

March 27, 2012

John Cooney, Chair
Committee on Rulemaking
Administrative Conference of the United States
1120 20th Street, NW
Suite 706 South,
Washington, DC 20036

Dear Mr. Cooney:

Thank you for the opportunity to express a small business perspective on the Administrative Conference of the United States (ACUS) project on the Paperwork Reduction Act (PRA). The Office of Advocacy appreciates ACUS's attention to the PRA and agrees that there is room for improvement in the Federal government's implementation of the PRA. We would like to offer three sets of thoughts on the Committee's work to date.

Advocacy was created by statute in 1976 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (SBA), so the views expressed in this letter do not necessarily represent the views of SBA or the Administration.

First, the PRA, as it is written, encourages sound Information Resources Management (IRM) as a means of simultaneously improving the quality of Federal information and minimizing the burden of information collection on the public. Advocacy believes that the Committee's recommendations could better reflect the purposes of the PRA by emphasizing the value of the PRA to the public in parallel with agency efficiency in collecting information. Therefore, Advocacy recommends the Committee expend additional effort towards a better understanding of agency IRM responsibilities and practices, and thus, of the possible effects of its recommendations on the public.

Second, Advocacy recommends that the Committee consider more broadly agency practices that would improve the quality of public interaction on information collections. Advocacy believes that public input is hindered by confusion about the PRA and the meaning of information agencies make available to the public. Advocacy suggests ACUS consider making recommendations on agency practices that could alleviate this confusion, including (1) better

education of both agencies and the public about the PRA, including the scope of the PRA and its procedural protections; (2) guidance to agencies and the public on burden estimates, including presentation of different burden estimates for different populations of respondents and cumulative burden of related information collections; (3) effective techniques to communicate with the public about the information collections in rules; and (4) clear and more informative Federal Register notices.

Finally, Advocacy welcomes the opportunity to provide comments on the March 20th draft Committee recommendations. These draft recommendations are improved from the previous iteration, but Advocacy believes that they would benefit from a greater understanding of existing PRA implementation and agency IRM practices. Specific comments on each recommendation are attached.

Thank you for the Committee's attention to the PRA. If you have questions or require additional information, you may contact me or Assistant Chief Counsel David Rostker, at (202) 205-6966 or david.rostker@sba.gov. I am looking forward to continuing the dialog on this important matter.

Sincerely,

/s/

Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy

/s/

David J. Rostker
Assistant Chief Counsel

**Small Business Administration Office of Advocacy
Comments on March 20, 2012 Draft Committee Recommendations**

Recommendation 1:

Advocacy has significant concerns about this recommendation. The Committee should consider whether the existing delegations, to the Federal Reserve Board and to the Federal Trade Commission, are fulfilling the purposes and requirements of the PRA before recommending more delegations. In addition, since delegation requires a similar level of CIO independence as is now required for all agencies, the Committee should postpone endorsing this recommendation until it has a better understanding of the role CIOs play in current PRA implementation.

Recommendations 2 & 3:

Advocacy welcomes public discussion of the statutory scope of the PRA, but believes that Inspector Generals should be subject to independent review as it relates to imposition of burden on small entities.

Recommendation 4:

Advocacy would recommend against a more lenient standard or fast track procedural based on a need to perform regulatory analysis. First, the purpose of regulatory analysis is not limited to a *post hoc* evaluation of impacts. Good regulatory design should incorporate the results of analysis. A lower standard for analysis would become a lower standard for the highly influential information used to design regulations. Small entities are best served when regulations are based on the best quality information, which can only come from the best quality information collections. Second, the PRA and OMB's regulations already include a fast track approval process for emergencies. It is unclear from the Committee's work so far that there is a need additional fast track authority. Third, OMB and industry representative have an inherent interest in the quality of data used to conduct regulatory analysis. Excluding or diminishing the voices of these interested parties would not serve the purposes of the PRA, since they bring a broader perspective to the table and can often suggest less burdensome alternatives, such as the development of an industry-sponsored data collection or alternate Federal data sources.

Recommendation 5:

Advocacy does not believe the Committee has sufficient information upon which to proceed with this recommendation. Congress adopted the three year approval period in both the 1980 and 1995 Acts, and the Committee should directly address the purpose of the three year review before recommending it be changed. Given the ease with which agencies can now design and implement information collections, thanks to advances in information technology, it is easier than it was in 1980 to review and revise information collection to improve IRM and reduce burden. The costs and benefits of periodic reviews have significantly changed since 1980, but they do not unequivocally point to a less frequent review.

Recommendation 6:

Advocacy welcomes the revised recommendations on the 60-day comment period. These measures are consistent with our recommendations above to improve the quality of public comment. However, Advocacy does not believe that public participation should automatically be streamlined for collections 'with no significant changes,' since other factors, including better

IT and changed market environments, may justify scrutiny of a collection the agency does not plan to change.

Recommendation 7:

Advocacy is hesitant to endorse this recommendation. Committee should consider whether the annual report plays an important role in a continuing policy-level dialog between OMB and the agencies about information collection burden.

Recommendation 8:

OIRA plays a crucial role in the Executive Branch, and not just with respect to the PRA. Regardless of whether other recommendations are adopted, Advocacy supports additional resources for OIRA to support its varied functions.

However, OIRA staff already provides compliance assistance and training to agencies on an *ad hoc* basis, generally as requested by agencies. Advocacy is not aware of circumstances in which OIRA has declined to provide such assistance due to a lack of resources. While a more structured approach may be desirable, most agency personnel are unaware of their need until confronted directly with PRA compliance. For this reason, Advocacy recommends that each CIO take a greater role in assistance and training for the agency's staff, in coordination with OIRA staff, to increase awareness of the PRA internally and better customize training to each agency's unique organization.

APPENDIX

The 1980 and 1995 versions of 44 U.S.C. § 3506, which specify federal agency responsibilities under the Paperwork Reduction Act.

including, where necessary, development of legislation to implement such recommendations;

“(E) develop, in consultation with the Administrator of General Services, a five-year plan for meeting the automatic data processing and telecommunications needs of the Federal Government in accordance with the requirements of section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) and the purposes of this chapter; and

Five-year plan.

“(F) submit to the President and the Congress legislative proposals to remove inconsistencies in laws and practices involving privacy, confidentiality, and disclosure of information.

“§ 3506. Federal agency responsibilities

44 USC 3506.

“(a) Each agency shall be responsible for carrying out its information management activities in an efficient, effective, and economical manner, and for complying with the information policies, principles, standards, and guidelines prescribed by the Director.

“(b) The head of each agency shall designate, within three months after the effective date of this Act, a senior official or, in the case of military departments, and the Office of the Secretary of Defense, officials who report directly to such agency head to carry out the responsibilities of the agency under this chapter. If more than one official is appointed for the military departments the respective duties of the officials shall be clearly delineated.

“(c) Each agency shall—

“(1) systematically inventory its major information systems and periodically review its information management activities, including planning, budgeting, organizing, directing, training, promoting, controlling, and other managerial activities involving the collection, use, and dissemination of information;

“(2) ensure its information systems do not overlap each other or duplicate the systems of other agencies;

“(3) develop procedures for assessing the paperwork and reporting burden of proposed legislation affecting such agency;

“(4) assign to the official designated under subsection (b) the responsibility for the conduct of and accountability for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759); and

“(5) ensure that information collection requests required by law or to obtain a benefit, and submitted to nine or fewer persons, contain a statement to inform the person receiving the request that the request is not subject to the requirements of section 3507 of this chapter.

“(d) The head of each agency shall establish such procedures as necessary to ensure the compliance of the agency with the requirements of the Federal Information Locator System, including necessary screening and compliance activities.

Infra.
Procedures,
establishment.

“§ 3507. Public information collection activities—submission to Director; approval and delegation

44 USC 3507.

“(a) An agency shall not conduct or sponsor the collection of information unless, in advance of the adoption or revision of the request for collection of such information—

“(1) the agency has taken actions, including consultation with the Director, to—

“(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

“(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

“(iii) meeting the information technology needs of the Federal Government in accordance with the purposes of this chapter; and

“(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.

“(b) For purposes of any pilot project conducted under subsection (a)(2), the Director may, after consultation with the agency head, waive the application of any administrative directive issued by an agency with which the project is conducted, including any directive requiring a collection of information, after giving timely notice to the public and the Congress regarding the need for such waiver.

“§ 3506. Federal agency responsibilities

“(a)(1) The head of each agency shall be responsible for—

“(A) carrying out the agency’s information resources management activities to improve agency productivity, efficiency, and effectiveness; and

“(B) complying with the requirements of this chapter and related policies established by the Director.

“(2)(A) Except as provided under subparagraph (B), the head of each agency shall designate a senior official who shall report directly to such agency head to carry out the responsibilities of the agency under this chapter.

Reports.

“(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate senior officials who shall report directly to such Secretary to carry out the responsibilities of the department under this chapter. If more than one official is designated, the respective duties of the officials shall be clearly delineated.

Reports.

“(3) The senior official designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this chapter, including the reduction of information collection burdens on the public. The senior official and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this chapter.

“(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the senior official designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

“(b) With respect to general information resources management, each agency shall—

“(1) manage information resources to—

“(A) reduce information collection burdens on the public;

“(B) increase program efficiency and effectiveness; and

“(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

“(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;

“(3) develop and maintain an ongoing process to—

“(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

“(B) in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

“(C) establish goals for improving information resources management’s contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

“(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency’s information resources, including directories necessary to fulfill the requirements of section 3511 of this chapter; and

“(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.

“(c) With respect to the collection of information and the control of paperwork, each agency shall—

“(1) establish a process within the office headed by the official designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this chapter, to—

“(A) review each collection of information before submission to the Director for review under this chapter, including—

“(i) an evaluation of the need for the collection of information;

“(ii) a functional description of the information to be collected;

“(iii) a plan for the collection of the information;

“(iv) a specific, objectively supported estimate of burden;

“(v) a test of the collection of information through a pilot program, if appropriate; and

“(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

“(B) ensure that each information collection—

“(i) is inventoried, displays a control number and, if appropriate, an expiration date;

“(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

“(iii) informs the person receiving the collection of information of—

“(I) the reasons the information is being collected;

“(II) the way such information is to be used;

“(III) an estimate, to the extent practicable, of the burden of the collection;

“(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

“(V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number; and

“(C) assess the information collection/burden of proposed legislation affecting the agency;

“(2)(A) except as provided under subparagraph (B) or section 3507(j), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to—

Federal Register,
publication.

“(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

“(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

“(iii) enhance the quality, utility, and clarity of the information to be collected; and

“(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

“(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A) (i) through (iv); and

Regulations.

“(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

“(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

“(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

“(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities,

as defined under section 601(6) of title 5, the use of such techniques as—

“(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

“(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

“(iii) an exemption from coverage of the collection of information, or any part thereof;

“(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

“(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

“(F) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

“(G) contains the statement required under paragraph (1)(B)(iii);

“(H) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

“(I) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

“(J) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

Public
information.

“(d) With respect to information dissemination, each agency shall—

“(1) ensure that the public has timely and equitable access to the agency’s public information, including ensuring such access through—

“(A) encouraging a diversity of public and private sources for information based on government public information;

“(B) in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and

“(C) agency dissemination of public information in an efficient, effective, and economical manner;

“(2) regularly solicit and consider public input on the agency’s information dissemination activities;

“(3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; and

“(4) not, except where specifically authorized by statute—

“(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

“(B) restrict or regulate the use, resale, or redissemination of public information by the public;

“(C) charge fees or royalties for resale or redissemination of public information; or

“(D) establish user fees for public information that exceed the cost of dissemination.

“(e) With respect to statistical policy and coordination, each agency shall—

“(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

“(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

“(3) protect respondents’ privacy and ensure that disclosure policies fully honor pledges of confidentiality;

“(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

“(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

“(6) make data available to statistical agencies and readily accessible to the public.

“(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

Records.

“(g) With respect to privacy and security, each agency shall—

“(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency;

“(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

“(3) consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

Privacy.
Computer
technology.

“(h) With respect to Federal information technology, each agency shall—

“(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

“(2) assume responsibility and accountability for information technology investments;

“(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

“(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, includ-

Science and
technology.

ing changes that improve the ability of the agency to use technology to reduce burden; and

"(5) assume responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is—

"(A) integrated with budget, financial, and program management decisions; and

"(B) used to select, control, and evaluate the results of major information systems initiatives.

"§ 3507. Public information collection activities; submission to Director; approval and delegation

"(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—

"(1) the agency has—

"(A) conducted the review established under section 3506(c)(1);

"(B) evaluated the public comments received under section 3506(c)(2);

"(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

"(D) published a notice in the Federal Register—

"(i) stating that the agency has made such submission; and

"(ii) setting forth—

"(I) a title for the collection of information;

"(II) a summary of the collection of information;

"(III) a brief description of the need for the information and the proposed use of the information;

"(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

"(V) an estimate of the burden that shall result from the collection of information; and

"(VI) notice that comments may be submitted to the agency and Director;

"(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

"(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

"(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except as provided under subsection (j).

"(c)(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

"(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

Federal Register,
publication.