



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 periods as a means 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,<sup>1</sup> 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.<sup>2</sup> 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  
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

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<sup>1</sup> 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).

<sup>2</sup> 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).



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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.

### **DRAFT RECOMMENDATION**

#### 54 **Improving Public Engagement**

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56 1. Agencies and OMB should take measures to revitalize the sixty-day comment period  
57 (in which, under the Paperwork Reduction Act, agencies must put a proposed information  
58 collection request out for public comment for 60 days before finalizing it and submitting it for  
59 OIRA's approval) to better serve the statutory goal of facilitating an interactive dialogue  
60 between the public and the agencies sponsoring an information collection and to enable the  
61 agencies to better design new information collection requests before submitting them to OMB  
62 for approval.

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

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- 66 (1) Agencies should make affirmative efforts to engage the public in efforts to design  
67 information collection requests.  
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- 69 (2) The Chief Information Officer (CIO) Council, in consultation with OMB and the  
70 Office of the Federal Register, should develop best practices for Federal Register  
71 notices, including the use of plain language, to improve public understanding of  
72 requests and the information collections they cover. Such best practices should  
73 include guidance on 60-day notices, 30-day notices, and notices of proposed and  
74 final rulemakings.  
75
- 76 (3) Agencies should post notices of information collection requests on a centralized  
77 website to create a one-stop location for the public to view such requests and  
78 comments received. The eRulemaking Program Management Office (PMO)  
79 should consider creating a dedicated page on Regulations.gov to facilitate  
80 implementation of this recommendation.  
81
- 82 (4) Agencies should avoid viewing an information collection request as final prior to  
83 the 60-day comment period. Instead, agencies should use public engagement as  
84 a way of improving their preliminary information collection plans. The  
85 preliminary information collection plan should provide sufficient detail for the  
86 public to meaningfully comment.<sup>3</sup>  
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- 88 (5) Agencies and OMB should consider use of alternative means of engaging the  
89 public (in addition to a formal Federal Register notice), such as identifying and

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<sup>3</sup> 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.



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90 reaching out to interested parties, during the 30-day comment period that occurs  
91 simultaneously with submission to OMB.

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93 (b) OMB should, as soon as feasible, post on its website or on Regulations.gov or  
94 Reginfo.gov any comments received during the 30-day comment period.<sup>4</sup>

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96 (c) Congress and OMB should look at ways to streamline the public participation  
97 requirements when agencies seek renewal of approval from OMB for collections  
98 with no significant changes.

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### 100 **Using Available Tools to Make the Process Easier**

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102 2. Each agency CIO should take a greater role in assistance and training of agency staff  
103 to increase awareness of the PRA within each agency and better customize training to each  
104 agency's unique organizational challenges. The CIO Council, in consultation with OMB, should  
105 develop and disseminate training best practices.

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

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<sup>4</sup> 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.").



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112           4. OMB should evaluate existing delegations of ICR review authority to determine how  
113 they are working and what is required to make them work well.<sup>5</sup> OMB should use the  
114 information drawn from that evaluation to, on a pilot basis, consider delegating for two years  
115 to selected agencies review of information collections below a particular burden-hour threshold  
116 (e.g., up to 100,000 hours total), that do not raise novel legal, policy, or methodological  
117 issues—perhaps with a condition that collections that would impose a large burden on a small  
118 number of individuals must be cleared with OMB. OMB should audit the results of such  
119 delegations after two years; then, if no problems have occurred, and time savings have  
120 resulted, OMB should consider reauthorizing existing delegations and providing similar  
121 delegations to other agencies. Delegations should include a requirement to consult with OMB  
122 on burden estimates (for delegations based on burden) and provide a clear opportunity for  
123 OMB and the public to request OMB review. Regular audits of agency review processes should  
124 then follow.

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### 126 **Reforms to Improve Efficient Use of Resources**

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128           5. Congress should amend the Paperwork Reduction Act to grant OMB discretion to  
129 approve collections for up to five years when such collections are being reapproved without  
130 significant change.

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132           6. Congress should change the annual reporting requirement for OMB to require only a  
133 reporting and analysis of the data on Reginfo.gov and a discussion of developments in

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<sup>5</sup> 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).



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134 government management and collection of information. OMB should not solicit information  
135 from agencies for the annual report except as necessary to analyze and discuss these two areas.

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137 7. If Recommendations 4-6 are adopted, OIRA should devote some of the resources  
138 that have been saved to providing compliance assistance and training for agencies (including  
139 training on burden estimation with the goal of standardizing the estimation of respondent  
140 burden). If they are not adopted, then Congress should consider expanding the OIRA staff in  
141 order to facilitate this function.

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### 143 **Information Resource Management**

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145 8. To the extent feasible, OMB should emphasize integration of life-cycle management  
146 of information into the existing information collection process. Agencies (with OMB's support)  
147 should redo their Strategic Information Resource Management plans, to make clear how they  
148 are complying with the PRA and implementing a life-cycle approach.