



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Paperwork Reduction Act

Committee on Administration and Management

Draft Recommendation

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

16 Experience has shown that, in practice, parts of the PRA have not operated as its
17 drafters intended. For example, the 60-day comment period was originally intended to
18 facilitate an interactive dialogue between an agency and the public, enabling the agency to
19 better craft its information collection plan. In practice, however, agencies tend to view
20 information collection plans as final before this first comment period begins, and members of
21 the public infrequently submit comments. These realities undermine the promise of the



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22 comment period structure for facilitating a meaningful dialogue between agencies and the
23 public.

24 A related problem is that the PRA was last amended in 1995, and has not been updated
25 to account for evolved technologies. Although OMB has provided some helpful guidance
26 regarding the application of the PRA to social media,¹ there is concern that provisions of the law
27 adopted during the era of the hard-copy information collection paradigm may inadvertently
28 create disincentives to agencies' use of modern technologies capable of facilitating faster,
29 easier, and more effective communication with the public. Finally, over time, the PRA's
30 regulation of information collections has come to be viewed as its primary component and has
31 overshadowed the law's broader information management goals.

32 Some current and former agency officials have expressed concern that the PRA may be
33 unduly restrictive, imposing delays and costs on the agencies that are disproportionate to the
34 benefits to the public. This is not a new concern, and it appears that much of the delay occurs
35 within agencies and is not a product of OMB review. Nonetheless, there seem to be occasions
36 in which the PRA sometimes impedes agencies from undertaking information collections that
37 would not be burdensome to the public and would provide information necessary to craft
38 better, less burdensome policies. For example, some agencies have complained that the PRA
39 prevents them from using focus groups or related methods to collect the information necessary
40 to complete a full, nuanced regulatory analysis. Also, if an agency's approach shifts as a
41 regulatory action moves forward, so too may its information collection needs. In such cases,
42 agencies must initiate the entire PRA process again, even if they have already spent significant
43 time and resources securing approval for an earlier, slightly different information collection
44 request.

¹ See Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act (April 7, 2010).



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45 Agencies that rarely undertake information collections also may find the process
46 challenging because they are unfamiliar with the PRA and find it difficult to obtain reliable
47 guidance or sufficient assistance to navigate the process smoothly. There also appears to be
48 some lack of clarity regarding the application of the PRA to Special Government Employees and
49 Inspectors General.

50 This recommendation is intended to address these concerns. Taken together, the
51 recommendations seek to serve the Congressional purpose of allowing OMB and the agencies
52 to better focus on those collections that impose the greatest burden on the public and those
53 that can benefit most from OMB review. It will maintain the benefits of the current OMB review
54 process while reducing the costs.

DRAFT RECOMMENDATION

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Exemptions

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58 1. OMB should, on a pilot basis, delegate to several selected agencies review of
59 information collections below a particular burden-hour threshold (recommended to be 100,000
60 hours total, that do not raise novel legal, policy, or methodological issues—perhaps with a
61 condition that collections that impose a large burden on a small number of individuals be
62 cleared with OMB). OMB should audit the results of such delegations after two years; then, if
63 no abuse of delegation authority has occurred, and time savings have resulted from the
64 delegation, OMB should consider expanding the delegation to other agencies. Regular audits of
65 agency review processes should then follow.

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67 2. OMB should solicit comment from agencies on the applicability of the PRA to Special
68 Government Employees and provide guidance on the matter.



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70 3. OMB should issue guidance regarding the requirements of 5 CFR 1320.4(a)(2), which
71 determines the circumstances in which investigations by Inspectors General are exempt from
72 the PRA.

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74 4. Congress or OMB should consider crafting a more lenient standard or fast track
75 procedure for voluntary agency focus groups or for information collections that are certified by
76 the agency to be needed to perform a regulatory analysis required by law or Executive Order.

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78 **Other Reforms**

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80 5. Congress should amend the Paperwork Reduction Act to grant OMB discretion to
81 approve collections for up to five years.

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83 6. Agencies and OMB should take measures to revitalize the sixty-day comment period
84 to better serve the statutory goal of facilitating an interactive dialogue between the public and
85 the agencies sponsoring an information collection and enable the agencies to better design new
86 information collection requests before submitting them to OMB for approval.

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88 (a) For new collections or collections with significant changes:

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90 (1) Agencies should make affirmative efforts to engage the public in efforts to design
91 information collection requests.

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93 (2) Agencies should post notices of information collection requests on a centralized
94 website to create a one-stop location for the public to view such requests. The
95 eRulemaking Program Management Office (PMO) should consider creating a



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96 dedicated page on Regulations.gov to facilitate implementation of this
97 recommendation.

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99 (3) Agencies should avoid viewing an information collection request as final prior to
100 the 60-day comment period. Instead, agencies should use public engagement as
101 a way of improving their preliminary information collection plans.

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103 (4) Agencies and OMB should use alternative means of engaging the public (in
104 addition to a formal Federal Register notice) during the 30 day comment period
105 that occurs simultaneously with submission to OMB.

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107 (b) Congress and OMB should look at ways to streamline the public participation
108 requirements when agencies seek renewal of approval from OMB for collections
109 with no significant changes.

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111 7. Congress should change the annual reporting requirement for OMB to require only a
112 reporting and analysis of the data on Reginfo.gov and a discussion of developments in
113 government management and collection of information. OMB should not solicit information
114 from agencies for the report except as necessary to report on these two areas.

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116 8. If Recommendations 2, 4, 6, and 7 are adopted, OIRA should devote some of the
117 resources that have been saved to providing compliance assistance and training for agencies. If
118 they are not adopted, then OIRA staff should be expanded in order to facilitate this function.