

**The Paperwork Reduction Act: Research on Current
Practices and
Recommendations for Reform**

**Report to the Administrative Conference of the United
States**

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Executive Summary

This report, commissioned by the Administrative Conference of the United States (ACUS) is an evaluation of the Paperwork Reduction Act (PRA). ACUS requested that the report include the following:

the costs and benefits of PRA compliance, whether the Act's goals could be achieved in a more efficient manner, whether the Act needs to be updated to account for advances in social media and other new technologies, whether the Act should apply to voluntary collections of information, and whether the Act should apply when an agency seeks to collect information from special government employees.

Toward that end I examined the available literature (including academic literature and GAO and CRS reports) and data on the implementation of the PRA. I also conducted 21 interviews with experts inside and outside of government. Interview subjects were asked about information that would allow development of estimates on benefits and costs and their views of various reforms to the PRA.

This report details the resulting benefits and costs of the Act and then bases recommendations on exemptions, other reforms, and the use of information technology and social media on these benefits and costs. Many of the benefits and costs are not quantifiable but their explication allows for a better assessment of reforms to the PRA. Recommendations are as follows:

Exemptions

Recommendation 1 OMB should solicit comment from agencies on the applicability of the PRA to Special Government Employees and provide guidance on the matter.

Recommendation 2: OMB should delegate to several pilot agencies review of information collections below a particular burden-hour threshold (recommended to be 100,000 hours) that

do not raise novel legal, policy, or methodological issues. OMB should audit the results of delegations after two years; then, if abuse of delegation authority has not occurred, and time savings have resulted from the delegation, OMB should expand the delegation to all agencies. Regular audits of agency review processes should then follow.

Recommendation 3: *OMB should issue guidance to make clear that investigations by Inspectors General are exempt from the requirements of the PRA so long as they meet the requirements of 5 CFR 1320.4(a)(2).*

Other Reforms

Recommendation 4: *Amend the Paperwork Reduction Act to allow OMB to approve collections for up to five years.*

Recommendation 5: *Eliminate the sixty-day comment period from the Paperwork Reduction Act. Encourage agencies and OMB to use alternative means of reaching the public (in addition to a formal Federal Register notice) during the 30 day comment period that occurs simultaneously with submission to OMB.*

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

Recommendation 7: *Congress should change the annual reporting requirement for OMB to include only a reporting and analysis of the data on reginfo.gov and a discussion of developments in government management and collection of information. OMB should not solicit information from agencies for the report except as necessary to report on these two areas.*

Information Management and Information Technology

Recommendation 8: *Congress should allocate additional funding to support the integration of life-cycle management of information into the existing information collection process. OMB should revise Circular A130 and agencies should redo their Strategic IRM plans to make clear how they are complying with the PRA and implementing a life-cycle approach.*

Taken together these recommendations should be seen as returning the PRA to its original intentions. The statute was passed to improve all aspects of the use of information by the federal government. It has come to be perceived as dealing only with reducing the information collection burden on the American public.

Reducing the burden on the public is an important goal. The recommendations here will allow OMB and agencies to better focus on those collections that impose the greatest burden and those that can benefit most from OMB review. In other words, it will maintain the benefits of the current OMB review process and significantly reduce the costs. Doing this will allow OMB and agencies to examine information management issues as part of the review of information collections.

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The Paperwork Reduction Act: Research on Current Practices and Recommendations for Reform

Report to the Administrative Conference of the United States Stuart Shapiro*

Introduction

History of the Paperwork Reduction Act

Paperwork burden has been a concern of the government for nearly a century. With the growth of the administrative state came an increase in the requirements for the public to provide information and fill out forms. The first serious attempt to manage government information came with the Federal Reports Act (FRA) of 1942.¹ Implemented by the Bureau of Budget (BOB) (the predecessor agency to the Office of Management and Budget), the FRA required agencies to submit collections of information for approval to the BOB. Much of the Department of the Treasury was exempted from the requirements of the FRA.² While this was a significant change in information collection policy, skeptics such as Senator Arthur Vandenberg (R-MI) thought the bill did not, "remotely touch the magnitude of the problem."³

Agencies complained about BOB interference in their statutory missions and the length of time required to secure BOB approval for information collections. In 1973, Congress exempted independent regulatory agencies. The Office of Management and Budget (OMB) was also criticized by the Senate Select Committee on Small Business for an indifference "towards their basic responsibilities Since only a relative handful (between one and five percent) of

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¹56 Stat 1078

²Harold Relyea "Paperwork Reduction Act Reauthorization and Government Information Management Issues" *Government Information Quarterly* 2000 17:367.

³William Funk "The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law" *Harvard Journal on Legislation* 1987 24:7

forms were disapproved the committee could only conclude that hundreds of duplicative forms were being imposed on the public.”⁴ The FRA contained numerous other provisions but the clearance process received the most attention and the most criticism.⁵

As a result of these criticisms, Congress created a “Commission on Federal Paperwork” in 1974. The Commission completed its work in 1977 and argued that the FRA was flawed. The flaws included the exemption of Internal Revenue Service (IRS), insufficient funding for FRA supervision, and a placement in the decision-making process that was too late to make a difference. After GAO reported that the commission's recommendations were being carried out too slowly, legislators began work on the Paperwork Reduction Act (PRA). The PRA was passed in 1980 and signed into law by President Carter.⁶

The PRA created the Office of Information and Regulatory Affairs (OIRA) within OMB to oversee information policy in the executive branch.⁷ It eliminated the exemptions (including, most notably, IRS) that were present in the FRA and clarified that clearance requirements also applied to information collections within regulations. It required that the public be given the opportunity to comment on information collections. Finally, the PRA required the production of an Information Collection Budget that tallied the burden of government information collections on the American public.⁸

The PRA has long been the subject of controversy. In addition to implementing the PRA, OIRA has had responsibility for review of regulations under several executive orders (Executive Order 12291 issued by President Reagan and Executive Order 12866 issued by President Clinton). Critics have claimed both that OIRA has used the PRA to leverage its regulatory review responsibilities and that it has ignored its obligations under the PRA to focus on

⁴Supra Note 2. p 369.

⁵ *Supra* Note 3. p. 13

⁶Id. p. 371.

⁷Weidenbaum, Murray. 2007 “Regulatory Process Reform: From Ford to Clinton” *Regulation*

⁸2002 OMB Report to Congress. “Information Collection Budget of the United States”

regulatory review.⁹ These controversies were, in part, what led to significant amendments in the act when it was reauthorized in 1986 and 1995.

The 1986 amendments made the OIRA Administrator subject to confirmation by the Senate, emphasized information resource management (IRM) as a goal of the act, and set paperwork reduction goals.¹⁰ According to Jeffrey Lubbers, the 1995 amendments to the PRA are better described as an “entire recodification” of the Act.¹¹ They increased the scope of OIRA's oversight to include dissemination of information, maintenance of archives, acquisition of information technology, and numerous other functions,¹² while maintaining OIRA's authority over information collection. They also required that each agency establish an office, independent from program responsibilities, to conduct information collection clearance activities.¹³

The Structure of the Paperwork Reduction Act

The PRA is codified at 44 U.S.C §§ 3501-3520. Section 3504 gives OMB a broad array of responsibilities. As described in Section 3504(a)(1), OMB (through OIRA) must:

(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

(B) provide direction and oversee--

(i) the review and approval of the collection of information and the reduction of the information collection burden;

(ii) agency dissemination of and public access to information;

(iii) statistical activities;

(iv) records management activities;

(v) privacy, confidentiality, security, disclosure, and sharing of information; and

(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.

⁹GAO report 83-35 *Implementing the Paperwork Reduction Act: Some Progress but Many Problems*.

¹⁰*Supra* Note 2.

¹¹Jeffrey Lubbers, “Paperwork Redux: The (Stronger) Paperwork Reduction Act of 1995” *Administrative Law Review* 1996 49:111 p. 112

¹²44 U.S.C.A. 3504

¹³*Supra* Note 11.

OIRA's responsibility for reviewing and approving the collection of information and reducing the information collection burden (Section 3504(a)(1)(B)(i)) has received the most attention and will be the primary focus of this report.

Section 3504(c)(3) and (4) describe the goal of OIRA's review of information collections.

It is to have two purposes: to

(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government;

The process for reviewing information collections appears in Section 3507 and is discussed in more detail below. The rest of Section 3504(a)(1)(B) assigns to OMB responsibilities that have received far less attention, and this report will include some limited discussion of these more neglected parts of the PRA.

Section 3506 outlines the responsibilities of the individual agencies, requiring that each agency have a Chief Information Officer to oversee all of the functions described in the Act. The section goes on to specify agency responsibilities for information resource management¹⁴ information collection¹⁵, information dissemination¹⁶, statistical policy¹⁷, records management¹⁸, privacy¹⁹ and security, and information technology.²⁰ The requirements pertaining specifically to information collection will be discussed below.

Section 3512 contains the primary enforcement mechanism to ensure agencies follow the requirements of the Act:

(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

¹⁴44 USCA 3506(b).

¹⁵44 USCA 3506(c).

¹⁶44 USCA 3506(d).

¹⁷44 USCA 3506(e).

¹⁸44 USCA 3506(f).

¹⁹44 USCA 3506(g).

²⁰44 USCA 3506(h).

subject to this subchapter if--

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

Finally, Section 3514 requires OMB to submit an annual report to Congress (known as the Information Collection Budget) describing its efforts to reduce information-collection burdens on the public and explaining any developments on the implementation of other aspects of the PRA.

The Information Collection Approval Process

As mentioned above, the PRA is known primarily for requiring agencies to secure OIRA approval prior to collecting information from ten or more people. Therefore it is helpful to briefly outline the process agencies must follow when seeking to collect information from the American public.²¹ An agency must publish a notice in the Federal Register and give the public 60 days to comment. Once the comment period is over, the agency submits the information collection to OIRA along with a supporting statement.²² Concurrent with this submission, the agency publishes a second notice in the Federal Register asking the public to submit any comments on the collection to OMB. After waiting thirty days for public comments, OIRA has an additional thirty days within which to approve the information collection.²³

There are some differences when the information collection is within a proposed rule or a final rule. The agency may then use the proposed rule in lieu of the first Federal Register notice and the final rule in lieu of the second notice. Comments OMB receives on the

²¹The regulations implementing the act, which closely track the statutory requirements can be found at 5 CFR 1320.

²²The supporting statement must include answers to 18 questions for non-statistical information collections, and 23 for statistical ones. The questions and cover sheet can be found here: <http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf> (last viewed January 5, 2012).

²³*Supra* Note 11.

information collection go into the agency rulemaking docket with other comments. The information collection provisions of the rule do not go into effect until OMB approves them, regardless of the effective date of the remainder of the rule. Finally, if OMB disapproves a collection in an existing rule, then the agency has 120 days to initiate a rulemaking to rescind the provision in question.²⁴

Information collections are defined broadly by both the statute and by implementing regulations. OMB gives numerous examples of what qualifies as an information collection:

Report forms, application forms, schedules, questionnaires, surveys, reporting or recordkeeping requirements, contracts, agreements, policy statements, plans, rule or regulations, planning requirements, circulars, directives, instructions, bulletins, RFPs, interview guides, oral communications postings, notifications, labeling or similar disclosure requirements, telegraphic or telephonic requests, automated electronic, mechanical, or other technological collection techniques or questionnaires used to monitor compliance with agency requirements.²⁵

Certain types of information collections do not have to go through the entire process described above. Collections from government employees are exempt from the Act. The current OIRA Administrator, Cass Sunstein, has clarified that general solicitations of comment, including those on social media websites, are also exempt. For minor changes to approved collections, agencies can fill out a "Paperwork Reduction Act Change Worksheet" and ask for OMB approval without undergoing the full public comment process.²⁶

There are also processes known as generic clearances and fast-track clearances. The generic clearance is a longstanding OMB practice newly emphasized by Administrator Sunstein, while the fast-track process is a Sunstein innovation. Both generic and fast-track processes allow agencies to seek approval for a certain general type of information collection using the full

²⁴Id. p. 117.

²⁵5 CFR 1320(3)(c)(1)

²⁶The worksheet can be found here: <http://www.whitehouse.gov/sites/default/files/omb/inforeg/83c-fill.pdf> (last viewed January 6, 2012).

process described above, and then to seek approval on an expedited basis for individual collections of the already-approved general type. For example, if an agency wants to seek approval for a series of customer-satisfaction surveys, it may seek a generic clearance for such surveys using the full PRA process. Then, when individual programs within the agency want to evaluate the response to a particular initiative or program, they can submit an survey to OIRA for review under the fast-track process, and OIRA will respond with an approval or disapproval within five days.²⁷

ACUS Request and Research Methodology

The Request for Proposals (RFP) from the Administrative Conference of the United States (ACUS) asked a number of questions about the PRA. Specifically ACUS said:

The PRA project will examine the Act broadly to determine whether the statute itself or agencies' practices under the Act could be improved. Among other things, the project will consider the costs and benefits of PRA compliance, whether the Act's goals could be achieved in a more efficient manner, whether the Act needs to be updated to account for advances in social media and other new technologies, whether the Act should apply to voluntary collections of information, and whether the Act should apply when an agency seeks to collect information from special government employees.

The RFP's focus, therefore, was on the information-collection portions of the PRA. This report focuses on that aspect of the Act both in response to the RFP and because after I began my research, it became clear that information collection generates the lion's share of the benefits and costs of the PRA.

A thorough benefit-cost analysis of the PRA, however, must include some examination of the Act in its entirety. I do note in the final section of this report that the comparative neglect of the PRA's information resource management provisions has costs, however difficult to quantify, and I argue that the neglect of IRM should be considered in any discussion of the success or

²⁷The fast-track process is described here: <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-26.pdf> and the generic process upon which it builds is here: http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf (both last viewed January 6, 2012)

failure of the Act.

I began my research by reviewing academic literature on the PRA. Academic literature is scant, comprised of only a few articles that focus primarily on information resource management (academics focus far more on this issue than OMB or Congress). Articles on the information collection approval process are largely historical and are cited in the section above, on the history of the PRA.

Although academic literature on the information-collection aspect of the Act is limited, the Government Accountability Office (GAO) has produced a large volume of work reviewing nearly all aspects of the PRA and focusing in particular on the information collection approval process. The Congressional Research Service (CRS) also issued one highly useful report on the information collection provisions of the PRA. Reports from both entities are cited throughout this document.

Sources generated by OIRA were also helpful. I reviewed OIRA's annual Information Collection Budgets (ICB) (prepared in compliance with Section 3514 of the PRA). While, as described below, the reports of burden hours must be taken with some caution, the ICBs do include some useful information and paint an informative picture of PRA implementation over the years. I also reviewed the responses to OIRA's October 2009 request for comments on the PRA.²⁸ these were a fertile source of ideas about reform.

For data on the PRA approval process, I relied on (in addition to the annual ICBs) the website <http://www.reginfo.gov/public/do/PRAsearch> (last viewed January 16, 2012). The website permits users to search information collections by categories: e.g., by whether they were generic collections, voluntary, or statistical; by the number of burden hours imposed; and by many other characteristics. Of all the sources I reviewed, this website offers the most comprehensive portrait of the information collection activities of the federal government.

²⁸Federal Register 74 FR 55269 October 27, 2009.

Once I had reviewed and analyzed data on the PRA, I turned to interviews with experts and interested parties. I conducted 21 interviews, largely by telephone. All of the interview subjects were promised confidentiality so they would speak freely. Twenty of the interviews were with individuals and one was with a group of OIRA officials. The individual interviews broke down as follows: five were with former OIRA officials, six were with current or former agency officials familiar with the PRA, four were with current or former GAO examiners who had contributed to the many reports on the PRA, and five were with representatives of outside interests who had long histories of involvement with PRA-related issues.

Finally, I have to acknowledge that I was an OIRA desk officer for five years and worked on hundreds of information collection requests from agencies. In writing this report, I have tried to rely exclusively on the data gathered and the interviews conducted for this project. However, I would not be human if I had not been influenced by my own experiences with the PRA.

Basic Data on The Paperwork-Reduction Act

OIRA takes action on between three and five thousand information collection requests (new approvals, renewals, or revisions) each year. As of December 5, 2011, according to reginfo.gov, there were 8,549 collections approved by OMB and therefore considered, “active.” Table 1 shows that neither the number of collection requests per year nor the number of new requests per year has changed much over the past few decades. (2011, however, was the year with the greatest number of new information collections since the years immediately after the Act was created, when all collections were “new.”).

Table 1 Information Collections Per Year

Year	Number of Information Collection Requests	Number of New Requests
2011	4805	970
2006	4076	705
2001	3849	691
1996	3484	644
1991	3744	846
1986	4176	799

Sixty-three percent of collections are aimed at collecting data from businesses and twenty-seven percent, from individuals. This has also been largely consistent over time; the current data nearly mirror results reported by GAO in 2002.²⁹ In that same report, GAO also found that 95% of collections were for regulatory compliance (including tax compliance) and fewer than 5% of collections were for benefit applications (the remainder (less than 1%) were for “other categories” such as surveys).

As will be discussed below, the measure of burden hours is problematic. However, the annual report of total burden hours is somewhat indicative of the general trends in government information collection. Table 2 shows the burden hours reported in the annual Information Collection Budget.

²⁹GAO Report 02-598T “Paperwork Reduction Act. Burden Increases and Violations Persist.” April 11, 2002.

Table 2: Annual Burden Hours Imposed by Information Collections

Fiscal Year	Annual Burden Hours (in millions)
1997	6,970
1998	6,967
1999	7,183
2000	7,361
2001	7,651
2002	8,223
2003	8,099
2004	7,971
2005	8,240
2006	8,924
2007	9,642
2008	9,711
2009	9,795
2010	8,783

The Benefits of the Paperwork Reduction Act

The first issue that ACUS asked me to address was the benefits and costs of the PRA.

This section discusses the benefits of the PRA; the next section examines the costs.

Improving Information Collection

The benefit most often cited by those involved with the PRA was not a reduction in paperwork burden, but rather an improvement in the quality of the information collections that agencies use. My interview subjects disagreed about the extent of the improvement, but enough parties cited specific improvements to make it highly likely that on balance, OIRA review does improve information collections.

What is the nature of these improvements? They tend to come in two categories. The first is preventing the government from asking the public questions that are ineffective, overly intrusive, offensive, or otherwise inappropriate. As one agency official said,

“I’ve seen some of the things people put out there and they could get us in trouble. Too many people do these collections without thinking.”

OIRA officials cited examples of inappropriate questions that they had stopped and examples of collections they had improved by, for example, asking an agency to develop a Spanish language version of a form (in a case where respondents were likely to be primarily Spanish speaking).

There was considerable skepticism that these improvements were widespread, however. Even former OIRA officials, while noting that improvements indeed occurred, cast doubt on their frequency. One former manager in OIRA said, “Occasionally a desk officer will find a stupid question and fight back. But that is rare.” Another argued that the number of improved collections was very small. However, even these officials acknowledged that the very presence of OIRA probably leads agencies to be more careful in designing their information collections. They suggested it is impossible to determine how many “bad surveys” are never proposed, because they are stopped by agency officials before ever reaching OIRA.

The second way that OIRA review improves information collections is through the work of the statistical policy branch in OIRA. As in the preceding paragraph, there are different views on the extent of this type of improvement. Former OIRA officials cited this as the chief accomplishment of OIRA review. One said that

“Where there is an improvement is in statistical policy[,] where OIRA can make sure that agencies' survey designs make sense[,] and they aren't doing phone surveys getting a 10% response rate. There is benefit in technical expertise at OMB rather than having someone in the agency who only took one statistics course design the survey.”

Another said “The methods [of surveys when they arrive in OIRA] are not often well thought out and impose burdens on the economy that are huge.”

Not surprisingly, agencies in which there is a significant amount of statistical expertise disputed this characterization. Scientific agencies in particular chafed at the statistical standards imposed by OMB. One agency official said to me,

“For an evaluator[,] there is a lot of work you do where you can't expect a response rate like that. We understand the limits and we do non-response analysis. You get one where you get a 30-40% response rate. You take that and weigh it appropriately. We know how to do that. We grew up with that. . . . Purposive sampling can be better than random sampling[,] and you can't calculate confidence intervals for purposive sampling.”

Over the wide range of activities of the federal government, there are vast differences in the expertise of agency officials. In agencies (or in particular programs) where statistical expertise is limited, OIRA can make a significant difference in improving survey design. In agencies where survey design is a way of life, the likelihood of improvements is much smaller.

In any analysis of benefits (and costs), there is the desire to quantify as much as possible. Doing so here requires some significant assumptions. How many collections does OMB significantly improve each year, either by eliminating inappropriate questions and suggesting constructive improvements or by improving the statistical design of an information collection? I have no doubt that the answer to this question is a positive number. But the responses of both agency officials and former OIRA officials make clear that the percentage of collections improved is not huge. Still, with 4000-5000 collections per year, if even two percent are significantly improved, then eighty to one hundred collections per year are provide better information to the government (or are less burdensome on the public) because of OIRA review. My informed estimate is that this is a minimum number of collections improved by OIRA annually. For a maximum number, I'll assume five percent of the total number of collections which would be 200-250 collections per year.³⁰ I found it interesting to observe that if you assume that 10-25% of the 800-1000 new collections/year (virtually all of the collections likely to be improved are new collections) were improved you arrive at the same range of estimates. This seems like a reasonable percentage as well, given what I heard from my interview subjects.

³⁰Of all active collections, seventeen percent were designated as “approved with change,” indicating that some change had been made during OIRA review. However this includes every change including minor wording changes and, most commonly, changes in the estimate of burden hours imposed by the collection. The changes that reflect improvements in the collection that meet the statutory tests of either increasing practical utility or decreasing burden are likely to be a much smaller percentage of reviews.

Public Participation

As described above, there are two public comment periods in the information collection approval process. The agency publishes a notice in the Federal Register and allows 60 days for the public to respond with comments to the agency; then, when submitting the package to OIRA, the agency publishes a second notice, and the public has thirty days to submit comments to OIRA. Rarely do agencies do anything outside of the use of Federal Register notices to solicit public input.³¹

Historically, public involvement in the comment process has been limited. In 1998 and 2005, GAO reported that members of the public had rarely if ever submitted comments. Their 2005 report said, more specifically, that only

“An estimated 7 percent of notices of collections received one or more comments. According to our sample of all collections at the four agencies reviewed, the number of notices receiving at least one comment ranged from an estimated 15 percent at Labor to an estimated 6 percent at IRS.”

GAO went on to note that when other means of consultation (besides the Federal Register notice) were used, the results were encouraging:

“When agencies did make efforts to actively consult with potential respondents, some reported that these efforts led to improvements to the proposed collections. For example, VA officials stated that they obtained valuable information through consulting with patient focus groups and with experts in survey methods and data processing for a nationwide survey on customer satisfaction.”³²

Interviews with agency officials indicated that meaningful public participation in the comment process was concentrated in a small number of collections. One agency official said that the volume of comment varied from “nonexistent to overwhelming depending on the collection.” Another described the types of collections that receive comments as the “high-profile controversial ones” or ones that “have high costs.” Many of the collections that receive comments are associated with new regulations, according to agency officials. As for whether

³¹GAO 05-424 “Paperwork Reduction Act: A New Approach May Be Needed to Reduce Government Burden On The Public.” May 2005.

³²Id.

agencies make changes to their information collections in response to public comments, one agency official said,

“If a comment comes in that is substantive then it is 50-50 that it will lead to a change. It may be minor, an instructions clarification or sometimes we will see an adjustment in burden estimation.”

Agencies had a generally uniform view: changes do get made, but they are usually minor ones.

I also looked at data on reginfo.gov to characterize the comment process. I found that 8.7% of active collections received comments the last time they were submitted for review (a slight increase over the amount reported by GAO in 2005). I then looked at those agencies that received comments on more than 10% of their collections. For each of these agencies, I sampled a small number of collections to try to determine how many of the comments were actually substantive. The results are presented in Table 3.

Table 3: Public Comments on Agency Information Collections

Agency	% of collections that received comments	# sampled	# substantive
Agriculture	25	11	6
Commerce	14	8	5
Education	17	6	5
FDIC	15	3	3
FERC	22	3	3
Interior	14	5	3
Labor	13	5	3
State	33	5	3

While the number of collections that received a comment was small, more than 50% of the comments that those collections received were substantive. Compared with the regulatory process, the public comments far less frequently (8.7% here, versus one study's estimate of 63%

for regulations³³) but the proportion of comments that resulted in changes in regulations was similar to the off-the-cuff estimate given by the agency official quoted above for information collections ("50-50" here, whereas in the regulatory context, 45% of rules on which comments had been received underwent more than trivial changes³⁴).

The interviews, GAO reports, and data all point to a common conclusion: The public comments on a small number of information collections, but when agencies do receive comments, nearly half are substantive in nature and lead to some (albeit frequently minor) changes in the information collection. A number of sources both inside and outside the government echoed the concern raised by GAO, that the use of the Federal Register as a means for soliciting input was not particularly effective, as the public rarely sees the Federal Register.

Does the PRA Reduce Burden?

One would expect that the reduction of paperwork burden would be one of the chief accomplishments of the Act. However, the evidence is mixed at best that the Act has reduced the hours Americans spend providing information to the government. In fact, when asked whether the PRA has reduced burden, interview respondents from very different perspectives uniformly said that this was not even the right question to ask. In other words, these individuals argued, paperwork reduction is not one of the ways to evaluate the Paperwork Reduction Act. The likely reason for this statement is that the effect of the PRA on the burden of information collection is limited. I discuss below how burden has increased over the past decade and a half and how it is likely that the PRA has probably done little to prevent it from increasing more than it has.

The primary evidence, of course, is Table 2, above, showing the burden hours each year since 1997. As the table shows, hours increased at an almost constant rate (until 2011)³⁵, with a

³³Stuart Shapiro. Presidents and Process: A Comparison of the Regulatory Process Under the Clinton and Bush Administrations. *Journal of Law and Politics* 2007 XXIII: 393.

³⁴*Id.*

³⁵And the reduction in 2011 is largely due a change in the way that burden hours are computed by the Internal Revenue Service.

total increase of 26% from the beginning to the end of the period. While this is partly explained by a fifteen percent increase in the U.S. population over the period, the burden hours per capita have also increased, from 26.1 hours to 28.4 hours. Changes in the economy also result in burden changes (for example, during a recession, more people will fill out paperwork to apply for food stamps), but it is clear from the annual ICBs, they cannot on their own explain the change over the past decade and a half.

OMB categorizes changes beyond the government's control (such as the factors of population growth and economic conditions discussed in the paragraph above) as “adjustments” and changes due to government action as “program changes.” Program changes can be the result of new statutes (they account for the bulk of program changes) or discretionary actions by agencies. But regardless of their origin, program changes represent actions by the government

Table 4 Program Changes by Year

Fiscal Year	Annual Program Changes (in millions)
1997 ³⁶	
1998	41
1999	189
2000	188
2001	159
2002	294
2003	72
2004	29
2005	419
2006	114
2007	158
2008	197
2009	86
2010	386

³⁶ The first year of the Information Collection Budget is 1997.

that change the information collection burden on the American public. Table 4 tallies the number of program changes by year. As Table 4 shows, the information collection burden due to government actions (a.k.a. “program changes”) has gone up every year since data has been collected, often by more than 100 million hours.

Of course, it is possible that information collection burden would have increased more sharply, without the PRA. As one interview subject put it,

“The difficulty has to do with the counterfactual, what would the world look like without it. In terms of the positive impact, reducing burdens and increasing practical utility, what would happen without the PRA.”

The question is unanswerable, but two facts argue against the PRA having made much of a difference in burden. First, as the ICB regularly notes, most program changes are due to newly enacted statutes. When passing a statute, Congress is not required to minimize the resulting information collection burden. It is hard to believe that any statutory requirements that have resulted in burden on the public would have been any different in the absence of the PRA.

Second, the largest source of burden is the Internal Revenue Service (IRS). The ten largest IRS collections of information totaled 6,636 million hours or 75% of the total calculated burden of all active collections.³⁷ While IRS has undertaken burden-reduction efforts over the past decade, it is hard to ascribe those efforts to the PRA. As the CRS reported,

“the IRS accounts for about 80% of the estimated paperwork burden government-wide, but OIRA indicated that it devoted less than one full-time equivalent staff person to reviewing the agency’s paperwork requests (reportedly because much of the burden is mandated by statute or is outside of the agency’s {IRS's} control).”

Given that OIRA expends so few resources on IRS oversight, it is unlikely that changes in the

³⁷GAO described the relationship of IRS to the rest of the government in a 2004 report: “IRS reported a decrease of 131.4 million burden hours that was more than enough to offset the increases experienced by the other federal agencies. Therefore, although all agencies must ensure that their information collections impose the least amount of burden possible, it is clear that the key to controlling federal paperwork governmentwide lies in understanding the influence of increases and decreases at IRS. As we reported last year, five IRS information collections represented nearly half of the governmentwide paperwork burden estimate. A small reduction in the burden associated with those five collections could have a major effect on reducing the paperwork burden governmentwide.” GAO Report 04-676. “Paperwork Reduction Act: Agencies Paperwork Burden Estimates Due to Federal Actions Continue to Increase.” April 20, 2004.

burden caused by IRS are due to the PRA.

Every year the Information Collection Budget trumpets stories of reductions in burden. There are two difficulties with citing these efforts as success stories, however (in addition to questions about whether they occurred as a result of the PRA). First, when one researches the reductions on reginfo.gov, some appear as described in the ICB, but others do not. Second, many of the success stories in one year appear as burden increases in future years. (See Box 1 for one example). While it is tempting to cite the burden-reduction stories in the ICB, I remain unconvinced that many of them represent true long term burden reductions.³⁸

Box 1: A Tale of an Information Collection: (OMB #1902-0174): Standards for Business Practices of Interstate Natural Gas Pipelines.

1999 ICB describes a 421,000-hour burden increase.
2000 Report describes a 1,365,000-hour burden decrease and a 243,000-hour increase (verified in reginfo.gov database)
Database also cites a 411,000-hour decrease in 2000.
Database shows 164,000-hour increase in 2001, 421,000-hour increase in 2002.
2003 Report describes a 484,000-hour increase (not in database).
2005 Report describes a 421,000-hour decrease (verified in database).
2006 Report describes a 243,000 hour increase (verified in database).
Database shows a 211,000-hour increase in 2009.
2010 Report describes 149,000-hour decrease and 2011 Report describes a 149,000-hour increase (decrease in database, increase not).

Therefore, while there are certainly instances of OIRA and the PRA process reducing the burden of particular information collections, it is unlikely that these burden reductions are significant and represent a separate benefit from the improvement of information collections

³⁸GAO has also taken aim at claims of burden reduction. From its 2000 Report, “EPA Paperwork: Burden Estimate Increasing Despite Burden Reduction Claims, 00-59, “In at least one instance, however, agency burden reduction claims appear to have been overstated. In March 2000, GAO reported that most of EPA’s claims to have reduced paperwork burden by 24 million burden hours and saved businesses and communities hundreds of millions of dollars between fiscal years 1995 and 1998 were “misleading,” and in fact were the result of agency re estimates, changes in the economy or respondents’ technology, or the planned maturation of program requirements.”

described above.³⁹ The views of experts inside and outside of government, and the fact that much of the burden (because it is required by statute or by IRS) is not affected by the PRA, combine to indicate that burden-reduction is not a significant benefit of the PRA.

Does the PRA Lead to Accurate Estimates of Burden?

The PRA improves our ability to estimate burdens, in the sense that prior to the PRA, no such estimates were required or performed. The PRA also helps us understand trends in government information collection, as discussed above. However, my interviews with those inside and outside of government make clear that agencies' PRA-mandated estimates of burden are highly questionable at best and random numbers at worst. Particularly challenging is the fact that some believe the numbers are significant overestimates, while others believe the opposite.

OMB best described the problem itself back in 1999.⁴⁰

“Despite public input and certain common methodological techniques, agency estimation methodologies can produce imprecise and inconsistent burden estimates. Many agencies simply rely on program analysts to generate burden estimates based on their individual consideration of, for example, the number and types of questions asked, what records will need to be created and maintained, how long it will take people to complete these and other tasks, and how many people will be performing the tasks. While these officials are often experts in their areas of responsibility and are usually familiar with the public’s experience with responding to information collections they oversee, in many cases their estimates are not based on objective, rigorous, or internally consistent methodologies.”

This problem of agencies estimating burden in Washington without testing their collections on the affected populations causes a general lack of faith in the burden numbers produced. One former OIRA official said, “I have no confidence in burden hours.” An agency official said, “I think the tabulating and counting of burden hours is an artificial exercise that has no use in the real world.” Finally, an outside expert called the process of calculating burden-hours “pseudo

³⁹ William Funk (*Supra* Note 3, p. 111) also explains that reduction of duplication is unlikely to be a significant benefit of the PRA. “Certainly some duplicative requirements have been discovered but they are few in number. Significant reductions in paperwork burdens cannot be attained by eliminating unnecessary requirements just as significant budget reductions cannot be achieved by merely rooting out fraud, waste, and abuse.”

⁴⁰Office of Management and Budget Report to Congress, Information Collection Budget of the United States 1999.

science.”

The most that can be done with burden-hour calculations is to use them for looking at general trends in the government, as was done above (changes of a billion hours likely mean something even if a difference of a thousand hours doesn't). A considerable amount of work would be needed, and additional data added, to transform them into a tool that could produce accurate estimates.

Conclusions on the Benefits of the PRA

The first significant benefit of the Paperwork Reduction Act is that between 80 and 250 information collections per year are improved. For these collections, either the quality of the information provided is better than it would have been without the Act, the burden imposed by the collections is significantly lower, or both. Quantifying the value of these improvements in information and reductions in burden is impossible with current information.

The second significant benefit may be even more difficult to quantify. Participation in government decision-making has long been recognized as a way of building support for government decisions. While a small percentage of information collections receive comments, roughly half of those comments are substantive and roughly half result in changes by the agency. This participation in decisions made by unelected officials is an important way to confer legitimacy on the administrative state.⁴¹

Finally, large scale burden reduction and accurate burden estimates are commonly thought of as primary goals of the PRA's information-collection provisions. There is, however, little evidence that either of these goals has been achieved.

Costs of the Paperwork Reduction Act

Direct Costs of Administering the Act

The most obvious costs of the PRA are the salaries of employees that work on activities

⁴¹Davis, Kenneth Culp. *Discretionary Justice: A Preliminary Inquiry* University of Illinois Press 1969.

related to the Act. These include desk officers at OIRA and agency personnel. Numerous sources from OIRA noted that the statistical policy branch (four employees) spends much of its time on PRA-related activities, while desk officers spend 10-20% of their time on them. This varies considerably from desk officer to desk officer, as some work with “regulation heavy” agencies, and others work with agencies that rely more heavily on information collections. If one assumes that the PRA occupies 80% of the statistical policy branch's time and 15% of the time of 20 desk officers, and that the average OIRA desk officer is a GS 11 Step 1, then PRA exacts an annual cost of \$387,000 in OIRA-employee salaries.⁴²

Direct costs at the agencies involve four components. The first cost is for personnel at independent agencies and cabinet department paperwork offices. These individuals manage the PRA clearance process for their agencies and departments, work with OIRA on information collection review, and educate subagencies and programs about the requirements of the Act. I asked each of the interview subjects at agencies and cabinet departments how many personnel worked on these functions. At small agencies with few information collections, one person handles PRA matters on a part-time basis. At cabinet departments, the number of personnel performing this function varied from one to six. Finally there is the cost of publishing PRA notifications in the Federal Register.

Reginfo.gov lists approximately 75 non-cabinet (independent) agencies as having active information collections. These vary from the Federal Communications Commission (which has 421 active collections and therefore probably at least one full-time employee working on PRA clearances) to agencies like the Office of Navajo and Hopi Indian Relocation (which has one active collection) and therefore virtually no one working on PRA activities. The latter type of agency is far more common. If we assume that the 75 non-cabinet agencies have 0.2 employees at GS12, step 1, then these agencies spend \$1,123,000 on personnel salaries devoted to

⁴²Salary scales are available at <http://www.opm.gov/oca/12tables/pdf/saltbl.pdf>

information collection clearances. If we assume that the 14 cabinet departments have an average of 2 people performing this function, then cabinet departments are spending \$2,096,000 in this area.

The second type of direct cost is for personnel at subagencies (agencies within cabinet departments that typically do not interact directly with OIRA) at the cabinet departments. Interviews confirmed that this varies widely: the IRS has between 2 and 5 people (more than some cabinet departments) whereas many subagencies have no one to perform these functions. If the cabinet departments have an average of an additional two people across subagencies working on managing information collection clearance at a GS 9 step 1 level, then the total cost is \$1,445,000. If the cabinet departments have an average of five people performing this function, then the total cost would be \$3,614,000.

The final component of the direct costs stems from the actual preparing the proposed information collection for submission. Every time a program wants to collect new information from the public, someone familiar with the information-collection plan must prepare the submission to OMB; this includes answering the eighteen questions on the supporting statement and responding to any follow-up questions from OIRA. An average of 780 new collections are submitted each year (while some work needs to be done on renewing continuing information collections, I assume that most of that work is done by the personnel familiar with the PRA at the departments and agencies discussed above). If it takes one eight-hour day (a very conservative estimate according to most people I spoke with), and the person completing the supporting statement is a GS12 (likely to be at least this level because some program expertise would be needed), then the total cost is \$234,000. If, on the other hand, it takes five days to prepare a submission to OIRA and address their questions, then the total cost is \$1,168,000.

The Federal Register charges agencies a minimum of \$477 per page for a publication. Examining a week of the Federal Register (February 1- February 7, 2012), there were an average

of 17 notices per day. The notices were on average slightly more than one Federal Register page long. Using \$500/notice, 17 notices per day and 200 days of publication per year, this leads to a cost of \$1,700,000 annually.

The total direct costs of the information collection clearance process, as shown in Table 5, range from \$6,985,000 to \$10,088,000.

Table 5: Total Direct Costs of PRA Compliance

Component	Cost
OIRA	\$387,000
Departments and Independent Agencies	\$3,219,000.00
Subagencies	\$1,445,000 – \$3,614,000
Programs	\$234,000 - \$1,168,000
Federal Register	\$1,700,000.00
Total	\$6,985,000 – \$10,088,000

Indirect Costs: The Cost of Delay

The most frequently heard complaint about the PRA is that the process to secure approval of an information collection takes time. For continuing collections, this is not an issue, because the agency can go on collecting information while it pursues a renewal of its approval. But for new collections, agencies cannot start collecting information until OIRA approval is given. If the collection of information has social benefits, then delaying it has costs. Of course, not all collections have social benefits. And some of them will see their net benefits increased by going through the process of OMB approval (see discussion above on the benefits of OMB review).

To assess the costs of delay on collections that are eventually approved, one would need to answer the question, “What would the net social benefits of new information collections have been, had the agencies issued them without OMB approval, as they were originally conceived?” There is no basis on which to estimate the answer to this question. The answer is likely to be a positive number, because a single information collection leading to scientific information in

support of a regulation with large benefits will bring up the total net benefits considerably. The magnitude, however, has a wide band of uncertainty.

The best that can be done is to assess the delay imposed by the OIRA-review requirement and note that multiplying that delay by the total net benefits per year of the collections that were delayed would give a value for the cost of delay. The formal delay imposed by the PRA process is simple to calculate. An agency has to wait 60 days for the first public comment period and then another 60 days for OMB review (which includes the second 30 day comment period).⁴³ This would lead to a delay of four months or one third of a year.

But interview subjects made clear that this is a minimum estimate for the delay and that it usually takes longer -- sometimes much longer. As noted above, preparing the OMB submission, including the supporting statement, takes time. The Federal Register does not publish notices for comment immediately upon receipt. If an agency receives comments during the 60 day comment period, it must decide how to respond to the comments (if they are substantive). Finally, questions from OIRA may extend the review period beyond sixty days while agencies negotiate a resolution with OIRA.

All of these delays lead to an estimate that was relatively consistent from agency personnel. From the time that an information collection is developed until it is finally approved generally takes between six and nine months. As previously noted, though, this delay is impossible to quantify or monetize. If the 780 new collections per year lead to zero net social benefits, then obviously the delay has no costs. If they lead to \$1 million in annual net benefits, then the delay costs between \$500,000 and \$750,000. If they lead to \$10 million in annual net benefits, then the delay costs between \$5 million and \$7.5 million.

⁴³OMB can complete the review in fewer than 60 days but must wait at least 30 until the first comment period is completed. For purposes of simplicity, I assume here that OMB will use the full 60 days.

The Cost of Information Collections Not Pursued

Another consequence of the delay is that it may deter agencies from pursuing an information collection in the first place. If the agency wants to collect information that is time-sensitive, a delay of six to nine months may lead the agency to decide that the collection is not worthwhile. OMB does have emergency procedures for such instances,⁴⁴ but a program may not be aware of these provisions or may feel (correctly or incorrectly) that their collection would not be granted emergency approval.

As with the question of delay, this is only a cost of the PRA if the collections not pursued would have led to net social benefits. As with the question of delay, it is impossible to know whether this is the case. The lack of a submission could signify very different things. For example, an agency might choose not to pursue a collection because it feared that OMB would disapprove it on the grounds that the burden of filling out the collection did not provide sufficient practical utility. In that case, we could reasonably assume that the collection would have had no net benefit. On the other hand, if time-sensitivity, ignorance of the PRA process, or simply being daunted by the work involved in putting together a PRA submission have led an agency to abandon an information collection, then it is possible that net benefits have been foregone.

As one former agency official said,

“I can tell you certainly it is in the air, 'Impossible -- we can't do it in time.' I've heard it enough that I can tell you with confidence that it does occur.”

Another former government employee said,

“I've talked with academics who wanted to do projects who've waited for PRA clearance for a year and a half. In terms of facilitating the research agenda, you definitely hear tales of impediments.”

Agency officials repeatedly told me that agencies will often change their information collections in order to avoid the requirements of the PRA. The most common way is to collect

⁴⁴5 CFR 1320.13

information from nine people or fewer. Obviously this is not possible in many circumstances, but if an agency is planning a small-sample study, it is far more likely to ask nine people or businesses than any number between 10 and 20. This makes the collection instrument weaker, and this weakness is a cost of the PRA.

I will not attempt to quantify the number of information collections that are abandoned or the number that are modified to avoid OMB review. In conducting the interviews, it is clear that this phenomena is a real one but coming up with a frequency with which it happens and then putting a value on the impacts is far beyond what available information will permit.

Conclusions on the Costs of the PRA

The direct costs of the PRA are the ones that are most easily monetizable. As described above, they total between \$6.9 and \$10.1 million annually. An estimate of total costs would have to add to this number (1) the costs of delays in issuing socially beneficial information collections and (2) the foregone benefits of collections that are abandoned because of the PRA process. These latter two cost categories could range from nearly zero to a number that is significantly larger than the direct costs.

A wholesale comparison of the costs and the benefits of the PRA would involve comparing the benefits tabulated in the previous section with the costs tabulated here. But a comparison of total benefits and total costs is really only appropriate if the policy being considered is a complete repeal of the PRA. When considering particular reforms, the appropriate comparison is between the marginal benefits and the marginal costs associated with the changes in question. The next two sections of this report consider changes to the PRA and evaluate them based on the benefits and costs described here. The first of these two sections addresses potential exemptions to the PRA, and the second considers more general reforms.

Potential Exemptions to the Paperwork Reduction Act

ACUS asked me to evaluate two potential exemptions to the PRA: voluntary collections

and collections from Special Government Employees. Over the course of my research, two other possible exemptions came up. A CRS report discussed exempting Inspectors General from having their information collections approved, and numerous interview subjects mentioned the possibility of exempting collections that fell below a certain burden-hour threshold.

Voluntary Collections

OIRA asked for suggestions for reforms for the implementation of the PRA in a Federal Register notice on October 27, 2009.⁴⁵ Many reforms were suggested by commenters but one of the most popular was the exemption of voluntary collections.⁴⁶ As OIRA wrote in the 2010 ICB, “Over 50 commenters discussed the difference between voluntary collections and mandatory collections, with some arguing for a different review process and others pointing out that the PRA does not distinguish between voluntary and mandatory information collections.”⁴⁷

The rationale for exempting voluntary collections was articulated by OMB Watch: “voluntary participation does not equate to a reporting imposition and should be exempt from the definition of “collection of information” under Sec. 3502 of the PRA.”⁴⁸ Other commenters voiced their support for an exemption saying that many public health surveys were voluntary (and also noted that many are subject to review by an Institutional Review Board).⁴⁹ Others argued for an exemption for online surveys that are voluntary.

How many collections are voluntary? I turned to reginfo.gov to get this information. Agencies self-report whether their collections are voluntary; because there is no mechanism for verification, the results should be taken with a grain of salt. With that in mind, 26% of collections active on December 5, 2011 were described as voluntary. Those collections tended to be smaller than collections overall: seventy-two percent imposed fewer than 10,000 hours in

⁴⁵*Supra* Note 28.

⁴⁶ Comments are available on regulations.gov in docket folder OMB 2009-0020.

⁴⁷OMB 2010 report to Congress: Information Collection Budget of the United States.

⁴⁸Comments on OMB solicitation for comments on PRA implementation number2009-0007.

⁴⁹See for example the comments by the Public Health Management Corporation 2009-0020.

burden, compared with only sixty-two percent of collections overall. Similarly, 90% of the voluntary collections imposed fewer than 100,000 burden hours, compared with 82% overall.

No issue divided my interview subjects as much as the exemption of voluntary collections. Several respondents, including a few agency officials, echoed the perspective voiced in the public comments. One said,

“The costs of maintaining and clearing all these voluntary collections is not justified by the benefits we get. If something is voluntary and is not well structured people won't respond to it.”

Indeed, exempting voluntary collections would eliminate at least one quarter of the direct costs of the PRA, since they represent more than a quarter of all active collections.

Opponents to the idea of exempting voluntary collections were, however, numerous. They made several compelling arguments. The first argument, made by OIRA officials, outsiders, and agency personnel is that it is extremely difficult to determine which collections are truly voluntary. As one interview subject put it,

“The public often perceives voluntary as mandatory and they don't differentiate between them. So it would be hard. My aunt recently told me, 'I got this survey from Washington, DC, I guess I have to fill it out.'”

The line between mandatory collections and voluntary ones is not always clear, and, many of my interviewees argued, members of the public are unlikely to see government requests for information from as voluntary.

The second argument against exempting voluntary collections relates directly to one of the primary benefits of the PRA. As a former OIRA official put it,

“There are also methodological reasons [for not exempting voluntary collections]. If government is expending and using information, it should be done right, not throwing money away.”

One of the chief benefits of OIRA review, as described above, is the improvement of information collections. Sentiment was strongest that collections using statistical methodologies were the collections most frequently improved by an additional layer of review.

Voluntary collections are indeed far more likely than mandatory ones to pose issues of statistical methodology. Of the 1079 information collections described by agencies as “employing statistical methods,” 911 or 84% are voluntary. Exempting voluntary collections, therefore, would significantly reduce one the largest benefits of the PRA and have only a minor effect on the costs.. Hence without the review of voluntary collections, much of the rationale for the PRA disappears. The Act is intended not only to reduce paperwork burden, but also to ensure the practical utility of information collected..⁵⁰ Information collected with poor methodological approaches is unlikely to have any practical utility.

One agency official summed up the reasons not to exempt voluntary collections:

“Just because something is voluntary, there is still a value that the information is being collected correctly and using good statistical methods and not duplicative.”

The difficulty in defining a collection as "voluntary," coupled with the need to ensure that voluntary collections provide useful information, lead me to recommend that voluntary collections not be exempted from PRA's requirements.

Exemption of Special Government Employees

ACUS also asked for an evaluation of an exemption of Special Government Employees (SGEs) from the requirements of the PRA. The provisions on the PRA exempt collections from government employees.⁵¹ Special Government Employees are defined as, “retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis.”⁵² Examples of SGEs are members of the advisory committees the provide frequent policy advice to agencies like the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA).

⁵⁰44 USCA 3506 (c)(3)(a)

⁵¹3502(3)(A)(i)

⁵²18 U.S.C. 202

Special Government Employees fall in a gray area between federal employees and the public. My interview subjects provided little clarification as none of them recalled an issue with a collection of information from SGEs. Looking at forms that collect information from SGEs revealed a divergence of practices. I specifically examined forms that asked SGEs to provide information on potential conflicts of interest.

EPA clears its form with OMB and has an OMB number displayed on the form.⁵³ In contrast, FDA does not appear to have sought OMB clearance for its request of conflict of interest data from SGEs.⁵⁴ Finally the Office of Government Ethics (OGE) produces a form that numerous other agencies use for this purpose.⁵⁵ However, the form is also used to collect information from potential government employees and it is not clear from the supporting documents submitted to OMB whether OGE counted the burden on SGEs or just on potential government employees. It is clear from this small sample that there is considerable confusion on this issue.⁵⁶

Recommendation 1 OMB should solicit comment from agencies on the applicability of the PRA to Special Government Employees and provide guidance on the matter.

Exempting Collections Below A Certain Burden-Hour Threshold

Numerous interview subjects (particularly those from agencies) asserted that OIRA desk officers rarely have time to pay attention to most of the information collections they review. A simple back-of-the-envelope calculation (20 OIRA desk officers spend 15% of their time

⁵³See: <http://www.epa.gov/scipoly/sap/pubs/form3110-48.pdf> (last viewed January 14, 2012).

⁵⁴See: <http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM048297.pdf> (last viewed January 14, 2012).

⁵⁵See <http://www.usoge.gov/Forms-Library/OGE-Form-450--Confidential-Financial-Disclosure-Report/> (last viewed January 14, 2012).

⁵⁶There is also an ACUS information collection where this issue arises. Collection # 3002-0003, Substitute Confidential Employment and Financial Disclosure.

reviewing 4000 collections annually) shows that each collection receives 1.5 hours of attention from OIRA. If a small percentage of the collections takes significantly more than 1.5 hours to review, then most collections receive significantly less time. This has led numerous commenters and interview subjects to recommend that OIRA “get out of the retail business” so it can focus on more significant issues (regulations and the more meaningful information collections).

The question then is how to devise an exemption that would allow OIRA to focus on the most important collections. One simple way to do so would be to exempt collections under a certain burden-hour threshold. Table 6 breaks down the active collections by burden hour (for all collections active on December 5, 2011):

Table 6 Information Collections by Burden Hours

Burden Hour breakdown	Number of Collections	Percent that Received Public Comments
0-10,000	5257	7%
10,000 – 100,000	1898	12%
100,000 – 1,000,000	973	14%
More than 1,000,000	421	16%

Two observations jump out from this data. First, the largest portion of collections have a relatively small number of burden hours. Second, the higher the number of burden hours, the more likely it is that a collection will receive public comments. Therefore, an exemption of lower-burden collections could reduce direct costs considerably without losing the benefits of public participation. If the higher-burden collections also correspond with the collections that OIRA improves through its review, then this benefit of the PRA could be maintained as well.

Agency officials were generally enthusiastic about reducing OIRA's role in reviewing smaller information collections. As one agency official put it, “ We need an expedited process for collections with low burden.” A few agency officials and numerous people with connections to OIRA pointed out two problems with such an exemption. The first is the possible inaccuracy

of burden hours as a metric. If burden hours are not a good reflection of the burden imposed by an information collection, then crafting an exemption based on burden hours is problematic. Such an exemption would be easy to game: for example, setting an exemption at 10,000 hours would likely lead to a large number of collections asserted to require 9,900 burden hours; alternatively, agencies might take to dividing up their information collections in order to avoid review.

The second difficulty is the lack of correlation between the burden imposed by a collection and the likelihood that the collection would be improved by OIRA review. OIRA review is most beneficial for collections that employ statistical methodologies, but a large percentage (79%) of those collections impose fewer than 10,000 hours of burden. And nearly all of the collections that employ statistical methodologies impose fewer than 100,000 hours of burden. A burden-based exemption would remove from OIRA review many of those collections that would benefit the most.

CRS proposed a possible solution in its 2009 report:

“Another possible approach is for OIRA to focus its efforts on the larger information collections—similar to the way that OIRA’s regulatory reviews have focused only on draft rules that are at least 'significant' under Executive Order 12866.”⁵⁷

E.O. 12866 governs the regulatory review process by OIRA. Section 3(f) of the Executive Order sets a threshold, providing that certain regulations -- those with annual economic impacts of more than \$100 million -- are automatically subject to OIRA review. But in addition to this threshold requirement, the Act (in Section 3(f)(4)) gives OIRA the discretion to consider other regulations as “significant”, those that raise “novel legal or policy issues.” In 2011, OIRA reviewed 740 regulations: 117 of them because they crossed Section 3(f)(1)'s \$100-million threshold, and the remainder, most likely, under Section 3(f)(4).

⁵⁷Can be found at Federal Register 58 FR 51375 or http://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf (last viewed January 11, 2012).

A similar system could be designed for information collections, as suggested by CRS. A burden-hour threshold could be established, above which any information collection would be automatically reviewed. But OIRA could also be given discretion to review any other information collections that it felt raised novel legal, policy, or *methodological* issues. A process for information collections would need to be created similar to the process used under EO 12866, where agencies send lists of regulations to OIRA and OIRA tells the agencies which ones it wishes to review under the EO.

A system like this would have numerous advantages. It would capture the primary benefits of the PRA: OIRA review of important information collections and public participation in their development. Meanwhile, it would reduce the costs of the PRA by significantly decreasing the volume of collections subject to review. This in turn would result in lower direct costs at OIRA, at cabinet departments, and at the program level; it would also reduce the delay inherent in the PRA process for many collections.

Under this proposed system, OIRA could also delegate the review of certain types of collections (some of the many categories of information collections listed in 5 CFR 1320(3)(c) (1) that it felt were unlikely to be significant. Also if OMB were to conclude that certain agencies were more likely to successfully evaluate novel methodological issues than others, delegation of review of information collections with such issues could vary by agency.

This change could be implemented in one of two ways. A statutory change to the PRA could embody the principles of a tiered review system. Alternatively, under Section 3507(i) of the Act, OMB could delegate to the agencies review authority over some proposed collections. The Act provides that delegation may occur if OMB finds that

“a senior official of an agency designated under section 3506(a) 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.”

Partial delegations (such as the delegation of authority to review only those collections under a certain burden threshold, or only those that did not raise novel issues) are also permissible under the Act. Of course, passing the test outlined in 3507(i) would not be trivial. As one former OIRA official pointed out, “You would have to have better agency review processes.”

In order to test this reform, OMB would not need to delegate authority to every agency at the outset. Rather, it could delegate “non-significant” collections to several agencies and audit the results after a prescribed time period. (This would also allow OIRA to perfect a process of deciding which information collections were “significant.”) If, upon auditing the results, it appeared that the delegation authority was not abused and that significant savings were realized, delegation of authority to review non-significant information collections could be expanded to all agencies.

Recommendation 2: *OMB should delegate to several pilot agencies review of information collections below a particular burden-hour threshold (recommended to be 100,000 hours) that do not raise novel legal, policy, or methodological issues. OMB should audit the results of delegations after two years; then, if abuse of delegation authority has not occurred, and time savings have resulted from the delegation, OMB should expand the delegation to all agencies. Regular audits of agency review processes should then follow.*

Exemption of Inspectors General

A 2009 CRS report described some difficulties that Inspectors General encounter as a result of PRA compliance requirements:⁵⁸

"One PRA-related issue of concern in recent years has been whether the act's requirements should apply to audits and investigations being conducted by agency Inspectors General (IGs). OIRA considers the IGs to be subject to the PRA, and has required them to (1) allow the public to comment on their proposed

⁵⁸Curtis Copeland and Vanessa K. Burrows “Paperwork Reduction Act: OMB and Agency Responsibilities and Burden Estimates. *Congressional Research Service* R40636 2009

collections of information, and (2) submit those proposed collections to agency CIOs and OIRA for review and approval. Several IGs have said that the PRA's requirements have affected their ability to conduct timely audits and investigations, and that the requirement for agency and OIRA approval compromises their independence. For example, IG offices at the EPA and SEC have reported that they had limited certain surveys to fewer than 10 respondents in order to avoid the PRA's requirements. Another IG office reportedly turned to GAO to undertake a survey that encountered "PRA compliance constraints." One IG office reportedly conducted a congressionally-required audit without adherence to the PRA because obtaining agency and OIRA approval for the collection would have caused the office to miss the congressionally-established reporting deadline. Other IGs have decided not to undertake information collections because of the PRA requirements."

Inspectors general are instructed "to conduct and supervise audits and investigations" at federal departments and agencies.⁵⁹ In addition to being time-sensitive, such investigations are often politically sensitive. Subjecting such investigations to review by OMB, as a branch of the Executive Office of the President, may create the appearance of political supervision of what is intended to be a non-political investigation.

Fortunately, there is an existing exemption which would take care of most examples of information collections needed by Inspectors General. OMB's regulations implementing the PRA state that collections are exempt if they are conducted,

"[d]uring the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities."⁶⁰

Given the findings of the CRS report, there may be confusion on this issue.

Recommendation 3 *OMB should issue guidance to make clear that investigations by Inspectors General are exempt from the requirements of the PRA so long as they meet the requirements of 5 CFR 1320.4(a)(2)*

Other Reforms to the Paperwork Reduction Act

One of the questions asked by ACUS in its RFP was "whether the Act's goals could be

⁵⁹U.S.C. Appendix. 92 Stat 1101 as amended.

⁶⁰5 CFR 1320.4(a)(2).

achieved in a more efficient manner.” Recommendation 2 above, would greatly improve the efficiency of the Act, achieving a similar benefit to the current process at a significantly lower cost. Below, I address other reforms that could improve the Act's efficiency. Many of these reforms can be pursued either in conjunction with Recommendation 2 or without it.

The current administrator of OIRA, Cass Sunstein, has also pursued numerous implementation changes to the PRA. This section concludes with a discussion of these changes.

Extending the Approval Period for Information Collections

OMB is statutorily prohibited from approving an information collection for more than three years.⁶¹ This results in a requirement that agencies resubmit every approved information collection (if they wish to continue using it) every three years. Of the currently active collections, the most recent action on approximately 50% of them was a resubmission without changes.

There are good reasons to periodically review information collections. Doing so forces an agency to reconsider its need for the information. It allows the agency (and OMB) to consider alternative means for collecting the information. (This was particularly useful as OMB used PRA review to push agencies to make more of their information collections available and submittable online.) Many would argue that reviewing policies on a periodic basis is a tenet of good government. On the other hand, this group of collections represents the group that is likely given the most cursory review at OIRA upon resubmission. Over 90% of the active collections most recently submitted as “extensions without changes” were approved without any changes by OIRA.

Extending the length of time for which OMB can grant approval for an information collection has been suggested in public comments.⁶² OMB has publicly supported such an extension:

⁶¹44 USC 3507(g)

⁶²See comment 2010-0021 on OMB request for comments (*supra* note 28).

“This workload has been exacerbated by the three-year OMB approval cycle. . . .If the current limit on OMB approval time was extended, agencies would process fewer information collections annually. For example, a four-year OMB approval period would reduce the number of annual OMB clearances by about 19 percent.”⁶³

Most interview subjects also supported the idea, although nearly all of the subjects whom I asked, (including agency personnel) opposed an indefinite approval period, noting the need to periodically review agency actions. Finally, extending the approval time would do little to affect the benefits of the PRA (most of which accrue to new collections of information) but would significantly reduce the costs.

Giving OMB the option of approving information collections for more than three years would likely require a statutory change. It is conceivable that OMB's delegation power could be used to extend approval times (perhaps, in conjunction with Recommendation 2, OMB could designate all renewals without change as “not significant”), but doing so would be challenging to manage administratively -- delegations of individual collections would require a recordkeeping system whose management would consume valuable OMB resources.

Recommendation 4: Amend the Paperwork Reduction Act to allow OMB to approve collections for up to five years.

Elimination of a Comment Period

As I stated above, one of the chief benefits of the Paperwork Reduction Act is the public participation provisions. However, the PRA gives the public two chances to comment on an information collection. The first is before the submission of the information collection to OMB. Numerous interview subjects explained that the purpose of that comment period is the same as the comment period on regulations under the Administrative Procedure Act: both seek to allow the public to express their views to the agency. The second comment period, which takes place simultaneously with the submission to OMB, has a different purpose, according to interview

⁶³OMB Report to Congress The Information Collection Budget of the United States 2002.

subjects familiar with the history of the PRA. It allows commenters to “appeal” an agency decision to not adopt their comment to OMB.

While participation is undoubtedly a good thing, two comment periods may be the proverbial “too much of a good thing.” Several public comments on the OMB solicitation for comments suggested eliminating one of the two comment periods.⁶⁴ GAO has also recommended elimination of one comment period:

“we questioned the need for two such notices (the 60-day notice during the agency review and the 30-day notice during the OMB review). Eliminating the first notice, in our view, is . . . not likely to decrease public consultation in any significant way.”⁶⁵

As with the extension of the approval period, there was widespread (though not unanimous) support for eliminating one of the comment periods. Several agency personnel pointed out the same point made by GAO:⁶⁶ that in the age of the Internet, using Federal Register notices as the means of communicating with the public is far from ideal. One subject said,

“If you are going to hide it under a rock called the Federal Register then we don't need two comment periods -- if you are looking for the citizenry to see something we need to address where we put it. Then we can address how often to do it. Or maybe we should take it seriously by putting this somewhere where people will notice it.”

Elimination of a comment period, which would require a statutory change, would reduce the costs of delay. This in turn might decrease the the incentive to abandon potential information collections, since the overall process would no longer seem as burdensome. To have the greatest impact on reducing delay, I recommend eliminating the first sixty-day comment period. Steps could be taken to publicize information collections available for comment during the second thirty-day comment period using the Internet, including social media. (The Treasury Dept.'s www.pracomment.gov is an excellent example of a website devoted to soliciting comments on information collections.) Agencies and OMB desk officers would both be able to see any comments, and their disposition would become a more prominent feature of the OIRA review.

⁶⁴See comments 2010-0008 and 2010-0066 in particular.

⁶⁵GAO Report 06-477t. “Paperwork Reduction Act: New Approaches Can Strengthen Information Collection and Reduce Burden.

⁶⁶*Supra* Note 31.

Recommendation 5: *Eliminate the sixty-day comment period from the Paperwork Reduction Act. Encourage agencies and OMB to use alternative means of reaching the public (in addition to a formal Federal Register notice) during the 30 day comment period that occurs simultaneously with submission to OMB.*

Compliance Assistance and More Staff for OIRA

Officials within the government who deal regularly with the PRA, both at OIRA and at agencies, bemoan the lack of understanding by their colleagues about the Act. Administrator Sunstein has issued numerous explanatory memos (discussed in greater detail below), but much confusion remains. Many comments in response to the OMB notice⁶⁷ suggested that OMB provide more compliance assistance to agencies.

Interview subjects from agencies also expressed the desire for more training from OMB and more resources available to them. One said,

“DOJ has a {Freedom of Information Act} FOIA help desk that is always staffed. OMB needs a PRA help desk to give guidance to agencies when we can't get a hold of desk officers.”

Another suggested biannual training for agency personnel and program officials who anticipate needing PRA clearances in the near future. More compliance assistance could also help standardize the calculation of burden hours. OIRA could facilitate the sharing of methods to calculate burden hours used by more sophisticated agencies such as IRS with other smaller agencies. This could have the added benefit of giving meaning to numbers that are currently viewed with great skepticism.

Of course, providing training and compliance assistance requires time and resources from OIRA. As a small office that conducts regulatory review under E.O. 12866, and performs numerous other statutory and executive functions in addition to its PRA responsibilities, time is at a premium for OIRA desk officers. GAO noted, back in 1998, “OIRA's lack of action in some

⁶⁷ *Supra* Note 28.

of these areas may be a function of its resource and staffing limitations,”⁶⁸ and little has changed (except additional requirements for OIRA) since then. Interview subjects from numerous perspectives called on Congress to provide OIRA with more funding for additional personnel.

In the current funding climate, expanding agencies is a political challenge. If some of the other recommendations in this report (particularly Recommendation 2 and also 4) are adopted, then OIRA will have additional time available -- even without additional staffing -- to perform other functions, such as compliance assistance. It is impossible to envision OIRA doing additional PRA training and compliance assistance, with its current staffing levels and responsibilities -- so absent adoption of these recommendations, additional staffing would be required in order to provide more agency training on the PRA process.

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

The Information Collection Budget

The Information Collection Budget is the annual report from OMB to Congress required under Section 3514 of the PRA. It typically consists of four components: There is the annual accounting statement of burden hours broken down by agency. There is a series of burden-reduction initiatives. There is a list of PRA violations. And, finally, there are usually narrative sections by OMB discussing initiatives or other aspects of the PRA.

The production of the ICB is a resource-intensive exercise consuming the time of department and agency paperwork personnel and OIRA desk officers. I read through every ICB that OMB has published, and only one of the four parts described above was useful for this research. The narrative sections written by OIRA were regularly informative. Including

⁶⁸GAO Report 98-120. "Implementation of Selected OMB Responsibilities Under the Paperwork Reduction Act" July 1998.

subjects such as the difficulty of measuring burden hours, the movement toward electronic reporting, and government-wide initiatives related to information, the narrative sections were both useful and significant to those wanting to understand government approaches toward collecting and using information.

Numbers from the annual accounting statement are quoted in this report (see Table 2), but with the development of reginfo.gov, the ICB is no longer needed to gain an understanding of those numbers and changes over time. In addition, the concerns discussed about the utility of burden hours as a metric call into question the usefulness of annual accounting statements which are generated by adding up these flawed numbers.

Also, as shown above in Box 1, the descriptions of burden-reduction initiatives are flawed. There is little follow-up in subsequent reports explaining whether the burden-reduction initiatives succeeded or even took place. Reports of burden reductions in previous years are occasionally incorrect and often followed by burden increases in subsequent years (often nullifying the burden reduction). Finally, the research value of the violations section is negligible, and since violations are not punished (except by a sternly worded memo from the OIRA Administrator), it is not clear that publishing the violations has a major impact on agency behavior.⁶⁹

The ICB could easily be reduced to an analysis of information gleaned from reginfo.gov and a discussion of developments in information management and collection over the past year. Doing so would require a statutory change.

⁶⁹Violations of the PRA have a troubled history and may bear monitoring. Violations peaked in 1999 with over 800 outstanding violations being reported by OMB. They decreased afterward, particularly after a concerted effort by OIRA Administrator John Graham. They have recently begun to creep upwards again with 84 violations reported in the 2011 report.

Recommendation 7: *Congress should change the annual reporting requirement for OMB to include only a reporting and analysis of the data on reginfo.gov and a discussion of developments in government management and collection of information. OMB should not solicit information from agencies for the report except as necessary to report on these two areas.*

The Recent Sunstein Memos on the PRA

As discussed above, the current Administrator of OIRA, Cass Sunstein, has issued four memos clarifying aspects of the PRA. On May 28, 2010, he issued a memo explaining generic clearances,⁷⁰ and on June 15, 2011, the generic process was modified creating what were called fast-track clearances.⁷¹ On December 9, 2010, OIRA issued a memo aimed at facilitating scientific research.⁷² And finally, on April 7, 2010, a memo clarified the application of the PRA to the use of social media and web-based technologies.⁷³

I asked agency personnel and several outside parties about the effects of the four memos. I discuss the memos individually below, but the consensus was that the four memos were definitely helpful but represented explanations of existing policies rather than significant reforms. In light of the need for more compliance assistance, the memos were very much appreciated by agency personnel, who could share them with their colleagues who had misperceptions about the PRA process.

GENERIC AND FAST-TRACK CLEARANCES

As described above, generic clearances (and now fast-track clearances) allow agencies to

⁷⁰See http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf (last viewed January 12, 2012).

⁷¹See <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-26.pdf> (last viewed January 12, 2012).

⁷²See <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-07.pdf> (last viewed January 12, 2012).

⁷³See http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf (last viewed January 12, 2012).

go through the PRA process for a *type* of information collection (most often customer satisfaction surveys) and, if approved, submit individual collections (within this type) to OIRA for approval without public comment periods and with a five-day (for fast-tracks) or ten-day (for generics) turnaround. The generic clearance process has been around for decades, but the data from reginfo.gov shows that the recent Sunstein memo explaining their use has had an impact. In 2011, OIRA received 144 generic clearances for review in OIRA, while in the previous four years it had only received between 55 and 68. It is extremely likely that the increase is due to the Sunstein memo.

From speaking to interview subjects in OIRA and at agencies, it is clear that the reason for the increase is the greater awareness of the generic clearance process. As an OIRA official said,

“The memo piqued people's interest. More agencies are asking questions about how do I do it. The offer was out there before but people didn't know about it, so putting it out as guidance leveled the knowledge that people at the agencies had. Demystified it. I'm not sure there was equal knowledge. Some agencies didn't know they were available.”

If this is true, one would expect the increase in the use of generics to level off in a year or two as all possibilities for consolidating information collections into a generic clearance are exhausted.

SCIENTIFIC RESEARCH

Interview respondents characterized the chief benefit of the memo on scientific research as clarifying for researchers when the PRA applied to their information collections. As one respondent said,

“It was also a demystification thing. It helps researchers understand what the requirements are. The other aspect of scientific research is they contract out. It clarified when you are 'sponsoring.' There are still grays in there but give some fine tuning so people could understand whether PRA applied. Helped people get into compliance because they didn't know they were out of compliance.”

Of the four Sunstein memos discussed here, this was the least well-known among my interview subjects. (Because many of the subjects did not deal with scientific issues, however, this

was not surprising).

SOCIAL MEDIA AND WEB-BASED TECHNOLOGIES

This was the memo with which my interview subjects were the most familiar. Most emphasized that the memo was helpful, mostly because it cleared up misperceptions. Many agency personnel had believed that a general solicitation for comments on their website or on their Facebook page was subject to the PRA. In fact, as with solicitations for comment in hard copy in the Federal Register, such requests on web-pages or social media sites are not subject to the PRA. As one agency respondent said, “I feel like a lot of agencies have used that memo to go out and use websites and open ended voting and other approaches.”

My interview subjects reported, however, that there was still significant concern about the future of using social media and web-based technologies for information collection. The use of technology has transformed our understanding of information sharing. In the private sector, if a company wants information now, they can get it quickly using technology, -- particularly social media. Government (even with the use of generic clearances -- which may or may not be approved by OIRA) is more hamstrung, in part because of the PRA.

Now perhaps it is prudent to exercise more caution about providing information to the government than the private sector, because information provided to the government may never disappear and be used for purposes that may impact an individual's civil liberties. But that is a debate that is occurring on an ad hoc basis, as individual information collections are evaluated. The Sunstein memo brought “everyone up to speed but it didn't solve the underlying problem,” as one of my interview subjects put it.

The final request that ACUS made in its RFP was that I consider “whether the Act needs to be updated to account for advances in social media and other new technologies.” My first step in thinking about this issue was to evaluate the effects of the Sunstein memo on the subject. For a broader discussion, however, the role of information technology needs to be considered in

the context of the PRA as a whole -- particularly the information management provisions of the Act.

Information Technology and Information Management

Section 3504(a)(1)(B) of the PRA lays out six tasks that OIRA should oversee. These requirements are mirrored in the discussion of agency responsibilities in Section 3506(c) – (h). Of these six functions, 3504(a)(1)(B)(i) and part of 3504(a)(1)(B)(iii) deal with the collection of information. The remaining sections deal with other aspects of the government management of information. Several subjects who were part of the drafting of the original PRA in 1980 emphasized that the hope was that oversight of these functions would be integrated. Yet the government collection of information and burden reduction efforts dominate public and governmental understanding of the role of the PRA and indeed has dominated the majority of this report.

The reason for the emphasis on information collection and burden reduction has its roots in the politics of Congress. As one of my interview subjects who was involved with the original drafting of the PRA said,

“The Act has had an uneasy balance between review and elimination on one hand and on the other hand, information management. The emphasis on the first part is fueled by a reality. There are constituents for burden reduction, small businesses. So in Congress always there is always lobbying asking what are you doing about paperwork? Result is the emphasis on information collection.”

Several other subjects made similar points.

In part, the de-emphasis on information management by the executive branch has been dealt with by the passage of subsequent statutes. The Clinger Cohen Act⁷⁴ established Chief Information Officers and required agencies to “design and implement . . . a process to for maximizing the value and assessing and managing the risks of the information technology acquisitions of the agency.” It also more closely tied the purchase of information technology to

⁷⁴110 Stat 680.

the information resources management plan described in the PRA.⁷⁵ The Government Paperwork Elimination Act⁷⁶ made agencies move information collections online and allowed recordkeeping to be online. It made the Director of OMB responsible for overseeing

“the acquisition and use of information technology including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.”

Finally, the E-government Act created a new office in OMB to oversee information technology issues.⁷⁷

Yet the widespread perception among information policy professionals is that something is still missing. In part, the large number of statutes on information management has led to a fracturing of responsibilities for these issues. In part, Chief Information Officers (CIOs), who are technically responsible for the implementation of the PRA, focus much less on the requirements of the PRA than on the purchase and management of information technologies.⁷⁸ This lack of focus is felt in the agency paperwork offices where personnel told me they were largely not a part of discussions on information management.

But on a more fundamental level, the emphasis on information collection represents a movement away from one of the chief goals of the original statute. The original act provided “relatively content-free process requirements leaving it to OIRA and agency initiative to give meaning to that IRM interconnectivity.”⁷⁹ The 1986 amendments defined IRM as

⁷⁵CRS report RL30590 January 4, 2007 “Paperwork Reduction Act Reauthorization and Government Information Management Issues” by Harold Relyea.

⁷⁶112 Stat 2681.

⁷⁷116 Stat 2899.

⁷⁸GAO Report 11-634. GAO says, “Specifically, CIOs reported spending 6 percent or less of their time on average in each of the privacy, e-government initiatives, records management, information dissemination, information collection/paperwork reduction, information disclosure, and statistical policy and coordination. As discussed previously, most CIOs reported they were not responsible for all of these areas and indicated they did not always place a high priority on them. This is consistent with the views held by the panel of former federal CIOs, which generally did not place high priority on the information management areas.” “Federal Chief Information Officers: Opportunities Exist to Improve Role in Information Technology Management” July 2011.

⁷⁹David Plocher, “The Paperwork Reduction Act of 1995: A Second Chance for Information Resources Management” *Government Information Quality* 13:35 1996

“the planning, budgeting, organizing, directing, training, promoting, controlling, and management activities associated with the burden collection, creation, use, and dissemination of information by agencies and included the management of information and related resources such as automatic data processing equipment.”⁸⁰

The failure of the executive branch to focus on IRM was clear when PRA was reauthorized in 1995:

“billions of dollars lost due to faulty benefit payments systems, unwitting or unauthorized release of sensitive personal and law enforcement information, inadequate systems to provide basic financial data on program operations and more.”⁸¹

The 1995 PRA Amendments linked IRM to program performance and gave agencies more responsibilities. Agencies have the job of applying IRM principles to management.

IRM advocates talk about the “life-cycle” approach to information management. When information is collected from the public, thought must be given to how the information will be used by agencies, whether it will be disseminated by them (and if so what privacy concerns apply), how long it will be stored, and how and when it will be disposed of. These issues become more complicated with electronic processing of information than they were with paper. Information collected via the Internet can be stored indefinitely or easily be lost forever.

The tools to deal with information in a life-cycle manner are already in the PRA and will not require a rewriting of the statute. OMB is required to produce a Strategic Information Resource Management Plan and agencies are required to have their own plans. OMB issued Circular A-130 in 2000 as well as several documents on enterprise architecture⁸² and information dissemination⁸³ that collectively could be interpreted as a Strategic IRM Plan. I searched for agency IRM plans and found them for some agencies but not all. The ones I did find varied

⁸⁰PL 99-351.

⁸¹*Supra* Note 75, at page 42.

⁸²See

http://www.whitehouse.gov/sites/default/files/omb/assets/fea_docs/OMB_EA_Assessment_Framework_v3_1_June_2009.pdf (last viewed January 12, 2012).

⁸³See <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m06-02.pdf> (last viewed January 12, 2012).

dramatically in quality, with agencies like HHS and Treasury producing detailed plans and others producing much more basic ones with little information on the subjects required.

More than once I heard that the PRA is a misnamed statute (If the recommendations above that call for changes to the statute, Congress may also want to consider a name change). Most information is no longer collected on paper and, as detailed above, the chief benefits of the Act do not include the reduction of information collected. Several advocates of information management suggested repealing the PRA and starting over with an IRM statute. In addition to the practical difficulties with this approach, I do not see the necessity. Rather, Congress and OMB need to refocus implementation of the Act from strictly information collection to information management.

Doing this would involve evaluating significant information collections based in part on how the information will be used, disseminated, stored, and disposed of and making approval of information collections contingent upon detailed answers to these questions from the agencies. It would also involve OMB updating Circular A130 and the agencies reissuing their Strategic IRM plans. These plans would need to detail how agencies intend to fulfilling all of their responsibilities under Section 3506 of the PRA.

Even if the information collection review process is streamlined as suggested in Recommendations 2 and 4, OIRA would not be able to perform these functions with its current staff. In part this is because of the time requirements for performing these additional functions, but it is also because OIRA desk officers do not possess the necessary expertise in records management and disposal to meaningfully evaluate agency plans. There are numerous ways to overcome this limitation. One interview subject suggested adding a statutorily required deputy to the OIRA Administrator who focused on these issues.⁸⁴ The creation of such a position could

⁸⁴Another possibility is to task the E-Government office with these functions. There are two difficulties with this approach. First it would separate the IRM process from the information collection review process which is conducted by OIRA. Second as one interview subject explained to me, the E-government office is staffed with experts on information technology project management rather than experts on information.

be supplemented with additional funding for OIRA to add personnel to focus on IRM related tasks. Alternatively, the National Archives and Record Administration (NARA) could be brought into the information collection review process.

Recommendation 8 *Congress should allocate additional funding to support the integration of life-cycle management of information into the existing information collection process. OMB should revise Circular A130 and agencies should redo their Strategic IRM plans to make clear how they are complying with the PRA and implementing a life-cycle approach.*

Summary and Conclusions

It is a common refrain at federal agencies that the PRA increases paperwork.⁸⁵ The PRA does increase requirements of federal agencies hoping to collect information from the public. Of course, it does so in the hope that the burden on the public will be reduced, or at least that the information collected from the public will be of sufficient utility to the government to justify this burden.

As this report has shown, the PRA has made improvements in the information collection process. A number of collections have been improved by the OIRA review process. The public participates in the development of agency information collections, although probably not as much as the authors of the Act envisioned. Recent clarifications issued by OIRA have helped agencies better understand the scope and the requirements of the PRA and almost certainly increased the ratio of benefits to costs of the Act.

However, the agency complaint about the increase in their workload does reflect the fact that the Act does come with costs. OIRA, departmental, and program personnel all spend time on the information collection approval process. Approval of collections often takes six to nine months from completion of their development to final approval. And while the Act likely

⁸⁵This idea is so commonly voiced that it appears on an HHS FAQ website on the PRA. <http://www.hhs.gov/ocio/policy/collection/infocollectfaq.html#6> (last viewed January 14, 2012).

prevents the issuance of numerous useless information collections, it almost certainly also deters the pursuit of useful collections.

The recommendations developed and presented in this report are intended to maintain the benefits of the PRA while reducing its costs. Recommendation 2, which would give OIRA discretion over which collections to review, is the most critical. It would focus the attention of information collection review where it can do the most good: namely, on those collections that impose the largest burdens, and on new information collections whose methodology OIRA can improve in order to increase the utility of the information collected. With more time to examine these collections, the improvement that OIRA brings to information collections may even increase.

Recommendations 4, 5, and 7 collectively should reduce the cost of the PRA process by eliminating or scaling back steps that produce few tangible results. In addition to saving agency personnel a significant amount of time, these recommendations along with Recommendation 2 would save OIRA considerable time. That time could be spent implementing recommendations 1, 3, and 6, which suggest new guidance from OIRA and increased compliance assistance from OIRA.

Finally, recommendation 8 suggests that both Congress and OIRA return to a vision of the PRA that is apparent not in its name but rather in its development and its history. By focusing energy and oversight on information management rather than merely information collection, the benefits of the Act could grow considerably. Doing so might require structural changes at OMB and increased staff. However, the PRA is at its core a statute about information, not simply burden reduction.