

June 8,2012

Robert E. Coakley
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Administrative Conference of the United States
Chairman Paul Verkuil

Dear Mr. Chairman:

Comments regarding the Paperwork Reduction Act recommendations

The Administrative Conference of the United States (ACUS) May 25th notice to the Federal Register announces plenary session consideration of recommendations for improving administration of the Paperwork Reduction Act (PRA).¹

As you are aware, I have participated in two of the Committee on Administrative and Management's meetings regarding the Paperwork Reduction Act project. I also commented upon the draft Committee recommendations for the PRA project as an interested member of the general public.² Permit me some comments on the final Committee recommendations that I would like to bring to the plenary session's attention.

I respectfully suggest the Conference not endorse the Committee's final recommendations in any form. My reasons are as follows:

1. The Committee used a report authored by its consultant to inform its deliberations that employed an illegal "bootleg" collection of information under terms of the PRA. Two separate public comments raising this concern were brought to the Committee's attention.³ To the best of my knowledge, the Committee ignored the concerns of illegally obtained information for its use. **In my opinion, the Conference should not endorse recommendations to better administer the PRA that used information collected in willful violation of the Act itself.**

¹ Federal Register, May 25th,2012 page 31290

² See <http://www.acus.gov/research/the-conference-current-projects/paperwork-reduction-act>. My comments can be found on the ACUS web page dedicated to the Paperwork Reduction Act Project.

³ Ibid. See the respective comments of Dr. Richard Beltzer and Robert Coakley for March 28th and May 2cnd meetings. As a participant from the general public, I also raised the "bootleg" concern during the May 2 meeting.

Attached to these comments is a request to the Administrator of OIRA Cass Sunstein pursuant to §3517(b) of the Act to review the ACUS sponsored collection of information conducted by the consultant for the Committee.

The collection of information at issue supports the report entitled: "*The Paperwork Reduction Act: Research on Current Practices and Recommendations for Reform*".

§3517(a) enables any citizen to request the Director of OMB to review a collection of information. The Director is to determine whether it violates provisions of the PRA, and take remedial action accordingly if he so determines.⁴ §3517(b) contemplates the review and response will be completed within sixty days. The use of a Federally sponsored "bootleg" is explicitly prohibited by the Act and the public is to be protected from its use.⁵

2. The report used by the Committee to inform itself employed a collection of information from twenty-one anonymous interviewees. The information obtained was unverifiable. The Committee's final recommendations are directed to among others, the President's Executive Office of Management and Budget (OMB) and the Congress. I agree with the opinion of Dr. Richard Belzer, the President of Regulatory Check, and a former OIRA official, who commented to the Committee: **"There is simply no place in a democratic society for legislation founded on the opinions of anonymous sources"**.⁶

I would add that the research design employed by the author of the report to support his findings and recommendations to the Committee does not meet the standard of "empirical" research, academic or otherwise, that Chairman Verkuil has noted as a

⁴ §3517(b) reads: "(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if under this chapter, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

“(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

“(2) take appropriate remedial action, if necessary.

⁵ §3507(a) reads in part: "(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—... In addition, §3517 Public protection reads in part: "(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this chapter if—

“(1) the collection of information does not display a valid control number assigned by the Director in accordance with this chapter...

⁶ See Dr. Richard B Belzer, Ph.D. on page 1 of his comments: <http://www.acus.gov/research/the-conference-current-projects/paperwork-reduction-act/>

standard for the Administrative Conference's work in his recent essay: What the Return of the Administrative Conference Means for Administrative Law.⁷

The Committee's use of the Report's findings colored its deliberations and in my opinion, unacceptably taints the credibility and practical utility of its recommendations. The use of anonymous unverifiable information collected by a "bootleg" collection of information should not escape the Conference's notice and rejection.

3. The Committee's Report contains no information whatsoever concerning the extent to which agencies comply with the procedural requirements of the Act. Neither did the Committee deliberations include any significant consideration about the extent to which either OIRA or the agencies comply with the law or enforce it. In comments to the Committee, Dr. Belzer, the U.S. Chamber of Commerce, and I highlighted that some understanding of the extent to which the law is actually followed by the agencies is a vital aspect of any determination on how to improve administration of the Act and meet its purposes.⁸

Dr. Belzer noted it is impossible to evaluate the costs and benefits of a regulatory regime without ascertaining the extent to which regulated parties comply with it, or the extent the regulator enforces it.⁹

I would add that any recommendation to improve public engagement and participation in the Act's clearance processes and information resources management which includes burden reduction as an objective, is equally impossible to evaluate.

The Committee's final recommendation do not take these considerations into any meaningful account. **Such failure to use data or expert opinion to consider OIRA or agency compliance with procedural compliance required by the Act puts the Committee in the position of making recommendations without any legitimate basis.**

⁷ Chairman. Verkuil notes in his essay for example: "ACUS does not perform controlled experiments like the National Institutes of Health (NIH) does; it conducts applied research by using empirically-based analyses to understand the way the administrative process works. It then transfers those insights to the agencies for action and follows up with agencies to ensure compliance with its recommendations. This implementation phase is also empirically-driven."

⁸ See the Chamber of Commerce's comments for the May 2nd meeting.

⁹ Ibid. Dr. Beltzer's comments for March 2th meeting. (p. 2)

Consequently, the recommendations serve to give the appearance that the Committee was predominantly motivated by a biased effort to represent certain agency and ideological interests in the Federal executive branch who seek to avoid and attack the integrity of the clearance process, and avoid the continuing regulatory and information resources management reforms encouraged by the law.

Conclusion:

For these three reasons, permit me to respectfully suggest the Conference should not endorse any of the Committee's recommendations. The deliberations supporting them do not meet standards of consensus, impartiality, and bipartisan balance that the recently re-invigorated Conference states it will represent and pursue.

ACUS proclaims to be a public-private partnership worthy of federal appropriations for support of its mission. In my opinion, and in light of this, the Conference should not endorse any of the Committee's recommendations. Given the continued use of the consultant's Report and advice during the Committee's deliberations, they reflect an unwarranted disdain for the Paperwork Reduction Act's provisions and their integrity. As noted repeatedly during the Committee's deliberations, the Congress passed the 1995 version of the Paperwork Reduction Act unanimously in both Houses on roll call votes in each after three Congresses of deliberation. It was in turn enthusiastically signed by President Clinton.

Recommendations so carelessly constructed and endorsed by the full Conference will not serve to enhance the Conference's reputation. Instead, I believe endorsement will serve to discredit it. The Conference should not endorse them in any form.

Robert E. Coakley
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Attachment: Letter to Administrator Cass Sunstein, Administrator to OIRA.

Robert E. Coakley
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Administrator Cass Sunstein
Office of Information and Regulatory Affairs
725 17th Street N.W.
Fax: 202 395-3888
Washington D.C. 2053

Dear Mr. Sunstein:

Pursuant to §3517(b) of the Paperwork Reduction Act¹ I request you conduct a review of a collection of information sponsored by and conducted for the Administrative Conference of the United States (ACUS) for its compliance to provisions of the Paperwork Reduction Act. (44 USC 35)

ACUS indicates it is a covered agency as that term is understood for the purposes of the Paperwork Reduction Act. [§3502(1)] ACUS used a procurement contract with a consultant to conduct research for a report. The collection of information at issue concerns the Conference's Paperwork Reduction Act Project. It is described both in a report used by the Conference's Committee on Administration and Management and by way of an archived webcast meeting of the Committee on February 29, 2012. (See <http://www.acus.gov/research/the-conference-current-projects/paperwork-reduction-act/Administration>) The report is entitled "The Paperwork Reduction Act: Research on Current Practices and Recommendations for Reform". A description and explanation of the collection of information can be found in both the report at page 10 and at the beginning of the February 29th Committee meeting.

¹ §3517(b) reads: "(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this chapter, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

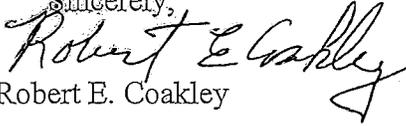
“(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

“(2) take appropriate remedial action, if necessary.

The report used a collection of information as that term is defined at §3502(3) as part of its research methodology. The author indicated he relied on the collection. The collection of information involved 21 anonymous interviews, at least 10 of which were persons as that term is defined at §3502(10) of the Act. The author further indicated identical questions were employed in the interviews. For example, he reported during the February Committee meeting that one hundred percent of the interviewees answered yes to the identical question of whether the statute needed to be changed to improve its administration.

I look forward to your review and to remedial action should you determine this collection of information violates provisions of the Paperwork Reduction Act. My understanding is §3517(b) requires a response at least within sixty days. I respectfully request as early a response as practicable.

Thank you for your attention to this matter.

Sincerely,

Robert E. Coakley

cc. Acting Director of OMB, Jeffrey Zients