



## Paperwork Reduction Act Efficiencies

### Committee on Regulation

#### Proposed Recommendation for Committee | April 12, 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.<sup>1</sup> 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.<sup>2</sup> The OIRA review process applies whenever a federal agency  
8 seeks to collect such information from ten or more individuals.<sup>3</sup> 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. This Recommendation primarily concerns the interaction  
11 between agencies and the OIRA review process, though several recommendations also concern  
12 the effects of information collections on the public.

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

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<sup>1</sup> 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).

<sup>2</sup> 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.*

<sup>3</sup> *Id.* *See also* 5 C.F.R. § 1320.3(c)(4) (2018).



17 notice in the Federal Register asking for comments on the information collection it provided to  
18 OIRA. After waiting thirty days for public comments, OIRA has another thirty days to decide  
19 whether to approve the information collection.

## 20 **The Expedited Clearance Process**

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

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<sup>4</sup> 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).

<sup>5</sup> See Cass Sunstein, *Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act* (Apr. 7, 2010) (hereinafter Sunstein I), [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/SocialMediaGuidance\\_04072010.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf); Cass Sunstein, *Paperwork Reduction Act – Generic Clearances* (May 28, 2010) (hereinafter Sunstein II), [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/PRA\\_Gen\\_ICRs\\_5-28-2010.pdf](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](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/inforeg/inforeg/praflexibilities_memo_7_22_16_final.pdf).

<sup>6</sup> 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.

<sup>7</sup> 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.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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

33 Agencies' use of social media may also qualify for expedited approval or may not even  
34 require PRA clearance. For instance, the PRA does not apply to general solicitations of public  
35 views and feedback; interactive meeting tools, such as discussion boards or forums; and certain  
36 other categories of collections that agencies may engage in through social media and web-based  
37 interactive technologies.<sup>10</sup>

### 38 **Agencies' Use of Expedited Clearance Processes**

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

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<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> See Shelanski, *supra* note 5; see also Sunstein II, *supra* note 5 ("Although certain uses of [social] media and technologies unquestionably count as information collections, many do not.").

<sup>11</sup> 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>.

<sup>12</sup> *Id.* at 19–20.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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

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

### 60 **Other Opportunities for Facilitating the Clearance Process**

61 Aside from the expedited clearance process outlined by OIRA, there are other  
62 opportunities for making the information collection clearance process more efficient, while still  
63 maintaining its integrity. One possibility would be for an agency to review all of the collections  
64 that are coming up for renewal without changes for a particular time period and consolidate the  
65 Federal Register notices for those renewals. There is, however, a concern that combining  
66 unrelated collections under a single umbrella request might be confusing to the public.

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<sup>13</sup> 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.

<sup>14</sup> See Shapiro, *supra* note 11, at 17–19.

<sup>15</sup> *Id.* Agencies must report their annual burden as part of OIRA’s required submission to Congress of an Information Collection Budget. *Id.* at 18, note 38.

<sup>16</sup> 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. *Id.* at 17–19.

<sup>17</sup> *Id.* at 17–19, 24.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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

77 Some agencies have also reported difficulties and confusion in using ROCIS, the  
78 computer system used by agencies to submit information collections to OIRA.<sup>20</sup> Improvements to  
79 ROCIS could both reduce agency burden and make agency submissions more useful to OIRA.  
80 Finally, obtaining better data regarding the effects of government information collections on  
81 businesses, state, local, and tribal governments, and the public may lead to additional ideas for  
82 improvement of the collections process.

### RECOMMENDATION

83 1. The Office of Information and Regulatory Affairs (OIRA) should provide training  
84 opportunities for agencies on the Paperwork Reduction Act (PRA) to the extent  
85 practicable. The topics of such sessions could include basic administration of the PRA,  
86 expedited clearance processes, including generic clearances and the use of common

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<sup>18</sup> 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.*

<sup>19</sup> 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.

<sup>20</sup> *Id.* at 22, 25.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

87 forms, as well as other new and emerging topics in information collection. The method of  
88 delivery of training could include in-person training, new training materials, and “training  
89 the trainers” at agencies.

90 2. Agencies should make greater use of generic clearances to comply with the PRA should  
91 they decide to engage in usability testing of websites and other applications.

92 3. OIRA should consider developing incentives for agencies to promote the development of  
93 common forms. OIRA should ask agencies to provide a list of potential common forms  
94 and facilitate agency coordination and implementation of good candidates. This list  
95 should be included in the Annual Information Collection Budget report which OIRA  
96 submits to Congress every year.

97 4. CAPRA should consider periodically inviting the public to discuss the PRA, for  
98 purposes of educating the public on the PRA, obtaining feedback on its effects, and  
99 identifying potential improvements to it. CAPRA should provide the feedback obtained  
100 from the public to OIRA.

101 5. For information collection requests without changes from previous approvals, OIRA  
102 should clarify that agencies may consolidate the first Federal Register notice for  
103 extensions by taking the following steps:

104 a. The agency would choose a time period (e.g., six months or a year) and review all  
105 of its related collections that were coming up for renewal during that period.

106 b. The agency would then place a single notice in the Federal Register to inform the  
107 public that those collections are available for public comment.

108 6. CAPRA, in consultation with OIRA, should develop recommendations for revising the  
109 supporting statement requirements on information collection submissions to ensure the  
110 requirements minimize preparation time and remain practically useful.

111 7. CAPRA should make recommendations for improvements to ROCIS, the internal  
112 computer system used to submit information collections to OIRA, in consultation with  
113 the General Services Administration (GSA) and OIRA.

114 8. OIRA should consider gathering feedback on classes of respondents, including  
115 businesses, as well as state, tribal, and local governments, about the cumulative effects of



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

116 information collections. To facilitate this effort, OIRA may also consider requiring  
117 agencies to use North American Industry Classification System (NAICS) codes.  
118 Agencies can then use this information to assess the distributional impacts of information  
119 collections on the public more broadly.