



Testimony

of Ellen Miller

Co-founder and Executive Director
The Sunlight Foundation

before the
Committee on Oversight and Government Reform
United States House of Representatives

*on Achieving Transparency and Accountability
in Federal Spending*

June 14, 2011

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Chairman Issa, Ranking Member Cummings, and members of the Committee, thank you for the invitation to testify today.

My name is Ellen Miller and I am the co-founder and executive director of the Sunlight Foundation, a non-partisan non-profit dedicated to using the power of the Internet to catalyze greater government openness and transparency. We take inspiration from Justice Brandeis' famous adage "Sunlight is said to be the best of disinfectants."

The Sunlight Foundation focuses primarily on creating transparency and accountability for the federal government through the development of databases, tools, and policies that illuminate the influence behind official decisions. Just as importantly, we have worked to make it easier to understand the outcomes of those decisions, so that citizens can track the government's work.

We have long been interested in improving federal spending transparency. Sunlight provided initial funding to OMB Watch to build a database of federal grants and contracts that became FedSpending.org, a model for the USASpending.gov website. We have followed earmarks through both investigative reporting and publicly-distributed research projects; helped persuade the House of Representatives to publish the Statements of Disbursements online; and extensively tracked federal subsidies -- sector by sector -- as a part of the Subsidyscope project of the Pew Charitable Trusts. We have

also followed with dismay Congress' recent deep reduction in budgetary support for federal financial oversight and collaboration through a reduction in the appropriation for the Electronic Government Fund, and advocated for a reversal of this decision in FY 2012.

Federal spending is a vital part of a transparent and accountable government. We are just beginning to see the benefits of online transparency as it applies to government spending. Only recently have the web tools been built and datasets released online that have begun to publicly illuminate government spending. For example, we developed a website, InfluenceExplorer.com, that displays federal contracts right alongside political contributions, lobbying activities, and contractor misconduct reports.

Because citizens are learning how to engage with the government online, our collective goal should be a truly open and accountable system for tracking every dollar the government spends. Sunlight's experience in developing databases and tools for tracking federal spending makes us cautiously optimistic that technology makes this dream attainable. To get there, we must resolve serious problems with how the federal government currently accounts for, tracks, and shares federal spending data.

Sunlight often grapples with poorly published data, proprietary identifiers that hinder effective tracking of corporate entities, and agencies that are unresponsive to FOIA requests. Nevertheless, we have redoubled our efforts to improve transparency and disclosure in the areas of grant and contract spending, government loans and guarantees, and tax expenditures.

Yesterday was quite the day for government transparency. Chairman Issa introduced a sweeping transparency bill – the Digital Accountability and Transparency

Act of 2011-- that would transform how we track federal spending, establishing an independent body with the dual missions of expanding spending transparency to the entire government and identifying government-wide financial data standards.

The DATA Act would build upon the successes of USASpending.gov and the Recovery Accountability and Transparency Board by creating a board responsible for publishing and monitoring all federal spending. This new Federal Accountability and Spending Transparency Board would oversee a successor website to USASpending.gov.

While the creation of the FAST Board will garner the lion's share of attention, the effort to create government-wide financial data reporting standards should not be overlooked. It will have a tremendous effect on public participation and oversight by empowering the American people to look at the data themselves. Indeed, Sunlight supports legislation, the Public Online Information Act, that promotes the creation of government-wide data standards and sets up an entity with similar responsibilities

Apparently the White House agrees with the direction proposed by the Chairman. Yesterday, the White House announced an Executive Order that appears to contain some of the same elements as the Chairman's legislation. The June 13, 2011, Executive Order has the immediate effect of creating a Government Accountability and Transparency Board with the mission applying the lessons of the RATB to the entire federal government. Within 6 months, the Board must present a plan to integrate government spending data.

These are complementary efforts. The Federal Accountability and Spending Transparency Board will have the opportunity to learn from the report to be issued by

Government Accountability and Transparency Board. Similarly, if enacted, the DATA Act will revolutionize federal transparency by impelling agency compliance and addressing the thorny but crucial questions of data standardization.

Both plans are laudable. Our biggest concern arises from their limited duration. The Executive Order's lifespan is subject to the priorities of the administration. Similarly, the DATA Act would sunset after 7 years, ending both this new effort and well-established transparency laws. So long as we have government, we must have transparency. We cannot let the sun set on government openness and accountability. These transparency programs should persist indefinitely. Congress and the White House should work together to create a permanent requirement.¹

We suggest revisiting the composition and structure of the FAST Board. We strongly recommend widening the membership to include representatives from the Government Accountability Office, persons recommended by both the House Committee on Oversight and Government Reform and the Senate Homeland Security and Government Affairs Committee, and members of the public with a particular expertise in federal spending transparency. Additional provisions should be added to make sure that the work of the Board is open to the public and available online, including through publishing meeting minutes, streaming live video from hearings, soliciting public input, etc. Whistleblower protections are a must. And, regardless of whether members of the public are included on the Board itself, there should be a public advisory committee that provides advice to the board. It makes sense to hard wire public input from the start.

¹ To the extent that House rules impose these time limitations, the limitations should be construed as narrowly as possible. If the House rules are inconsistent with permanent transparency laws, then the House rules should be changed.

I should add that pre-existing reporting requirements of data elements under FFATA should be retained. Although the FAST Board will work to improve those requirements, continuity of data elements will help us track spending over the long term.

This advice is grounded on experience. Previously, I testified to this committee regarding our data quality analysis² of grants reported in USASpending.gov. We had identified almost \$1.3 trillion in spending that failed to meet one of the following three metrics: timeliness, completeness, and consistency. Recently, Sunlight has revisited that analysis, and determined that while there are some improvements, many worrisome discrepancies in the grants data from USASpending.gov remain.

For 2010, we found that USASpending.gov still has over \$800 billion in obligations that were under- or overreported by a margin of at least 50%. This isn't an improvement; the decrease from \$1.3 trillion to \$800 billion in misreported dollars is almost entirely due to Medicare spending, which was reported to USASpending.gov shortly after our analysis was completed last year. Of 2010's \$800 billion reporting discrepancy, \$50 billion is from programs that do not report *any* obligations to USASpending.gov -- around 6%. OMB currently has no process for identifying non-reporting programs. Nor has OMB produced the USASpending.gov data quality dashboard referenced in an April 2010 memo.³ We believe that continued oversight and examination of the grants data in USASpending.gov is needed for further progress.

Loan data in USASpending.gov is in significantly worse shape. Using the same methodology, we found \$400 billion in misreported loan obligations for FY2010, out of

² Available at Clearspending.org

³ See <http://1.usa.gov/dUsdxY>

an estimated \$550 billion total. In other words, 70% of all loan obligations were misreported to USASpending.gov.⁴ This area of federal spending is in dire need of further oversight.

OMB has stymied our efforts to apply a similar data quality analysis to contracting data. We requested access to internal data quality reports that each agency has submitted to OMB for the past three years,⁵ which would show what the agencies know about their data quality and their plans for improvement.⁶ OMB has not only denied our request to produce this information, but has yet to fulfill a subsequently-filed FOIA request that has been pending for the last nine months. It is ironic that the agency responsible for promulgating the Open Government Directive and spearheading the government's transparency efforts is standing in the way of better financial transparency.

Our efforts to learn more about tax expenditures -- spending administered through the tax code -- has run into structural problems with how (and whether) the data is made available to the public. Estimates on specific tax expenditures are released separately by the Joint Committee on Taxation and the Department of Treasury. Their estimates often disagree, and neither body uses a common identifier system to make tax expenditures easily comparable. Unhelpfully, the Joint Committee publishes their estimates buried deep within a several-hundred-page PDF, instead of a much more user-friendly format.

⁴ We have not included the \$8 trillion in student loans that is currently reported to USASpending.gov. This is such a gross overestimate that it makes all numerical comparisons impossible when this data point is included. As a separate point, we believe that loans are under much less scrutiny than other types of spending and that the reporting requirements are often misunderstood and misapplied.

⁵ Memo and report template: <http://1.usa.gov/lfBIC0>

⁶ These reports certify the percentage and dollar amount of an agency's contracts that are available in USASpending.gov and are signed by the senior procurement official for that agency. They also discuss the agency's plan for improving their contracting data and provide metrics on specific data fields.

To start, tax expenditure data should be published in accessible, machine-readable formats with proper context and identification. This kind of spending deserves equal scrutiny to that made through grants and contracts.

OMB, like many agencies, has multiple and sometimes conflicting responsibilities. One responsibility is the decidedly non-political task of enforcing federal financial reporting requirements. But they also strive to avoid creating political problems for the President that can arise from public criticism of agency failings, such as when they fail to properly and accurately report spending. These political liabilities are inevitable for OMB. There's no public interest justification for withholding access to federal reports on spending data quality, for example, but that's just what OMB has done. Good faith enforcement of financial reporting requirements may require an independent platform to allow objective administration.

This problem is not confined to spending transparency. Information policy, ethics oversight, and lobbying disclosure policies, all of which OMB administers to one degree or another, suffer from similarly counterproductive incentives -- where OMB's close identification with the President conflicts with the need to be a neutral enforcer. This is not to say that (this, or any) OMB has unduly politicized their involvement in these issues, but simply that it may be structurally incapable of pursuing these goals in the best way possible.

Government must keep in mind general principles for openness in government. First, transparency is government's responsibility, as private/non-profit efforts can reach only so far. Accordingly, both Congress and the federal branch must make broad changes in their information and technology policies to establish online, real time public access as

a priority for virtually all the operations of the federal government.

Second, public means online. Whenever the government has committed to making information public, the standard for "public" should include "freely accessible online." Information cannot be considered public if it is available only inside a government building, during limited hours or for a fee. In the 21st century, information is properly described as "public" only if it is available online, for free, in some kind of reasonably parse-able format.

Third, data quality and presentation matter. Data should be made available online in as unrestricted a manner as possible, subject only to reasonable privacy and security concerns.⁷ Moreover, the Internet has redefined effective communications and publishing. It is an around-the-clock open medium, in which standard practices include continuous, contemporaneous dissemination, permanent searchability and reusability, among other key features.

Disclosure should move at the same pace as influence over such decisions; thus arbitrary periodic filing requirements (e.g., annual, quarterly or monthly) violate this standard and hinder public trust and participation. Fortunately, the Internet enables inexpensive real-time publishing.

Our role as citizens is only as strong as our government is open. The actions that make up our civic lives – informed voting, active participation, thoughtful discourse – all depend on access to public information. Our democracy depends upon it.

I applaud this Committee's attention to opening up the government's purse for

⁷ See "Ten Principles for Opening Up Government Information," available at <http://sunlightfoundation.com/policy/documents/ten-open-data-principles/>. The principles address the following data quality issues: completeness, primacy, timeliness, ease of physical and electronic access, machine readability, non-discrimination, use of commonly owned standards, licensing, permanence, and usage costs.

public review. Doing so is crucial to making the government more open and accountable.

I thank you for the opportunity to discuss this issue with you, and am looking forward to your questions.

Ellen Miller

Ellen S. Miller is the co-founder and executive director of the Sunlight Foundation, a Washington-based, non-partisan nonprofit dedicated to using the power of the Internet to catalyze greater government openness and transparency. She is the founder of two other prominent Washington-based organizations in the field of money and politics -- the Center for Responsive Politics and Public Campaign -- and a nationally recognized expert on transparency and the influence of money in politics.

Her experience as a Washington advocate for more than 35 years spans the worlds of non-profit advocacy, grassroots activism and journalism. Ms. Miller's work has been featured in Government Technology ("Top 25 Doers, Dreamers & Drivers in Public Sector Innovation," March 2011), Washingtonian Magazine ("100 Tech Titans," May, 2009), Fast Company, ("The Most Influential Women in Technology," January, 2009), WIRED Magazine ("15 People The Next President Should Listen To," October, 2008), and The Chronicle of Philanthropy ("Seeking Online Exposure," January, 2008). Ms. Miller also served as deputy director of Campaign for America's Future, was the publisher of TomPaine.com and was a senior fellow at The American Prospect. She spent nearly a decade working on Capitol Hill.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Ellen Miller

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

none

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Executive Director, the Sunlight Foundation

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

none

I certify that the above information is true and correct.

Signature:

Ellen S. Miller

Date: 6/10/2011