



Paperwork Reduction Act Efficiencies

Committee on Regulation

Proposed Recommendation for Committee | March 29, 2018

1 The Paperwork Reduction Act (PRA) created the Office of Information and Regulatory
2 Affairs (OIRA) within the Office of Management and Budget to oversee information policy in
3 the executive branch.¹ OIRA's oversight responsibilities include the review and approval of
4 federal agencies' information collections from the public. Information collections are
5 government requests for structured information from the public such as those issued through
6 report forms, application forms, schedules, questionnaires, surveys, and reporting or
7 recordkeeping requirements.² The OIRA review process applies whenever a federal agency is
8 seeking to collect such information from ten or more individuals.³ The goal of that process is to
9 ensure that the burden of information collection on the public is justified by the utility of the
10 information to the government.

11 When an agency seeks to collect information from the public, it must follow a series of
12 steps. It must first publish a notice in the Federal Register and give the public sixty days to
13 comment. Once the comment period ends, the agency must submit the proposed information
14 collection to OIRA with a detailed supporting statement. The agency must also publish a second
15 notice in the Federal Register asking for comments on the information collection it provided to

¹ The PRA was enacted in 1980 and has since been amended twice, in 1986 and 1995. *See* Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501–21).

² 44 U.S.C. § 3502(3). The PRA applies to the collection of structured information, meaning requests for information calling for either answers to identical questions or identical reporting or recordkeeping requirements or answers to questions which are to be used for general statistical purposes. *Id.*

³ *Id.*



16 OIRA. After waiting thirty days for public comments, OIRA has another thirty days to decide
17 whether to approve the information collection.

18 **The Expedited Clearance Process**

19 The process for obtaining OIRA approval for an information collection can be lengthy.⁴
20 To address this, OIRA has issued a series of memoranda designed to highlight existing processes
21 that shorten the review time of certain types of information collections, while still maintaining
22 the integrity of the review process.⁵ The memoranda discuss several categories of information
23 collections that may qualify for expedited clearance from OIRA, such as generic clearances and
24 fast-tracks, common forms, and certain requests for information through social media.⁶ Generic
25 clearances are generally intended for “voluntary, low-burden, and uncontroversial collections,”
26 not for ones with substantive policy impacts.⁷ The fast track process, a subset of generic
27 clearances, was designed to encourage agencies to solicit feedback about their services, and

⁴ Stuart Shapiro, *The Paperwork Reduction Act: Research on Current Practices and Recommendations for Reform* 26 (Feb. 15, 2012) (report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/final-draft-paperwork-reduction-act-report> (stating that reviews can take from six to nine months).

⁵ See Cass Sunstein, *Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act* (Apr. 7, 2010), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf; Cass Sunstein, *Paperwork Reduction Act – Generic Clearances* (May 28, 2010), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf; Cass Sunstein, *New Fast-Track Process for Collecting Service Delivery Feedback Under the Paperwork Reduction Act* (June 15, 2011), <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-26.pdf>; Howard Shelanski, *Flexibilities under the Paperwork Reduction Act for Compliance with Information Collection Requirements*, (July 22, 2016), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/inforeg/inforeg/praflexibilities_memo_7_22_16_final.pdf.

⁶ Agencies can also take advantage of expedited approval processes for the following additional categories of information collections: emergencies; non substantive changes; de minimis changes; data search tools and calculators; and challenges or prizes. See Shelanski, *supra* note 5. Direct observations of users of digital services (observations of users interacting with a digital services tool and at most engaging in nonstandardized oral communications with user) are not subject to the PRA. *Id.*

⁷ When an agency asks for approval of a generic clearance, it is asking for approval of a series of related information collections under a single, umbrella request. The umbrella request describes the individual collections that would fall under it. The umbrella request then goes through the entire PRA process. If OIRA approves the umbrella request for a generic clearance, the individual collections covered by that clearance can be submitted through an expedited approval process in which OIRA reviews the proposed collection within ten days of receipt.



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28 therefore is generally used for information collections that focus on customer service feedback.⁸
29 Common forms are information collections that can be used by two or more agencies, or
30 government-wide, for the same purpose.⁹

31 Agencies' use of social media may also qualify for expedited approval or may not even
32 require PRA clearance. For instance, the PRA does not apply to general solicitations of public
33 views and feedback; interactive meeting tools, such as discussion boards or forums; and certain
34 other categories of collections that agencies may engage in through social media and web-based
35 interactive technologies.¹⁰ If, however, agencies use the internet to collect more than identifying
36 information or general public comments, they must secure OIRA approval before doing so.

37 **Agencies' Use of Expedited Clearance Processes**

38 Agencies have used the expedited clearance process offered by OIRA in varying
39 degrees. Agencies' use of new generic clearances and fast tracks increased after OIRA
40 publicized them and provided training to agencies on their use in 2011, but has since decreased
41 (although agencies continue to extensively seek OMB approvals under existing clearances).¹¹
42 This is in part because the most likely candidates for generic clearances and fast-track approval
43 were the first ones submitted by agencies. But these techniques have likely also faded in the
44 consciousness of agencies, particularly with the turnover of agency personnel. Agencies have
45 also been very limited in their use of social media to request public feedback,¹² even though
46 social media could be beneficially used to gain general and unstructured feedback without

⁸ The fast track process borrows heavily from the generic clearance process, but adds a few features. In the fast track process, OIRA drafts the initial sixty-day notice for publication in the Federal Register as well as the subsequent thirty-day notice; it also reviews individual requests under the fast-track clearance within five working days.

⁹ Under the common form approval process, a "host" agency secures approval of the collection from OIRA. Later, other agencies that wish to use the form can avoid the two Federal Register notices required under the PRA and merely inform OIRA of any additional burden on the public that the use of the form might create.

¹⁰ See Shelanski, *supra* note 5.

¹¹ Stuart Shapiro, Paperwork Reduction Act Efficiencies 12–17 (Mar. 14, 2018) (draft report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/paperwork-reduction-act-efficiencies-draft-report>.

¹² *Id.* at 19–20.



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47 implicating the PRA. There also appears to be very little use of the generic clearance and fast
48 track processes to test the usability of forms or obtain feedback to improve agency websites,
49 even though OIRA has indicated that usability testing is a good fit for these processes.¹³

50 Common forms could also be used to expedite approval of collections, but agencies have
51 not used them as often as fast-tracks and generic clearances. This may be because there are
52 barriers that make it difficult for agencies to collaborate with one another to develop common
53 forms.¹⁴ There also appears to be confusion at agencies about how they should report the burden
54 created by an information collection conducted through a common form.¹⁵ Finally, agencies
55 sometimes avoid common forms because they want to ask for information to suit particular
56 agency needs.¹⁶ Regardless, it appears that there is a great deal of untapped potential for the use
57 of common forms.¹⁷

58 **Other Opportunities for Facilitating the Clearance Process**

59 Aside from the expedited clearance process outlined by OIRA, there are other
60 opportunities for making the information collection clearance process more efficient, while still
61 maintaining its integrity. An approval for an information collection only lasts three years, so an
62 agency must submit an information collection for re-approval after three years even when
63 nothing has changed in the information collection since the last submission. One possibility
64 would be to expand the use of generic clearances and fast tracks to cover these extensions of
65 approval of information collections without changes. Another would be for an agency to review
66 all of the collections that are coming up for renewal without changes for a particular time period

¹³ *See id.* at 25–26. Not all types of activities related to testing the usability of forms or website feedback would be covered by the PRA. Direct observations of users interacting with digital services tools are not subject to the PRA. *See supra* note 6.

¹⁴ *See id.* at 17–19.

¹⁵ *Id.* Agencies must report their annual burden as part of OIRA’s required submission to Congress of an Information Collection Budget.

¹⁶ Sometimes this is because statutes require agencies to collect data elements not on the common form; in other cases, it may be the agency’s preference.

¹⁷ *Id.* at 17–19, 24.



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67 and consolidate the Federal Register notices for those renewals. Both approaches—expanding
68 the use of generic clearances and fast tracks and consolidating Federal Register notices for
69 renewals—could be time-saving, especially since these clearances raise the fewest substantive
70 issues as they are unchanged from when OIRA initially approved them. On the other hand, if
71 these processes were available, they might incentivize agencies to shy away from making
72 necessary changes to collections. There is also a concern that combining unrelated collections
73 under a single umbrella request might be confusing to the public.

74 Another opportunity to achieve efficiencies is to update the supporting statement that
75 agencies must submit with each submission of a proposed information collection to OIRA for
76 review.¹⁸ The supporting statement is intended to allow OIRA to evaluate the collections against
77 the statutory criteria in the PRA. Developing it is a significant component of the time it takes
78 agencies to prepare information collections for review, especially new collections. As things
79 currently stand, neither agencies nor OIRA are satisfied with them.¹⁹ Refining the supporting
80 statement with the involvement of the Council of Agency Paperwork Reduction Act (CAPRA), a
81 group that meets monthly to discuss issues related to the PRA, has the potential to reduce the
82 burden on agencies while increasing the practical utility of submissions for OIRA.

83 Some agencies have also reported difficulties and confusion in using ROCIS, the
84 computer system used by agencies to submit information collections to OIRA.²⁰ Improvements to
85 ROCIS could both reduce agency burden and make agency submissions more useful to OIRA.
86 Finally, obtaining better data regarding the burdens imposed on businesses, other institutions,

¹⁸ The supporting statement consists of the answers to eighteen questions. *Id.* at 22. For collections with a statistical component, there is a second part to the supporting statement consisting of five additional questions. *Id.*

¹⁹ Filling out some parts of the form for the supporting statement is perceived by agencies as a pro forma exercise, and filling out other parts is perceived as a needlessly time-consuming exercise. From OIRA's perspective, agencies focus too much on discussing burdens of the proposed information collection and not enough time discussing its practical utility. *Id.* at 24.

²⁰ *Id.* at 22, 25.



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87 and individuals by government information collections may lead to additional ideas for
88 improvement of the collections process.

RECOMMENDATION

- 89 1. The Office of Information and Regulatory Affairs (OIRA) should increase the training
90 opportunities for agencies on the Paperwork Reduction Act (PRA) to the extent
91 practicable. The topics of such sessions could include basic administration of the PRA,
92 expedited clearance process, and other new and emerging topics in information
93 collection. The method of delivery of training could include in-person training, new
94 training materials, and “training the trainers” at agencies.
- 95 2. Agencies should consider making greater use of social media platforms for general
96 solicitations of information from the public on agency policies as well as encouraging the
97 public to comment on published proposed regulations and information collections.
- 98 3. Agencies should make greater use of generic clearances for usability testing of websites
99 and other applications.
- 100 4. Agencies, through the Council of Agency Paperwork Reduction Act (CAPRA) and with
101 guidance from OIRA, should develop an annually updated list of candidates for common
102 forms. This list should be included in the Annual Information Collection Budget report
103 which agencies submit to Congress every year.
- 104 5. For information collection requests without changes from previous approvals, OIRA
105 should consider expanding generic clearances by providing a PRA-compliant process that
106 includes the following steps:
- 107 a. An agency creates a generic clearance for all of its collections which expire in the
108 next three years and for which it expects no changes in the format or burden
109 estimate.
- 110 b. The agency then follows the generic clearance process, clearly listing which
111 collections are being covered by the umbrella clearance.
- 112 c. If OIRA approves the clearance, when an individual collection listed on the
113 umbrella clearance is scheduled to expire, the agency submits it to OIRA and



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- 114 affirms that there are no changes to the collection. OIRA then has ten days to
115 approve the individual collection.
- 116 d. If an agency does decide to make a non-trivial change to the collection, then it
117 must go through the normal PRA process.
- 118 6. For information collection requests without changes from previous approvals, OIRA
119 should consider allowing agencies to consolidate the first Federal Register notice for
120 extensions by providing a PRA-compliant process that includes the following steps:
- 121 a. The agency would choose a time period (e.g., six months or a year) and review all
122 of its collections that were coming up for renewal during that period.
- 123 b. The agency would then place a single notice in the Federal Register to inform the
124 public that those collections are available for public comment.
- 125 7. OIRA, through collaboration with CAPRA, should develop recommendations for
126 revising the supporting statement requirements on information collection submissions to
127 ensure they minimize preparation time and remain practically useful.
- 128 8. The General Services Administration (GSA), through collaboration with OIRA, should
129 examine whether user-friendly changes are needed to ROCIS, the internal computer
130 system used to submit information collections to OIRA.
- 131 9. OIRA should consider developing a survey of businesses regarding cumulative
132 paperwork burdens, which could later be used by other agencies to examine the
133 paperwork burdens on schools, hospitals, and other individuals and entities.
- 134 10. OIRA should consider adding North American Industry Classification System (NAICS)
135 codes, which capture information about affected sectors of the economy, to individual
136 collections so that agencies can tag each individual collection with the appropriate
137 NAICS codes. This would allow OIRA to understand which sectors of the economy are
138 subject to the greatest volume of information collections.