



Paperwork Reduction Act

Committee on Administration and Management

Proposed Recommendation | June 14-15, 2012

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

17 Experience has shown that, in practice, parts of the PRA have not operated as its
18 drafters intended. For example, the 60-day comment period was originally intended to facilitate
19 an interactive dialogue between an agency and the public, enabling the agency to better craft

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).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

20 its information collection plan. In practice, however, agencies tend to view information
21 collection plans as final before this first comment period begins, and members of the public
22 infrequently submit comments. These realities undermine the promise of the comment periods
23 as a means for facilitating a meaningful dialogue between agencies and the 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,⁴ 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. Indeed, OMB has recently taken steps to
36 make the process easier for agencies, including by offering a process for approving generic
37 clearances.⁵ Nonetheless, there seem to be occasions in which the PRA impedes agencies from
38 undertaking information collections that would not be burdensome to the public and would
39 provide information necessary to craft better, less burdensome policies. For example, some
40 agency officials have complained that the PRA prevents them from using focus groups or

⁴ 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).

⁵ See Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, Paperwork Reduction Act—Generic Clearances (May 28, 2010).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

41 related methods to collect the information necessary to complete a full, nuanced regulatory
42 analysis. Also, if an agency's approach shifts as a regulatory action moves forward, so too may
43 its information collection needs. In such cases, agencies must initiate the entire PRA process
44 again, even if they have already spent significant time and resources securing approval for an
45 earlier, slightly different information collection request.

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

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

RECOMMENDATION

54 **Improving Public Engagement**

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

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

⁶ See 44 U.S.C. § 3506(c)(2).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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

63 (2) Agencies and OMB should consider using alternative means to engage
64 the public (in addition to a formal *Federal Register* notice), such as identifying and
65 reaching out to interested parties, during the 30-day comment period that occurs
66 simultaneously with submission to OMB.

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

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

79 (d) Agencies should avoid viewing an information collection request as final prior
80 to the 60-day comment period. Instead, agencies should use public engagement as a
81 way of improving their preliminary information collection plans. The preliminary
82 information collection plan should provide sufficient detail, including drafts of any



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

83 collection instruments (e.g., the survey or form), for the public to comment
84 meaningfully.⁷

85 (e) Agencies should, as soon as feasible, post to Regulations.gov or the
86 centralized website identified in paragraph 1(c) above any comments received during
87 the 30-day comment period. OMB should also, as soon as feasible, post upon receipt on
88 its website or on Reginfo.gov any comments received during the 30-day comment
89 period.⁸

90 (f) Congress and OMB should look at ways to streamline the public participation
91 requirements when agencies seek renewal of approval from OMB for collections with no
92 significant change in the collection or the circumstances surrounding it.

93 **Using Available Resources to Make the Process Easier**

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

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

⁷ Taking this approach would not require the agency to put the information collection request out for a second 60-day comment period prior to submission to OIRA.

⁸ See Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Memorandum for the President's Management Council on Increasing Openness in the Rulemaking Process—Improving Electronic Dockets at 2 (May 28, 2010) (“OMB expects agencies to post public comments and public submissions to the electronic docket on 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.”).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

102 4. OMB should evaluate existing delegations of ICR review authority to determine how
103 they are working and what is required to make them work well.⁹ OMB should use the
104 information drawn from this evaluation to consider whether time-limited delegations would be
105 useful for other agencies. Such time-limited delegations could be set at a particular total or per
106 respondent burden-hour threshold and be limited to those collections that do not raise novel
107 legal, policy, or methodological issues. OMB should audit the results of such delegations,
108 including compliance with the statutory factors,¹⁰ and, if the delegations have worked well,
109 OMB should consider extending them and determining if other similar delegations would be
110 appropriate. Delegations should include a requirement to consult with OMB on burden
111 estimates (for delegations based on burden) and provide a clear opportunity for OMB and the
112 public to request OMB review. Regular audits of agency review processes should then follow.

113 **Reforms to Improve Efficient Use of Resources**

114 5. Congress should consider amending the PRA to define a subset of collections that
115 could be approved for up to five years in order to enable OMB to shift its focus to those
116 information collections that require the most scrutiny.¹¹

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

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 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).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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

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

128 **Information Resource Management**

129 9. To the extent feasible, OMB should emphasize the integration of the life-cycle
130 management of information¹² into the existing information collection process. Agencies, with
131 OMB's support, should redo their Strategic Information Resources Management plans¹³ to
132 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).