



Administrative Conference Recommendation 2012-4

Paperwork Reduction Act

Adopted June 15, 2012

The Paperwork Reduction Act (PRA), enacted in 1980 and revised upon its reauthorization in 1986 and 1995, created the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) to oversee information policy within the executive branch. The Act requires, among other things, that agencies secure OMB approval before collecting information from the public. Since 1995, this has meant that agencies must put a proposed information collection request out for public comment for 60 days before finalizing it and submitting it for OIRA's approval.¹ An additional 30-day comment period is opened while OMB reviews the request.² One of the statute's goals is to reduce the burden on the public of agency information requests. The burden of such requests on small businesses was of particular concern to Congress in drafting and revising the Act. OMB review also ensures that agencies employ solid methodologies in designing information collections, particularly those seeking to gather statistical data. Another, broader goal of the PRA was to encourage agencies to implement a life-cycle approach to information management. This means that, from the initial stage in which information is collected from the public, agencies must give thought to how the information will be used, disseminated, stored, and disposed of throughout the entire process.³

Experience has shown that, in practice, parts of the PRA have not operated as its drafters intended. For example, the 60-day comment period was originally intended to facilitate

¹ See 44 U.S.C. § 3506(c)(2).

² See *id.* § 3507(b).

³ See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR A-130, MANAGEMENT OF FEDERAL INFORMATION RESOURCES §§ 6(i), (j), (o) (1996).



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an interactive dialogue between an agency and the public, enabling the agency to better craft its information collection plan. In practice, however, agencies tend to view information collection plans as final before this first comment period begins, and members of the public infrequently submit comments. These realities undermine the promise of the comment periods as a means for facilitating a meaningful dialogue between agencies and the public.

A related problem is that the PRA was last amended in 1995, and has not been updated to account for evolved technologies. Although OMB has provided some helpful guidance regarding the application of the PRA to social media,⁴ there is concern that provisions of the law adopted during the era of the hard-copy information collection paradigm may inadvertently create disincentives to agencies' use of modern technologies capable of facilitating faster, easier, and more effective communication with the public. Finally, over time, the PRA's regulation of information collections has come to be viewed as its primary component and has overshadowed the law's broader information management goals.

Some current and former agency officials have expressed concern that the PRA may be unduly restrictive, imposing delays and costs on the agencies that are disproportionate to the benefits to the public. This is not a new concern, and it appears that much of the delay occurs within agencies and is not a product of OMB review. Indeed, OMB has recently taken steps to make the process easier for agencies, including by offering a process for approving generic clearances.⁵ Nonetheless, there seem to be occasions in which the PRA impedes agencies from undertaking information collections that would not be burdensome to the public and would

⁴ See Memorandum from Cass R. Sunstein, Admin., Office of Info. & Regulatory Affairs, to the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act (Apr. 7, 2010), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf.

⁵ See Memorandum from Cass R. Sunstein, Admin., Office of Info. & Regulatory Affairs, to the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, Paperwork Reduction Act—Generic Clearances (May 28, 2010), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf.



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provide information necessary to craft better, less burdensome policies. For example, some agency officials have complained that the PRA prevents them from using focus groups or related methods to collect the information necessary to complete a full, nuanced regulatory analysis. Also, if an agency's approach shifts as a regulatory action moves forward, so too may its information collection needs. In such cases, agencies must initiate the entire PRA process again, even if they have already spent significant time and resources securing approval for an earlier, slightly different information collection request.

Agencies that rarely undertake information collections also may find the process challenging because they are unfamiliar with the PRA and find it difficult to obtain reliable guidance or sufficient assistance to navigate the process smoothly.

This recommendation is intended to address these concerns. It seeks to serve the congressional purpose of allowing OMB and the agencies to better focus on those collections that impose the greatest burden on the public and those that can benefit most from OMB review. It focuses on the areas where modest reforms can make substantial improvements, seeking to maintain the benefits of the current OMB review process while reducing the costs.

RECOMMENDATION

Improving Public Engagement

1. Agencies and OMB should take measures to revitalize the information collection request process, including the 60-day comment period and the 30-day comment period,⁶ to better serve the statutory goal of facilitating an interactive dialogue between the public and agencies sponsoring information collections and to enable agencies to design better information collection requests before submitting them to OMB for approval.

⁶ See 44 U.S.C. § 3506(c)(2).



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(a) Agencies should avoid viewing an information collection request as final prior to the 60-day comment period. Instead, agencies should use public engagement as a way of improving their preliminary information collection plans. The preliminary information collection plan should provide sufficient detail, including drafts of any collection instruments (e.g., the survey or form), for the public to comment meaningfully.

(b) For new collections or collections with significant changes, agencies should make affirmative efforts to engage the public in efforts to design information collection requests and consider using alternative means to engage the public (in addition to a formal *Federal Register* notice), such as identifying and reaching out to interested parties.

(c) OMB, in consultation with the Office of the Federal Register, should develop best practices for *Federal Register* notices, including the use of plain language, to improve public understanding of requests and the information collections they cover. Such best practices should include guidance on 60-day notices, 30-day notices, and the PRA components of notices of proposed and final rulemakings. It should also include guidance on how to clearly and consistently identify various types of PRA notices in the “action” line of *Federal Register* notices.

(d) Agencies should post information collection requests on a centralized website to create a one-stop location for the public to view such requests and comments received. The eRulemaking Program Management Office (PMO) should consider creating a dedicated page on Regulations.gov to facilitate implementation of this recommendation.

(e) Agencies should, as soon as feasible, post to Regulations.gov or the centralized website identified in paragraph 1(c) above any comments received during the 60-day and 30-day comment periods and provide links thereto on their own



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websites.⁷ OMB should also, as soon as feasible, post upon receipt on its website or on [Reginfo.gov](http://www.reginfo.gov) any comments received during the 30-day comment period.⁸

(f) Congress and OMB should look at ways to streamline the public participation requirements when agencies seek renewal of approval from OMB for collections with no significant change in the collection or the circumstances surrounding it so long as the issuing agency demonstrates that the information collection has been used.

Using Available Resources to Make the Process Easier

2. Each agency Chief Information Officer (CIO) should take a greater role in assisting and training agency staff to increase awareness of the PRA within each agency and better customize training to each agency's unique organizational challenges. The CIO Council, in consultation with OMB, should develop and disseminate training best practices.

3. Agencies should use all available processes for OMB approval for information gathering via voluntary collections (e.g., focus groups), including OMB's available generic clearances and fast track procedures. OMB is encouraged to continue using its generic clearance authority for this and other purposes, as appropriate and permitted by law.

4. OMB should evaluate existing delegations of information collection request review authority to determine how they are working and what is required to make them work well.⁹

⁷ See Administrative Conference of the United States, Recommendation 2011-8, *Agency Innovations in E-Rulemaking*, 77 Fed. Reg. 2,257, 2,264 (Jan. 17, 2012).

⁸ See Memorandum from Cass R. Sunstein, Admin., Office of Info. & Regulatory Affairs, to the President's Management Council, *Increasing Openness in the Rulemaking Process—Improving Electronic Dockets at 2* (May 28, 2010), available at http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/edocket_final_5-28-2010.pdf ("OMB expects agencies to post public comments and public submissions to the electronic docket on [Regulations.gov](http://www.regulations.gov) in a timely manner, regardless of whether they were received via postal mail, email, facsimile, or web form documents submitted directly via [Regulations.gov](http://www.regulations.gov).").

⁹ OMB has authority under the PRA to delegate authority to approve information collections if it "finds that a senior official of an agency . . . is sufficiently independent of program responsibility to evaluate fairly whether



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OMB should use the information drawn from this evaluation to consider whether time-limited delegations would be useful for other agencies. Such time-limited delegations could be set at a particular total or per respondent burden-hour threshold and be limited to those collections that do not raise novel legal, policy, or methodological issues. OMB should evaluate the results of such delegations, including compliance with the statutory factors,¹⁰ and, if the delegations have worked well, OMB should consider extending them and determining if other similar delegations would be appropriate. Delegations should include a requirement to consult with OMB on burden estimates (for delegations based on burden) and provide a clear opportunity for OMB and the public to request OMB review. Regular evaluations of agency review processes should then follow.

Reforms to Improve Efficient Use of Resources

5. Congress should consider amending the PRA to permit OMB to define a subset of collections that could be approved for up to five years in order to enable OMB to shift its focus to those information collections that require the most scrutiny consistent with the condition set forth in 1(f).¹¹

6. Because much of the information reported in the Information Collection Budget is now available to the public online, currently through Reginfo.gov, Congress should change the annual reporting requirement for OMB to require only a discussion of developments and trends in government management and collection of information.

proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively." 44 U.S.C. § 3507(i)(1). Such a delegation is not an exemption, but rather is a shifting of responsibility from OMB to the agency for reviewing proposed information collections. Currently, OMB has long-standing delegations to the Federal Reserve Board and the Managing Director of the Federal Communications Commission. 5 C.F.R. pt. 1320 App. A. (2010).

¹⁰ See 44 U.S.C. § 3507(i).

¹¹ The PRA currently permits OMB to approve information collections for up to three years. See 44 U.S.C. § 3507(g).



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7. OIRA should, in collaboration with individual agencies, provide guidance to agencies on communicating effectively with the public regarding estimated burdens, including the burdens of alternative methods of collection, with the goal of standardizing the estimation of respondent burden.

8. The CIO Council, in consultation with OMB, should develop guidance to help agencies better use available technologies to improve and streamline the collection of information from the public.

Information Resource Management

9. To the extent feasible, OMB should emphasize the integration of the life-cycle management of information¹² into the existing information collection process. Agencies, with OMB's support, should redo their Strategic Information Resources Management plans¹³ to make clear how they are complying with the PRA and implementing a life-cycle approach.

¹² See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR A-130, MANAGEMENT OF FEDERAL INFORMATION RESOURCES §§ 6(i), (j) (1996).

¹³ The PRA requires that agencies, "in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions." 44 U.S.C. § 3506(b)(2). See also OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR A-130, MANAGEMENT OF FEDERAL INFORMATION RESOURCES § 8(b) (1996) (providing such guidance).