

Recommendations for Updating House Rules for the 114th Congress

October 8, 2014

Democracy is an iterative process. Recently, the House of Representatives' Committee on Rules held a [hearing](#) that gave members the opportunity to offer ideas on improving legislative processes, generating many [useful ideas](#). With this newly updated list of recommended rules changes for the House of Representatives, we welcome the opportunity to add our suggestions to the mix.

Some recommendations have carried over from previous years (see our recommendations for the [113th](#) and [112th](#) congresses) or reflect an [emerging international consensus](#), while others reflect new understandings of how the House operates and build upon recent developments. Some prior recommendations were taken to heart set the stage for [significant improvements](#) in the lower chamber. But with all the progress that has been made, there still is much more to do.

In summary, we recommend:

- Adopting a chamber-wide presumption in favor of public access, including proactive disclosure of many documents and the institution of an open source software policy.
- Providing greater public access to draft legislation prior to consideration by the House and its committees and subcommittees, including creating context for amendments.
- Further strengthening the Office of Congressional Ethics.
- Auditing and creating an index of congressional information.
- Fixing lobbying disclosure forms.
- Reexamining the accreditation of journalists.
- Creating a special committee on congressional effectiveness to examine systemic problems.
- Creating new transparency mechanisms, including an ombudsman, an advisory committee on public access to information, and better ways of managing legislative support agencies.
- Addressing oversight of national security issues.

ADOPT A CHAMBER-WIDE PRESUMPTION IN FAVOR OF PUBLIC ACCESS

As part of the rules package for the 112th Congress, the House of Representatives decided that online publication of documents satisfy certain rules requirements for distribution of publications to all members of Congress. The House also charged the Committee on House Administration with the responsibility to establish and maintain standards for making documents publicly available in electronic form, and allowed members of Congress to use electronic devices to access information the House floor. Altogether, this illustrates a trend towards online access to legislative information by everyone anywhere, including on the floor of the House.

Even with these changes, requests for access to legislative documents or information held by Congress are still being rejected or made unduly difficult. Often times access is denied simply because no institutional mandate exists to do so, and inertia trumps transparency. The House should strike a new balance that addresses the public's right to know while identifying circumstances where non-disclosure is appropriate, such as internal deliberative process, national security, or personal privacy.

The House should adopt a rule that establishes a presumption in favor of public access to congressionally-held information. Members, committee and leadership offices, legislative support offices, and (when working on House issues) legislative support agencies should be encouraged to make information available upon request unless a strong, articulable reason outweighs the public's interest in access. In addition, a response to a request should be timely, and information should be made available in the requested format unless doing so is not practical. The executive branch has adopted such a [presumption of openness](#), even if unevenly implemented. The House can do better, and should.

In addition, the House should require the proactive online publication of information already available to the public, including historical information stored in electronic form. The websites [docs.house.gov](#) and [rules.house.gov](#) are great examples of proactive disclosure and should be expanded. The House should continue to work to create open data standards for the publication of machine-readable information (including [bulk access](#) to legislative data) and continue the Bulk Data Task Force. It should codify the leadership [declaration](#) that the House should use "more open data formats.... and that this legislative data, using standardized machine-readable formats, should be publicly available on House websites."

The House of Representatives should be allowed to communicate regarding, make use of, and publish open source software. ([Open source software](#) is computer software that has its source code made widely available with a license in which the copyright holder provides the rights to study, change, and distribute the software to anyone for any purpose.) Similar initiatives already are being undertaken in the [executive branch](#). Accordingly, Rule 23(4) should be updated to make this permissible.

The creation and release of open source code—so long as it is available to the public on a widely-used code-sharing website and can serve a public good—should be considered as a gift to the public, just like solicitations on behalf of charitable organizations. (The statutory gift provision, 5 USC 7353, prohibits the solicitation of gifts of "anything of value," although it has

been interpreted to permit solicitations on behalf of charitable organizations.) The House of Representatives should be allowed to encourage and communicate with the public to develop open source code even when it is related to the work of Congress, so long as it does not approximate an unpaid employer-employee relationship. Members also should be able to freely make code available to the public. Alternately, the creation and publication of open source code should be determined to not be of value, in effect "freeware," and thus permissibly solicited so long as it is available to the public and can serve a public good and does not form the basis of an impermissible relationship.

Among other documents, we recommend the House take steps to proactively publish:

- **Legislative Resource Center Documents** maintained by the Clerk for public access. We have conducted an [inventory](#); an official one should be conducted by the Clerk. (The Senate already generates an [inventory](#).) To the extent data is drawn from or stored in a database, it should be published online as well. In particular, the House Statement of Disbursements should be published as a dataset and not just a PDF. Approved franked mail should also be online.
- **Annual, semi-annual and other regularly recurring reports** from the legislative support offices (e.g. the Clerk, Chief Administrative Office, Sergeant-at-Arms, etc.). While some legislative support offices do an excellent job of publishing their reports online, for example, [the CAO](#), other offices do not publish their reports online and refuse requests for copies. Access to this information makes it possible for the public to have confidence that the House is being operated effectively and efficiently, and also for academics, journalists, and others to make recommendations for improvement. These regular reports are described in House Rule 2 sections 2(j), 3(e), 4(b), and perhaps 6(c)(e).
- **Witness disclosure statements.** Witnesses appearing before congressional committees in a non-governmental capacity are currently required to submit to the committee a curriculum vitae and disclose federal grants or contracts received. Rule 11(2) should be modified so that witnesses submit their information in electronic format. Furthermore, the information should be published contemporaneously in a publicly-accessible database that covers all committees and is searchable by the data submitted. The House should also require witnesses to disclose whether they are paid by a foreign government or an agent thereof, using language mirroring that under the Foreign Agent Registration Act.
- **Dear Colleague letters**, except when doing so would endanger the security of the House or the originating office has requested otherwise. These widely-distributed documents often are made publicly available and are a helpful window into Capitol Hill. In addition, public access will allow technologists to build new tools to help make this flood of information more digestible to those working for Congress.
- **Widely-distributed Congressional Research Service.** As a start, the Clerk should publish a list of all widely-distributed reports issued by CRS in a given timeframe, and make that list publicly available, similar to the requirement under rule 2(2)(b). Thousands of CRS reports are available online, and many more can be purchased through third party-vendors. These

frequently-cited documents can help explain important policy issues to the public, and occasionally could benefit from public review for completeness and accuracy. However, they are not available to the public in a timely way, and public access is spotty. There is a bipartisan resolution pending in the 113th Congress, [H. Res. 110](#), which addresses all the important aspects of making the text of these reports freely available to the public. It is time to level the playing field and give everyone equal access.

- **Congessionally Mandated Reports.** The list of reports that the Clerk must compile at the beginning of each regular session under rule 2(2)(b) should be published online. In addition, the Clerk should establish a publicly-available dashboard that indicates when a report was received (drawing upon information published in the Executive Calendar) so that it is possible to see what reports have been submitted, to whom they were sent, and whether they were timely submitted.
- **Staff salary survey.** On a regular basis, the House conducts or hires a contractor to conduct a survey of congressional staff salaries. Current and prior reports should be published online, along with other similar reports of public interest.
- **Pink sheet ethics guidance.** Many but not all ethics guidance documents are available online. They all should be published in one central location.
- **Post Employment Notifications** should be published whenever a member of Congress is negotiating for employment, not just later when an actual conflict arises.
- **Address gaps in travel reporting.** Recent news stories about congressional travel have served to highlight gaps in reporting. Rules regarding travel should be systematized and expanded to require reports whenever a member travels, except when only for personal purposes. Those reports should be published online in detail with all the relevant information. Whenever a member travels, except when only for personal purposes, all of that travel information should be published online, in detail, in a central searchable database, with all the [relevant information](#).

ACCESS TO LEGISLATION PRIOR TO CONSIDERATION

The House of Representatives made significant progress when it adopted a 3-legislative-day rule under which all legislation must be published online prior to consideration on the floor of the House. To implement the rule, the House created the innovative transparency portal [docs.house.gov](#) and also recognized that information published online can be an official version of a document. These are major steps forward and should be applauded.

However, 3-legislative-days is not the same as 72 hours, and in practice can be as short as 24 hours. We believe that the original pledge of 72 hours should be fully implemented.

We also recommend strengthening the committee notice requirement for hearings (1 week) and markups (3 days). First, the word “publicly” should be added to rule 11(3)(A) so it reads: “The

chair of a committee shall publicly announce the date, place and subject matter of. . .” In addition, romanette iii should be updated to require that the public announcement be online and in human- and machine-readable format. We have found that committees do not always properly announce hearings, or do so with PDFs, a format computers cannot process. Second, the rationale for holding a hearing or meeting sooner than the timeframe described above should require more than the concurrence by the chair and ranking member that there is “good cause.” There should also be a finding of necessity, so that mere convenience is insufficient.

In addition, amendments for consideration by the full committee—most notably the chairman’s mark—should be available online at least 48 hours prior to a committee vote, and in a format that is easy for people to use. Moreover, the text of legislation reported by a subcommittee should be available no later than 24 hours after the subcommittee’s vote. In practice, we have found instances where committees are not applying rule 11(2)(e)(6), which states “the chair of such committee shall cause the text of each such amendment to be made publicly available in electronic form” “not later than 24 hours after the adoption of any amendment” to subcommittees. It should apply to the subcommittee, removing any possibility of ambiguity.

Finally, through use of technical means, upon the introduction of an amendment, the House should publish online, in real-time, how an amendment would change the text of the bill (using the equivalent of track-changes). Similarly, upon introduction or markup of legislation, the House should publish online, in real-time, how the amendment would change the positive and non-positive law contained in the U.S. Code. We support the [amendment](#) offered by Rep. Amash at the Rules Committee Members' Day [hearing](#) that would accomplish some of these purposes.

APPROPRIATIONS COMMITTEE AND SUBCOMMITTEES

In many respects, the Appropriations Committee and its subcommittees are treated as special cases by the rules of the House of Representatives. Because the committee is responsible for appropriations, and generates a unique kind of bill, we recommend that its disclosure match the unique role it plays. Consequently, general appropriations bills should be accompanied by spreadsheets that provide spending information in tabular format. This requirement should apply to the full committee and subcommittees, and to the extent possible the spreadsheet should include the amount of appropriation at a granular level (program, line item, etc.) over prior years, so it is possible to see changes in spending. This document should be released in a machine readable format, such as a CSV or XLS file. To the extent possible, this information should also be provided for special appropriations bills.

FURTHER STRENGTHEN THE OFFICE OF CONGRESSIONAL ETHICS

The Office of Congressional Ethics is the House's independent ethics watchdog. It provides a valuable service and should be retained intact. We believe the office should be retained without any cuts in funding or diminution of power. We recommend granting it subpoena authority and slightly increasing the amount of time available to review its recommendations prior to submission to the House of Representatives Ethics Committee. As OCE is reauthorized each

Congress in the legislative package accompanying the rules, we recommend that this change be made at that time.

AUDIT AND CREATE AN INDEX OF HOUSE INFORMATION

The House of Representatives generates and receives tremendous amounts of information, but often is not clear to members, staff, or the public what information is held by the House, who is responsible for it, and whether it can be made available to the public. While some institutional efforts have been made to make sense out of this tsunami of information, such as that codified in House Rule 2, which requires the Clerk to list all reports the executive must make to Congress, the effort is insufficiently comprehensive.

Every two years, the House of Representatives should undertake an audit of the documents or other information that it holds, who is responsible for the information, the format in which it is stored, and where and how it can be obtained by the public. The House undertook a related [effort in 1992](#) as memorialized in [S. Pub. 102-20](#). The results of this biannual audit should be published online as an Index to House Information. The executive branch is currently undertaking a comprehensive [inventory](#) of the datasets it holds; the House of Representatives should do the same, but go further.

FIX LOBBYING DISCLOSURE FORMS

While it is possible to track who is lobbying Congress by the filing entity, it is not possible to track each lobbyist, even though all lobbyists have a unique identifier. The rules package should require the publication of lobbyist unique identifiers in the lobbying disclosure datasets released by the House of Representatives.

ONLINE MEDIA ACCREDITATION

Journalists from online media are still having difficulty becoming [accredited](#) by the House or Senate Press Galleries. For example, it is unreasonable that SCOTUSblog was unable to become accredited. The House should review its media rules and establishment of press galleries under Rule 5 so that more people engaging in journalism can become accredited.

SPECIAL COMMITTEE ON CONGRESSIONAL EFFECTIVENESS

Despite the best of intentions of members of Congress, there is good reason to believe the House of Representatives has become less capable of carrying out its duties. But the question of what is necessary for the House to function effectively has not comprehensively been explored in many decades. We recommend that the House convene a special committee to explore the causes of its dysfunction and possible solutions.

As part of that inquiry, we suggest the committee examine issues of staff pay, retention, and expertise. Our [research](#) suggests a tremendous drop in the number of congressional staff over the last 25 years. For examples, House committees had 2146 personnel in 1985, but only 1272 in 2005. GAO, CRS, and other legislative support agencies have significantly reduced their number of personnel, and formerly vital support roles, like that provided by the Office of Technology Assessment, have disappeared.

It also is likely that staff lack the level of experience enjoyed by their predecessors. Reconsideration of how staff are chosen, and perhaps even increasing the numbers of non-partisan staff, should be on the table. Similarly, it may be worth revisiting the roles played by congressional caucuses as repositories of information.

Many other questions should be considered. How do we make it easier for Members of Congress to focus on their jobs and not spend so much time fundraising (at least while Congress is in session)? Is it worthwhile to make Congress less partisan, and if so, how? How can modern technology change the way Congress governs? What does accountable government look like in a digital age? Are there better means of communication with constituents and improving techniques for representing and understanding constituents' concerns? All of this, and more, should be addressed by the special committee.

NEW MECHANISM TO COORDINATE TRANSPARENCY EFFORTS

Many congressional offices (personal, committee, leadership, and support) share some responsibility for legislative transparency, but no one is responsible for the big picture view and overarching coordination. This creates inadvertent gaps in understanding of congressional activities. While dated, this 1988 Office of Technology Assessment [report](#), most notably chapter 8, provides still relevant context on what public access to governmental information should look like. Regardless of whether the House creates a special committee to explore its operations, we believe the following three recommendations will help address current shortfalls.

1. Transparency Ombudsman

The House of Representatives has key staff responsible for the needs of the chamber. In addition to major support offices such as the Clerk, Sergeant-At-Arms, and Chief Administrative Officer, there's also offices for the Chaplain, Historian, General Counsel, and Inspector General. Helping to make the House more transparent is a task that spans several of these offices, and is also the responsibility of leadership and several committees. But like most institutions, this diffusion of responsibility means that there is no central point of contact for congressional offices trying to be more transparent, or for those outside the institution to figure out who to contact.

We suggest that the House create a transparency ombudsman. The Ombudsman's responsibilities would include encouraging collaboration and information sharing among those responsible for different transparency efforts inside the House, to serve as a resource for those inside the House who wish to adopt best practices, to be a primary point of contact for those seeking information from the House, and generally to facilitate a more open and transparent Congress.

2. Advisory Committee on Public Access to Information

The House's efforts to improve transparency are intended to be of benefit to other offices within Congress, co-equal branches of government, the public at large, journalists, academics, and others. No regular forum exists, however, where interested parties can get together and talk with representatives of Congress about how to best meet everyone's needs in the most efficient and effective manner.

We suggest that the House create an advisory committee (along the lines of the Advisory Committee on the Records of Congress, or perhaps even a subcommittee thereof) that provides advice and recommendations to the House regarding public access to information.

3. Strengthen Oversight of Legislative Support Agencies

The Joint Committee on the Library and the Joint Committee on Printing are responsible for coordinating oversight with the Senate over the Library of Congress and the Government Printing Office. Unfortunately, JCP and JCL only met once for 5 minutes in the 113th Congress, no longer have their own websites, and from a public perspective are effectively moribund.

In the past, these committees provided guidance and oversight for legislative support agencies, which are responsible for making much of the work of Congress (and the government as a whole) available to the American people. Now, with the exception of infrequent but helpful Committee on House Administration oversight hearings, much of the public-facing oversight work is performed by the Legislative Branch Appropriations Subcommittee at its annual hearings. In addition, we have found that different messages are sometimes communicated by the legislative support agencies to their respective House and Senate oversight committees.

We recommend that the House explore ways to reinvigorate oversight of the Library of Congress and the Government Printing Office. It should particularly focus on making sure that Congress has sufficient capacity to effectively ensure that these agencies are properly performing their roles of making information available to the public, and that the oversight process is performed in a way that the public can be properly engaged.

It also may be wise to look more broadly about creating a Chief Technology Officer for the House of Representatives, whose office would look at campus-wide issues, including technology needs within the House as well as the legislative support agencies. This centralizing role has been recommended before, and is discussed in a September 27, 2006 Committee on House Administration hearing entitled "Hearing on IT Assessment: A Ten-Year Vision for Technology in the House." This is a natural outgrowth of the position of Chief Technology Officer for the Committee on House Administration

RECONSIDER CONGRESSIONAL OVERSIGHT OF NATIONAL SECURITY

Congressional oversight of national security does not function well. In addition to the greater resources brought to bear by the executive branch, which overwhelms legislative oversight, it is clear that crucial information does not reach members of Congress and their staff who seek to exercise their constitutional prerogatives. The House should reconsider which committees or personal offices may access sensitive information; how staff receive clearance; the mechanisms by which members may consult with staff; and so on.

Released by Citizens for Responsibility and Ethics in Washington, the Sunlight Foundation, and the OpenGov Foundation. For more information, please contact Daniel Schuman, CREW policy director, at 202-408-5565 or dschuman@citizensforethics.org, John Wonderlich, Sunlight policy director, at 202-742-1520 or johnwonderlich@gmail.com, or Seamus Kraft, OpenGov Foundation executive director, at seamus@opengovfoundation.org.