



## Committee on Administration and Management

Minutes

May 02, 2012

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### Members Attending

Paul Bardos

*Gov't Member, International  
Trade Commission*

Amy P. Bunk

*Liaison, Office of the  
Federal Register*

Daniel Cohen

*Gov't Member, Department of  
Energy*

John Cooney (Committee Chair)

*Public Member, Venable LLP*

Bridget C.E. Dooling

*Gov't Member, Office of  
Management and Budget*

David Frederick

*Public Member, Kellogg,  
Huber, Hansen, Todd, Evans &  
Figel*

Kevin Simpson

*Gov't Member, Department of  
Housing and Urban  
Development*

Robert Taylor

*Gov't Member,  
Department of Defense*

James J. Tozzi

*Public Member, Center for  
Regulatory Effectiveness*

### ACUS Staff Attending

Emily S. Bremer

*Staff Counsel*

Jeffrey S. Lubbers

*Research Director*

Stephanie J. Tatham

*Attorney Advisor*

Paul R. Verkuil

*Chairman*

### Invited Guests Attending

Darren Baxt

*U.S. Chamber of Commerce*

Robert Coakley

Fred Fielding

*Senior Fellow*

Tom Gabriel

*Pension Benefit Guaranty  
Corporation*

David Rostker

*Small Business Administration  
Office of Advocacy*

Barry Schwartz

Stuart Shapiro

*Consultant, Rutgers  
University*



## Meeting Opening

Committee Chair John Cooney opened the meeting in the conference room of the Administrative Conference. He called for the Committee to approve the minutes of its March 28, 2012 meeting. The Committee thereafter approved the minutes. The Committee members unanimously consented to the participation of invited guests and public attendees at the meeting.

Chairman Verkuil thanked everyone for their participation in the Paperwork Reduction Act (PRA) project. Mr. Cooney then opened the discussion of the revised draft preamble and recommendation to general comments. There were no comments from Committee members. Robert Coakley, a member of the public, spoke to summarize his written comments. Mr. Coakley feels it is important for the Committee to determine whether the issues addressed are caused by the statute or administrative practice. The recommendations could then be directed towards Congress or the Executive Branch. Mr. Coakley recommended that the Committee clarify in the preamble whether it is addressing administrative practice or statutory change.

## Recommendation One

Mr. Tozzi began the discussion by applauding the addition in 1(a)(2)-(3) of posting of notices and comments received on a centralized website because they are currently very difficult to find and are important for small businesses who want to submit comments.

Ms. Bunk observed that the *Federal Register* has saved topic searches, including one for PRA notices. OFR is working on highlighting that page and drilling into Regulations.gov as well. Ms. Dooling stated that the recommendation overall appeared to be in good shape.

Ms. Dooling asked whether 1(a)(1) would benefit from more specificity and expressed concern that agencies might not understand specifically what they should do. Mr. Shapiro suggested including example language. Mr. Taylor commented that examples should include low cost options. Ms. Dooling suggested including the caveat, “as appropriate.”

The Committee discussed the possibility of collapsing 1(a)(1) and 1(a)(2), but tabled the discussion.

Mr. Coakley asked if the recommendation would have agencies put out a request out for public comment for 60 days prior to the review process at the Office of Information and Regulatory Affairs (OIRA). He took the view that the statute does not require such a separate comment period before the agency. Mr. Tozzi and Mr. Coakley discussed the history of the law, its evolution, and the structure of the public comment periods.

Mr. Rostker offered his interpretation of the law’s requirements on public periods and stated that he felt that some of the recommendation in 1(a)(1) would apply well to all information collections, and not just those that are new or propose significant changes to a previously approved collection. He stated that the Small Business Association (SBA) shared some of the



concerns raised by the U.S. Chamber of Commerce in public comments regarding how changed circumstances external to the information collection itself could change the significance of a collection. He stated that the quality of management should be improved in new collections through public involvement at the design stage, as a part of a pre-public comment consultation.

The Committee discussed the possibility of making 1(a)(2) a freestanding recommendation.

Mr. Rostker raised concerns regarding the lack of guidance to agencies regarding burden estimation. Mr. Rostker also commented on 1(c) that an agency's self-identification of "no significant changes" does not necessarily capture significant changes, such as in how an industry is regulated or how the public uses information. The Committee discussed, but did not adopt, changes to 1(c) to include an example with external information.

Ms. Dooling withdrew her suggestion to collapse 1(a)(1) and 1(a)(2) and sought clarifying changes to 1(a)(2). The Committee made minor responsive textual amendments.

Ms. Dooling also commented on 1(a)(3) that agencies already notice information collections on the *Federal Register* website. The Committee discussed the merits of including notices, instruments, supporting materials, and comments in a centralized place and the fact that the Office of Management and Budget (OMB) only makes these materials available after-the-fact when OMB receives public comments. The Committee discussed whether regulations.gov or reginfo.gov would be a better repository for this information with insights from Mr. Rostker as to how each system operates. The Committee adopted a minor textual change to the amendment to reflect this discussion.

Ms. Dooling proposed minor textual changes on 1(a)(4) and the Committee discussed this proposal as well as the basis for the recommendation, which Mr. Shapiro and Mr. Tozzi described as public sentiment that agencies are locked into a position even while they accept public comment. The Committee agreed to advise agencies to include drafts of collections instruments as a part of preliminary information collection plans.

The Committee discussed the basis for 1(a)(5) and decided to keep the text.

Ms. Dooling observed that OMB cannot post to another agency's account on regulations.gov, which led the Committee to remove that recommendation from 1(b). Mr. Rostker advised the Committee to ask agencies to post comments on regulations.gov, which was adopted. Mr. Tozzi requested, and the Committee clarified, that OMB should post comments received in the comment period upon receipt.

Mr. Coakley requested that the Committee cite to 44 U.S.C. 3506(c)(2) in the introductory section of Recommendation One to clarify what is meant by the sixty-day comment period, was adopted by the Committee.



Mr. Rostker reiterated his request to expand 1(a)(2) to include guidance to agencies on burden information. The Committee discussed this possibility briefly then tabled the discussion to Recommendation Seven.

The Committee discussed and adopted structural changes to the ordering of the sub-recommendations, to be implemented by the staff.

Mr. Tom Gabriel suggested standardized titling or nomenclature as a best practice. The Committee discussed this suggestion and agreed to include a recommendation on identification of types of PRA notices in the “action” line of *Federal Register* Notices in the section then identified as 1(a)(2).

The Committee voted to adopt the revised Recommendation One.

### **Recommendation Two**

The Committee did not comment on Recommendation Two. Mr. Coakley commented that the Conference should highlight the Chief Information Officer’s (CIO’s) responsibilities under the PRA, and the Committee discussed this comment. The Committee discussed possibly reorganizing the recommendations to group together recommendations to CIOs and the possibility of reaching out to CIOs and left these issues for further consideration by the staff. The Committee ultimately changed the title of this section of the recommendation from “Using Available Tools to Make the Process Easier” to “Using Available Resources to Make the Process Easier.”

The Committee voted to adopt Recommendation Two as revised.

### **Recommendation Three**

The Committee voted to adopt Recommendation Three without comment.

### **Recommendation Four**

The Committee discussed the merits of delegation in the context of the aims of the PRA. The Committee adopted a number of textual changes to the recommendation to clarify that delegations should be assessed for compliance with statutory factors and whether they have worked well, and to clarify that a pilot program with one agency did not necessarily warrant a similar delegation to another agency. The Committee clarified in footnote six that a delegation is not the same thing as a waiver under the PRA—the agency is taking on the responsibility to independently ensure compliance with the PRA.

The Committee discussed the penultimate sentence, which is supported by the SBA. Mr. Rostker commented that the public should have an opportunity to comment on the proposed collection, and that OMB should still be involved in reviewing the collection. He noted that the



public could petition OMB for review. Mr. Darren Baxt, with the U.S. Chamber of Commerce, shared his view that agencies now are not complying with the PRA and that independent verification, such as from OMB, should be a part of the process. He stated that the public needs a way to ensure that burden estimates are accurate and to seek OMB involvement. The Committee modified the penultimate sentence to clarify its intentions.

The Committee voted to adopt revised Recommendation Four. Ms. Dooling voted against the recommendation and expressed that OMB may seek edits. Mr. Cooney encouraged advance discussion of any future floor amendments with Conference staff.

### **Recommendation Five**

The Committee discussed changes to remove language on collections re-approved without significant change, the possibility that the recommendation would lead to a default five year approval of some information collections, the large number of information collections OIRA must review each year, the availability of judicial review of OMB's decision, and the Chamber of Commerce's desire for more frequent and improved dialogue as to whether an exception is warranted. The SBA also expressed its opposition to a five-year approval period, observing that the statute was designed to impose upon agencies and OIRA to the benefit of business. Mr. Rostker further submitted that small business feedback indicates that *Federal Register* notices and other agency communications are too complex and therefore impede public understanding, leaving OMB to guess what is important.

Mr. Lubbers expressed his view that OIRA time was valuable and that OIRA should be trusted to prioritize more important rules as it was under Executive Order 12,291. The Committee revised the recommendation language to advise Congress to consider amending the PRA to allow a five year approval for a subset of collections, which would be defined by Congress with an eye towards focusing OIRA's attention on information collections requiring the most scrutiny. Mr. Cooney remarked that the revised language keys up the policy issue for Congress to consider. The Committee voted unanimously to approve the revised language.

The Committee voted to adopt Recommendation Five.

### **Recommendation Six**

Mr. Tozzi began by suggesting that the Committee strike the last sentence. Mr. Rostker raised concerns about tying the recommendations to [reginfo.gov](http://reginfo.gov), as the system itself could change. He raised the question of whether Congress should ask OMB to discuss the total burdens associated with information collections. Mr. Shapiro commented on the utility of megatrends in OIRA's existing reports. The Committee agreed to amend the language to ask Congress to require OMB only to analyze developments and trends in government management and collection of information.



Mr. Coakley asked the Committee to consider highlighting the fact that OIRA may always report to Congress on information collections.

The Committee voted to adopt Recommendation Six as amended.

### **Recommendation Seven**

The Committee discussed the allocation of any potential savings and whether OIRA faces resource constraints that might prevent it from providing agencies with compliance assistance. Ms. Dooling expressed concerns that the report did not support this recommendation. Mr. Rostker submitted that the issue was raised before the Administrative Conference in the small business roundtable, and Mr. Shapiro pointed to some areas in the report that discussed the problems with burden estimation. The Committee revised the language to reflect that the guidance on burden estimation should advise agencies to communicate with the public effectively regarding burdens, including consideration of alternative methods of collection.

Mr. Rostker commented that OIRA already helps improve information collections, except with respect to burden estimation, where he felt there was room for improvement in how agencies communicate burdens. Mr. Cooney agreed with Mr. Rostker that this was a problem. Mr. Rostker clarified that while desk officers may address burden analysis on a case-by-case basis, he would support a uniform policy on burden analysis.

The Committee voted to adopt amended Recommendation Seven, with Ms. Dooling abstaining.

### **Recommendation Eight**

The Committee discussed, at the request of Mr. Bardos, explaining the concept of life-cycle management through a footnote. The Committee agreed to include a citation to explain the concept of Strategic Information Resource Management Plans.

The Committee voted to adopt amended Recommendation Eight, with Ms. Dooling abstaining.

### **Vote on Approval of Revised Draft Preamble and Recommendation**

The Committee voted to adopt the entire set of recommendations. Ms. Dooling voted to oppose adoption of the set of recommendations.