset important enough to be released on data.gov probably has a case for its own community.

Summary

In conclusion, the administration's strides for using technology to open government, improving service delivery efficiency, and creating economic opportunity has been remarkable so far, and we commend them. A year ago, many contrasted the efforts of the Open Government Directive to government's actions in the past, but as we get farther from its launch, it's time to start comparing it to what could be. We believe the future of open government is citizen focused -- to be open to engagement on the terms that citizens are used to in the venues they're accustomed to.

The growth of social media since the delivery of the initial open government directive, and its adoption by agencies' communications departments requires the next step: for social media to also be used in giving citizens a voice in regulatory decisions. We believe the future of open government is about discoverability. Moving data or regulations from print publications to the online world results in a net loss if there are less people viewing them. Government should work hard to make sure that all publicly available information is discoverable by search engines, and via social media.

We believe that the future of open government is through the engagement of open source communities, and that agencies should begin to open up to their participation. Government treats lawyers as experts in the field of law, why not treat developers as experts in the field of processing data? Take the next step and participate with them directly, rather than through independent vessels.

We appreciate the opportunity to present our suggestions, recommendations and commendations in response to this request for feedback about Open Government. Expert Labs is deeply committed to enabling better public feedback and engagement through social media, and we hope to assist the current administration in implementing many of the improvements suggested here and across the web by others.