

Obama Administration Scorecard

WASHINGTON, D.C., December 3, 2009—In our February 2009 column, I expressed optimism that the election of Barack Obama as president would usher in a new era of openness and improved access to government information. Many of his campaign promises centered on the need for the public to know about government activities in order to hold it accountable. A year later, here's the scorecard of how his administration has performed. As you'll see, our early optimism on many issues was



right on the mark (✓) while on others, it's been a mixed bag (±) or outright disappointment (✗). As President Obama enters his second year in office, we will continue to track the administration's progress on openness and keep you updated on any significant decisions.

✓ **Promoting Openness and Transparency:** On his first full day in office, President Obama issued an executive order on Presidential records and memoranda on the *Freedom of Information Act (FOIA)* and Transparency and Open Government. AALL applauded the administration for these positive steps, which closely followed recommendations in the report "Moving Toward a 21st Century Right-to-Know Agenda" that AALL, nine of our chapters, and more than 75 law librarians endorsed.

✓ **Improving Agency Guidance Under FOIA:** In March 2009, Attorney General Eric Holder issued a memorandum to agencies on *FOIA*, instructing them to make *FOIA* disclosures whenever possible. The Holder memo rescinded the guidelines issued by former Attorney General John Ashcroft in October 2001 that encouraged agencies to avoid disclosing information if any potential harms might result.

✓ **Ensuring Network Neutrality:** In September, AALL applauded new Federal Communications Commission (FCC) Chairman Julius Genachowski's decision to follow through on President Obama's campaign promise to preserve network neutrality. Genachowski proposed the codification of the FCC's open Internet principles and two new principles prohibiting Internet service providers from discriminating against content or applications and ensuring that network management practices are transparent.

✓ **Releasing the Open Government Directive Recommendations:** In July, we were honored to have Dr. Beth Noveck, deputy chief technology officer for Open Government, summarize some of the Obama Administration's transparency initiatives at the 2009 AALL Annual Meeting program "Evaluating Federal e-Life Cycle Management—A Town Meeting with OSTP, NARA and GPO." Noveck updated us on the administration's efforts to develop the Open Government Directive (OGD), which has just been released after six months of public dialogue and input.

We are pleased that the OGD outlines specific actions agencies must take to become more open, participatory, and collaborative. These include publishing more government information online in open formats, and developing an "Open Government Plan" that will detail how each agency will become more transparent. We applaud the administration for its commitment to greater openness and will provide you with an in-depth analysis of the directive in next month's column.

± **Preserving White House Records:** In August, the White House issued a solicitation for the capturing and maintenance of data published by the Executive Office of the President (EOP) on publicly-accessible websites, including an explicit request to capture social networking sites where the EOP maintains a presence. AALL was pleased to see the administration taking proactive steps to fully comply with the *Presidential Records Act* by seeking a contractor to ingest the records, rather than waiting for the National Archives and Records Administration (NARA) to do so.

While Congress has appropriated hundreds of millions of dollars for NARA's Electronic Records Archive (ERA) to preserve and provide access to volumes of all types and formats of electronic records, the Government Accountability Office has documented serious delays and unanticipated expenses. The White House clearly shares our concerns about whether the ERA will meet its preservation goals.

± **Promoting Access to Official, Authentic Legal Information:** In October, the White House announced the official launch of the XML version of the *Federal Register (FR)*, now available from 2000 to the present through the Government Printing Office's (GPO's) Federal Digital System (FDsys), the *Federal Register* website, and the White House's Data.gov.

While we applauded the move to provide access to the XML that will allow third parties to mash the government data, AALL believes that the public needs permanent access to official, authentic online legal information. We successfully persuaded the Office of Management and Budget to add a disclaimer to the *Federal Register* on Data.gov stating that the XML *FR* is not the official or authenticated version, and a link was added to the authenticated version on FDsys. We will continue to promote government efforts that provide access to authenticated government information, not just data.

± **Recommending the Reauthorization of Expiring USA PATRIOT Act Provisions:** As President Obama has been forced to confront national security realities, some of his positions on openness have changed. While AALL had hoped for the repeal of Section 215, the so-called "library provision" of the *USA PATRIOT Act*, the administration made clear early in the reauthorization process that it wants Congress to extend all three expiring provisions. We believe that because the repeal of Section 215 is not possible, the law should at the least be amended to protect the privacy and civil liberties of library users and all Americans.

- **Invoking the State Secrets Privilege:** The Obama administration has asserted the privilege in several cases that were originally brought against the Bush Administration, disappointing openness advocates who believed that the new White House would reject such secrecy. In September, Attorney General Holder issued a memorandum on the State Secrets Privilege that added some procedures to increase government accountability.

- **Issuing Presidential Signing Statements:** As a senator, President Obama opposed President Bush's use of signing statements, which are issued to raise constitutional objections to statutory provisions. Last March, President Obama released a Memorandum on Presidential Signing Statements promising more transparency on the use of signing statements. Unfortunately, as we reported in this column in November, since taking office President Obama has issued signing statements on numerous occasions. ■

Mary Alice Baish, director of the AALL Government Relations Office, 25 Massachusetts Avenue, NW, Suite 500, Washington, D.C. 20001 • 202/942-4237 • Fax: 202/737-0480 • E-mail: mbaish@aall.org • www.aallnet.org/aallwash.