Administrative Conference of the United States

Paperwork Reduction Act Efficiencies

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Introduction[*]

The Paperwork Reduction Act (PRA) has governed the federal government's collection of information from the public for 37 years. The centerpiece of the PRA is the requirement that the Office of Information and Regulatory Affairs (OIRA) review and pass judgment on any attempt by a federal agency to collect information from ten or more individuals. The purpose of OIRA approval is to ensure that the burden of information collection on the American public is justified by the utility of the information to the government. The process of OIRA approval has long been criticized for deterring and delaying agency attempts to collect information.

Over the past decade OIRA has taken numerous steps to streamline the process for information collection approval. This report is an attempt to evaluate those steps and investigate the possibility of other ways for the executive branch to work within the statutory confines of the PRA to ensure the information collection process works efficiently.

History of the Paperwork Reduction Act[1]

As long as the government has solicited information from members of the public, there have been concerns about the burden that these solicitations imposed. The first serious attempt to manage government information collection came with the Federal Reports Act (FRA) of 1942.[2] Implemented by the Bureau of Budget (BOB) (the predecessor agency to the Office of Management and Budget), the FRA required

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[1] Portions of this subsection on the history of the PRA and the following subsection on the operation of the PRA are copied from my previous report to the Administrative Conference of the United States. See Shapiro, Stuart. "The Paperwork Reduction Act: Research on Current Practices and Recommendations for Reform." Feb. 9, 2012. https://www.acus.gov/report/revised-draft-pra-report (last viewed January 3, 2018).

[2] 56 Stat. 1078.

agencies to submit collections of information for approval to the BOB.[3] While this was a significant change in information collection policy, skeptics such as Senator Arthur Vandenberg (R-MI) thought that the bill did not "remotely touch the magnitude of the problem."[4]

The FRA was widely considered toothless and ineffective at reducing the burden of paperwork on the American public. After a series of commissions and General Accounting Office (GAO) (now the Government Accountability Office) examinations of the subject, Congress began debating new legislation on paperwork reduction in 1979.[5] Much of the debate centered on agency independence and the potential effects of the legislation on agencies' ability to collect information.[6] The Paperwork Reduction Act (PRA) was passed in 1980 and signed into law by President Carter.[7]

The PRA created the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB), to oversee information policy in the executive branch.[8] The PRA was subsequently amended 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.[9] The 1995 amendments were characterized as an "entire recodification of the act."[10] They increased the scope of OIRA's oversight to include dissemination of information, maintenance of archives, acquisition of information technology, and numerous other functions,[11] while maintaining OIRA's authority over information collection. Congress has not seriously considered amending the PRA since the 1995 changes.

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[3]Relyea, Harold. "Paperwork Reduction Act Reauthorization and Government Information Management Issues." *Government Information Quarterly* 2000 17:367.

[4] Funk, William. "The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law." *Harvard Journal on Legislation* 1987 24:7.

[5] While the primary impetus for the Paperwork Reduction Act was burden reduction, it also includes provisions on protecting privacy, managing information, and ensuring that information collections maximize the utility of the information to the government.

[6] Shapiro, Stuart, and Moran, Deanna. "The Checkered History of Regulatory Reform since the APA." *NYU J. Legis. & Pub. Pol'y* 19 (2016): 141.

[7]Paperwork Reduction Act, Pub. L. No. 96-511, 94 Stat. 2812 (1980) (codified at 44 U.S.C. §§ 3501–21).

[8] Id. at § 3503.

[9]*Supra,* note 2.

[10]Lubbers, Jeffrey. "Paperwork Redux: The (Stronger) Paperwork Reduction Act of 1995." *Administrative Law Review* 1996 49:111 p. 112.

[11]44 U.S.C.A. 3504.

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. Section 3504(a)(1) requires OMB (through OIRA) to:

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

OIRA's responsibility for reviewing and approving collections of information by agencies 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.

Subsections 3504(c)(3) and (c)(4) describe the goals of OIRA's review of information collections. That review is to

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

(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 clarified in OMB's implementing regulations (found at 5 C.F.R. 1320). When an agency seeks to collect information from the public, it must publish a notice in the Federal Register and give the public sixty days to comment. Once the comment period is over, the agency submits the information collection to OIRA, along with a detailed "supporting statement."[12] Concurrent with this submission, the agency publishes a second notice in the Federal Register asking the public to submit any comments on the information collection to OIRA. After waiting thirty days for public comments, OIRA has an additional thirty days within which to decide whether to approve the information collection.[13]

"Information collections" are defined broadly by both the statute and its implementing regulations; examples, according to OIRA regulations, include the following:

> 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

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[12]The supporting statement must include answers to eighteen questions for non-statistical information collections, and twenty-three, for statistical ones. The questions and cover sheet can be found here: https://www.nrc.gov/docs/ML1431/ML14310A723.pdf (last viewed January 24, 2018).
[13]*Supra,* note 7.

technological collection techniques or questionnaires used to monitor compliance with agency requirements.[14]

PRA Efficiencies and ACUS Research Request

PRA Efficiencies

The process for approving information collections is long, and perceived by agencies as burdensome. As detailed in my previous (2012) report for ACUS, the process from the time that an agency develops an information collection until the time it secures OIRA approval can run from six to nine months.[15] My earlier report recommended changes to the PRA process, many of which would have required statutory modifications.

With little appetite in Congress for modifying the PRA, attention in the past few years has focused on working within its confines. Toward that end, the Obama Administration's OIRA administrators, Cass Sunstein and Howard Shelanski, issued a series of memos designed to highlight existing processes that shorten the review time of certain types of information collections, while still maintaining the integrity of the review process. The memos also clarified the applicability of these processes and were intended largely to encourage agencies to explore their use. Four of these memos are particularly relevant for this report.

The first memo was issued in April 2010 to clarify the applicability of the PRA to agencies' use of social media.[16] It highlighted the fact that general solicitations of comment (including under the Administrative Procedure Act for rulemaking), interactive

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[14]5 C.F.R. 1320(3)(c)(1).

[15] Shapiro. "The Paperwork Reduction Act: Research on Current Practices and Recommendations for Reform" (2012), *supra* note 1.

[16] Sunstein, Cass. "Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act." April 7, 2010. https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf (last viewed March 7, 2018).

meeting tools, and similar items were not covered by the PRA under most circumstances. The memo acknowledges expanding Federal agency use of social media and the Internet in general to interact with the public, and corrects the misconception that doing so would always require pre-clearance under the PRA.

This was followed on May 28, 2010 by a memo on "generic clearances."[17] Generic clearances had been in place since the Clinton Administration, but agencies did not frequently use them. The generic clearance process works as follows: When an agency asks OIRA to approve a "generic clearance," it is asking for approval of a series of information collections rather than an individual collection. The generic clearance request goes through the normal PRA process and describes the type of individual collections that would fall under its coverage.

If OIRA approves the generic clearance, then the individual collections covered by that "umbrella" clearance can be submitted through an expedited approval process. Details of the expedited process are negotiated on a case-by-case basis, but typically OIRA will allow the agency to skip the Federal Register notices and will agree to review the proposed collection within ten days of receipt. The May 2010 memo clarifies and highlights the process for generic clearances in the stated hope of encouraging agencies to use this process where appropriate.

The memo specifies that the generic clearance process is intended for "voluntary, low-burden, and uncontroversial collections." An appendix gives examples of appropriate categories of collections:

- Methodological testing or pre-testing;

- focus groups;

- message development and testing;

- customer satisfaction surveys;

- website satisfaction surveys; and

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[17] Sunstein, Cass. "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 (last viewed March 7, 2018).

- prizes, competitions, and contests.

OIRA has made clear that it believes that the PRA does not allow the generic process to encompass information collections that have substantive policy impacts.

The third Obama Administration memo[18] expanded on the generic clearance process. This memo describes a new "fast track" process for clearances under the PRA. The fast track process is intended to be a subset of generic clearances and applies specifically to "information collections that focus on the awareness, understanding, attitudes, preferences, or experiences of customers or other stakeholders (e.g., delivery partners, co-regulators, and potential customers) relating to existing or future services, products, or communication materials."[19]

The fast track process was designed in response to Executive Order 13571 on "Streamlining Service Delivery and Improving Customer Service."[20] In order to encourage agencies to solicit customer feedback about their services, OIRA wanted to make it easier for agencies to do so. The fast track process borrowed heavily from the existing generic clearance process but added several new features:

- For certain types of information collections, OIRA itself drafted the initial notice for publication in the Federal Register that would serve as the required solicitation for public comment (the "sixty day notice") for all agencies.

- Individual agencies would then publish their own thirty day notice which OIRA also drafted.

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[18] Sunstein, Cass. "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.pdflast viewed March 7, 2018).

[19] OMB. "FAQs for New Fast-Track Process for Collecting Service Delivery Feedback under the Paperwork Reduction Act." https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/pra-faqs.pdflast viewed March 7, 2018).

[20] Executive Order 13571, "Streamlining Service Delivery and Improving Customer Service." April 27, 2011. https://obamawhitehouse.archives.gov/the-press-office/2011/04/27/executive-order-13571-streamlining-service-delivery-and-improving-custom (last viewed January 8, 2018).

- OIRA pledged to review individual requests under the fast-track clearance in only five working days so long as the submissions fell within the parameters of the fast track clearance. (Review times for generic clearances are individually negotiated and are most frequently set at ten working days.)

At the suggestion of OIRA, nearly all of the fast-track clearances were given the name "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery." This naming convention makes it easier for OIRA to identify a collection as a fast-track submission.

The fourth and final of the Obama Administration PRA memos relevant here was issued in July 2016 by OIRA Administrator Howard Shelanski.[21] This memo was intended to "provide an overview of the administrative flexibilities available to assist agencies in complying with their statutory obligations under the PRA." The memo voices the concern that although OIRA had developed numerous efficiencies for information clearance, agencies were not always aware of these processes, which were therefore under-utilized.

The memo goes on to discuss numerous categories of information collections that may qualify for expedited clearance from OIRA. These include:

- generic clearances and fast-tracks;

- common forms (forms used by more than one agency);

- de minimis changes;

- non-substantive changes;

- emergencies;

- social media;

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[21]Shelanski, Howard. "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/pra_flexibilities_memo_7_22_16_finaII.pdf (last viewed March 7, 2018).

- data search tools and calculators;

- challenges or prizes; and

- direct observations of users of digital services.

Collections falling in each category must be evaluated on a case by case basis as to whether the entire PRA process is necessary. The purpose of the Shelanski memo, though, was to ensure agencies were aware that for some collections, the six-to-nine-month approval process might be unnecessary.

ACUS Research Request

The purpose of this project is to explore the current expedited processes for OIRA approval of information collections under the PRA, assess their utility, and identify additional reforms that might further improve the operation of the information collection approval process. This report will take the statutory constraints of the PRA as givens. I stand by the recommendations made in my previous report to ACUS regarding the PRA[22] and will not restate them here.

In order to assess implementation, I sought to determine whether and how frequently agencies were using the expedited processes (e.g., generic clearances and fast track approval, etc.) outlined in the Shelanski memo of 2016.[23] If agencies were not taking full advantage of these processes, what barriers exist to their doing so? Were there changes that could be made at OIRA or at the agencies to encourage the use of these processes?

Next, given my assessment, I sought to identify additional reforms that could be made to the information-collection approval process. Any such reforms would have to be consistent with the statutory language of the PRA and continue to adhere to the PRA's purpose -- minimizing the burden of information collections on the American public while maximizing their utility to the government. In assessing current implementation and recommending changes, I both examined data on current information collections and conducted interviews.

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[22] See note 15, *supra*.
[23] See note 21, *supra*.

Research Methodology

The website reginfo.gov is a wonderful source of data on agency requests for information-collection approval. The website lists all currently approved information collections and contains the supporting documentation that the agency submitted to OIRA as part of its approval request.

The site is easily searchable and up to date. Either I or a research assistant searched the database for all of the following terms:

- "generic"

- "fast track"

- "qualitative feedback on agency service delivery"

- "common form" (we conducted both a search of this term, and a search of all collections that were labeled as "common forms")

These searches allowed us to measure the frequency with which these techniques were used to expedite clearance under the PRA. We also searched the following terms:

- "customer service"

- "customer satisfaction"

- "focus groups"

- "website"

- "usability"

We compared the results of these searches with the searches for generic and fast-track clearances to see if there were instances in which agencies were foregoing the expedited processes for collections that might qualify for them.

We also searched OMB's recently approved collections, to determine how often agencies were using the emergency review process; and agency social media sites to see if agencies were using social media to collect information.

Once we had completed gathering data on information collections, I began conducting interviews with agency clearance officers and OIRA personnel. (Agency clearance officers are the individuals who coordinate the PRA process at their agencies and interact with OIRA desk officers.) These interviews were conducted by phone (except for one in-person interview) and generally lasted about a half hour. I began the interviews by running through the various processes outlined in the Shelanski memo and asking agencies about their use of these processes. If our research on the data had turned up any unusual patterns (e.g., if an agency had conducted many focus-group collections but had not used the generic clearance process), then I asked about those patterns as well. The OIRA interview focused on the same subjects as well as OIRA's perspective on various reform possibilities.

I also participated in one of the monthly meetings of the Council of Agency Paperwork Reduction Act (CAPRA) officers to discuss this report and solicit potential interview subjects. I conducted interviews with six agency clearance officers and a group interview with OIRA personnel. Interview subjects were guaranteed confidentiality, which is standard practice in sound qualitative research.[24] The interviews concluded with a prompt for suggestions for improving the PRA process and follow-up questions regarding these suggestions.

Finally, I conducted a brief literature review of efforts in other developed countries to reduce paperwork. Often labeled "red tape" initiatives, these efforts have become much more common around the world in the past decade. There have been few studies of their efficacy, but there has been a good deal of descriptive work.

Results

This section lays out the results of the research, both data collection and interviews. The discussion is broken down by each process currently being used to streamline PRA approvals, with a separate section describing recommendations made by interview subjects for additional reforms.

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[24] Rubin, Herbert J., and Rubin, Irene S. *Qualitative interviewing: The art of hearing data*. Sage, 2011.

Generic Clearances and Fast-Tracks

Agencies frequently use both generic clearances and the newer fast-track process. (As described above, fast-tracks are a subset of generic clearances.) It is important to distinguish the "umbrella clearances" for generics and for fast tracks from the individual information collections submitted to OMB under the umbrella clearance. As described above, agencies submit an umbrella clearance through the normal PRA process (two Federal Register notices, and 60 days for OMB review). If approved, the agency can then submit individual clearances for expedited review under the umbrella clearance to OMB. The number of approved generic and fast-track umbrella clearances and the individual collections submitted under generic umbrellas by cabinet departments and independent agencies are displayed in Table 1.

Table 1: Current Number of Approved Generic Clearances and Fast Tracks by Agency

Agency	Number of Umbrella Generic Clearances (Includes Fast-Track Clearances)	Number of Individual Surveys Approved Underneath these Umbrella Clearances (since 2006)	Number of Umbrella Fast-Track Clearances[25]
Department of Agriculture	12	362	5
Department of Commerce	14	844	2
Department of Defense	5	40	3
Department of Education	5	779	1
Department of Energy	3	106	2
Department of Health and Human Services	61	2682	23

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[25] Data on individual surveys approved under fast track umbrella clearances was not available at the time of the completion of this report.

Department of Housing and Urban Development	1	39	0
Department of Homeland Security	9	105	7
Department of Interior	5	1054	1
Department of Justice	3	69	1
Department of Labor	4	505	0
Department of State	1	102	1
Department of Transportation	10	87	8
Department of Treasury	12	643	7
Department of Veterans' Affairs	2	146	1
Environmental Protection Agency	3	191	1
All Other Agencies	51	1731	22

As Table 1 indicates, most agencies have adopted both the generic clearance and the fast-track process. The Department of Health and Human Services (HHS) has been a particularly prolific user of these processes. This is not surprising, because besides the Department of the Treasury (whose numbers are largely driven by the Internal Revenue Service), HHS imposes the greatest information collection burden of all agencies.[26]

The Obama Administration's efforts at publicizing the expedited clearance processes clearly had an impact. Once generic clearances were publicized and the fast-track process created, there was a marked increase of these types of information collection approvals. Tables 2 through 4 show the approval by year of generic and fast-

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[26] See 2016 Information Collection Budget.
https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/icb/icb_2016.pdf (last viewed January 10, 2018).

track clearances.   (Note that the swell in 2011 for umbrella generic clearances is largely due to the adoption of fast-tracks.)

Table 2 Adoption of New Umbrella Generic Clearances by Year

Pre-2000	2000-2005	2005-2010	2011	2012	2013	2014	2015	2016	2017
28	16	18	60	20	12	16	13	12	6

Table 3 Adoption of Individual Surveys under Generic Umbrellas Since 2007[27]

2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
80	254	300	306	376	588	629	654	900	1089	1102

Table 4 Adoption of New Umbrella Fast Track Clearances by Year

2011	2012	2013	2014	2015	2016	2017
52	11	5	6	5	5	1

There are two plausible explanations for the decline in the number of new umbrella fast tracks and generics since 2011. The memos on these two methods were accompanied by publicity and training from OIRA. Hence interest in their use was initially very high. Since then, both publicity and training have been much less prevalent. Thus agencies may not think of new fast-tracks and generics as frequently as they did in 2011 and 2012 (although clearly the use of existing generic and fast tracks is widespread).

The second explanation is that the introduction of fast-track clearances and the publicity surrounding generic clearances led agencies to convert all of their collections that were obviously eligible for these processes immediately. Since these obviously eligible collections (particularly customer satisfaction surveys) were soon all converted there were fewer candidates for generic or fast-track approval. Discussions with my interview subjects indicate that both of these explanations have some merit.

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[27] Data on individual surveys was not kept before 2005.

PRA clearance officers told me that their agencies appreciated the opportunities provided by the generic and fast-track clearance mechanisms. They appreciated them so much that, at times, they wanted to use them for collections that did not fall under the categories outlined by Administrators Sunstein and Shelanski. The most common type of information collection that failed to qualify for generic clearances were collections that were likely to have policy impacts. To date the generic clearance process is restricted to the types of information collections outlined in the 2010 memo.[28] OIRA does not allow generic clearances for collections designed to have policy impacts, feeling that allowing such clearances violates the spirit of the PRA.

OIRA personnel also pointed out that there is an opportunity cost to the use of generic clearances. With the quick turnaround time, desk officers on occasion have to put aside other work (including the review of more intensive information collections) to review individual collections under generic or fast-track clearances

Many of the types of information collections that are eligible to fall under generic clearances or fast-tracks (some generic clearances could likely still be converted to fast-tracks) have been converted to these types of approvals. To examine the extent of collections that still use the traditional PRA approval process but may be eligible for generic or fast-track clearances (keeping in mind that fast-tracks are a subset of generic clearances), we searched the database for instances of customer satisfaction surveys, usability surveys, and focus groups that were not cleared under generic clearances or fast tracks. Table 5 presents the frequency of such collections.

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[28] See note 17, *supra*.

Table 5: Candidates for Generic or Fast-Track Collections among Currently Approved
Collections (all agencies)

Term Used in Title of Collection	Number of Umbrella Generic/Fast-Track Collections.	Number of non-Generic/Fast-Track Collections.
"customer satisfaction"	67	18
"customer service"	18	12
"focus group"[29]	48	74
"usability"	28	6

In three of the four categories, a significant majority of possible collections have been converted to generic or fast-track clearances. In some cases in which collections were not converted, there may be efficiency gains from converting in the future.[30] On the other hand, some of the un-converted collections come from small agencies that issue only a single customer satisfaction survey[31] -- meaning the time savings from converting to a generic clearance is limited. Finally, other collections have purposes that include the search term ("customer service") but also have other purposes that make them ineligible for their agency's generic clearances. For those collections, the expedited mechanisms provide no opportunity for saving time.

For focus groups, the story is somewhat different. Focus groups are groups of individuals gathered together to discuss a particular topic. They are often convened by agencies to better understand public views on a subject the agency is contemplating. Focus groups are explicitly mentioned in the memos outlining generic[32] and fast-track clearances[33] as good candidates for expedited review. The FAQ memo on fast-tracks,[34]

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[29] There is likely to be some overlap between these categories. In particular, collections with "focus group" in the title could easily also have any of the other search terms in the title as well.

[30] See, for example, https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=0930-0325 (last viewed January 12, 2018).

[31] See, for example, https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3420-0040 (last viewed January 12, 2018). It is plausible that smaller agencies are deterred from doing more customer feedback because of a lack of understanding about generic and fast-track clearances or because of less capacity and expertise on measuring customer satisfaction. I have no evidence as to which of these hypotheses may be correct.

[32] See note 17, *supra*.

[33] See note 18 *supra*.

[34] See note 19, *supra.*

however, specifically excludes certain collections from eligibility for that mechanism. Fast-tracks are not to be used for:

> (a) surveys that require statistical rigor because they will be used for making significant policy or resource allocation decisions;

> (b) collections whose results are intended to be published;

> (c) collections that impose significant burden on respondents or significant costs on the government;

> (d) collections that are on potentially controversial topics or that raise issues of significant concern to other agencies;

> (e) collections that are intended for the purpose of basic research and that do not directly benefit the agency's customer service delivery; or

> (f) collections that will be used for program evaluation and performance measurement purposes.

Focus groups can be convened for purposes approved for generic and fast-track clearance (customer satisfaction surveys) or they could be convened for other information collection purposes. The titles of the proposed focus groups that have not been made part of generic clearances make clear that many fall into these six categories that do not fall under OIRA approved uses of generic or fast-track clearances (or are parts of broader studies that do).[35]

Common Forms

A "common form" is defined in the Shelanski memo[36] as "an information collection that can be used by two or more agencies, or government-wide, for the same purpose." 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

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[35] See https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=0970-0460 for example (last viewed January 12, 2018).
[36] See note 21, *supra.*

can avoid the two Federal Register notices required under the PRA and merely inform OIRA of any additional burden that its use of the form might create.

Agencies check off a box labeling an information collection as a common form when they submit it to OIRA. We searched the reginfo.gov database for information collections with this designation and found 87 collections so labeled. Upon closer examination, however, many of these forms did not in fact seem to meet the definition of "common form." By our estimation, thirty-four of these collections were common forms (the other 53 seemed to be forms particular to one agency[37]). Of these, fifteen fall into a single category; forms used in the federal grant application process.

OIRA also provided us with data on common forms. This data showed that seventeen common forms had been in usage since 2000 and agencies had requested use of these forms 233 times. Again, the vast majority of common forms (14 of 17 forms and 201 out of 233 usages) were for forms related to securing or reporting on the progress of grants.

Both agency and OIRA representatives expressed the belief that there were many more opportunities for the use of the common form approval process. This is supported by the limited number of common forms currently approved. Several interview subjects gave examples of collections for which that process would be appropriate. (Unfortunately, I must withhold specific descriptions in order to protect the respondents' anonymity.) One agency representative described an attempt to use a common form approval process that other agencies were not willing to buy into.

The most commonly expressed reason that the common form process was not used more often was that agencies were "territorial" and "did not talk to each other." There was also confusion at agencies about the burden allocation process for common forms.[38] Finally, agencies sometimes avoid common forms in order to "personalize" their information collections. Sometimes this is because statutes require agencies to

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[37] See for example, https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201704-2502-008 (last viewed February 6, 2018) or https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201610-2900-005 (last viewed February 6, 2018).

[38] Agencies must report their annual burden as part of OIRA's required submission to Congress of an Information Collection Budget.

collect data elements not on the common form; in other cases, it is simply the agency's preference.

The cost of not using common forms can be seen most clearly in the one area where there has been some usage: research grants. A 2015 National Academy of Sciences (NAS) report[39] found that even though scientific agencies had adopted some common forms, they frequently added on other requirements to these forms. The report recommended that Congress and OMB require grant-making agencies to make their grant-application forms more uniform.[40]

It is clear that there is room for greater usage of common forms; my suggestions appear in the "Recommendations" section below.

Social Media

When the Paperwork Reduction Act was passed, Facebook and Twitter were still more than twenty years away. OIRA has tried to make clear to agencies that the structure of the PRA applies, regardless of the medium of information collection. For example, general solicitations of comments are not covered by the PRA, whether they're done on paper or on social media, so they need not submit such solicitations to OIRA for pre-clearance. If, however, agencies use the Internet to collect more than identifying information or general public comments, then they must secure OIRA approval before doing so, which is how it works for non-Internet media as well.

We scanned agencies' Facebook pages and Twitter feeds to get a rough idea of how they were using these platforms. While any such approach is likely to be haphazard and not comprehensive, it does give a snapshot in time of the use of social media. We did not find any violations of the PRA. In fact, agencies seemed to use social media only very rarely for any kind of information collection, even in circumstances (e.g., general solicitations of comments) for which OIRA pre-clearance would not be required. Other very recent work has documented agency use of social media to

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[39] The author was a member of the NAS panel.

[40] National Academies of Sciences, Engineering, and Medicine. Optimizing the Nation's Investment in Academic Research: A New Regulatory Framework for the 21st Century. National Academies Press, 2016.

promote their regulatory proposals.[41] Some agencies announced pre-existing grants or contests on social media and included links to information collections on agency websites.[42]

It is possible that confusion about how the PRA applies to social media has deterred agencies from using it, even for those functions that do not require OIRA approval. It is also possible that agencies are concerned about the possibility that individuals would think that commenting on a Facebook post would constitute a public comment on the rulemaking and wish to avoid this confusion. Agencies could turn off comments on their posts and provide to a link where formal comments can be submitted to avoid this scenario.

Emergencies and Non-Substantive Changes

The Shelanski memo also mentions emergencies and processes for making minor changes to existing information collections. The implementing regulations for the PRA[43] provide that in the case of an emergency, an agency may ask OIRA to approve the information collection for a ninety-day period without the need to place either of the two normally required notices in the Federal Register. Emergency approvals are allowed when:

(i) Public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) An unanticipated event has occurred; or

(iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

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[41] This use of social media to promote regulatory initiatives is discussed here, http://yalejreg.com/nc/visual-regulation-and-visual-deregulation-by-elizabeth-porter-kathryn-watts/ (last viewed February 9, 2018). It has been criticized as improper (on the grounds that agency promotion may damage the credibility of an agency to serve as a neutral arbiter on suggestions made in public comments) (see http://yalejreg.com/nc/administrative-braggadocio-by-michael-herz/ (last viewed February 9, 2018)).
[42] As far as we could determine, these information collections had gone through the normal, non-expedited PRA process.
[43] 5 C.F.R. 1320 et. seq.

Also, OIRA allows agencies to make non-substantive changes to their information collections without going through the full PRA process. Both of these processes are highlighted in the Shelanski memo.

To look at emergencies, we counted the number of "emergency" submissions made to OIRA in an arbitrarily selected thirty-day time period. There was only one. I also asked interview subjects about these collections, and there was agreement that they were not frequently used.

Non-substantive changes to existing information collections (a small change in wording, a very small change in a burden estimate) are used more frequently, but neither agency nor OIRA personnel seemed to think there was under-use or over-use of the process.

One interview subject suggested that OIRA create a process that was "halfway" between the emergency process and the current regular non-expedited process. Under such a proposal, agencies could forgo the first required Federal Register notice (the one requiring 60 days of public comment) and simply do the second notice, which is done concurrently with submission of the information collection to OIRA. The hope was that this process could be used when agencies needed information quickly (in a month or two) rather than immediately. Such a case may occur when an agency's ability to meet a statutory deadline was dependent on the information collection.

I raised this possibility with OIRA, and they noted that the terms of emergency clearances were negotiated on a case by case basis with agencies, These negotiations often resulted in a process similar to the one desired by agencies. OIRA noted that such discussions were available when the emergency was due to external circumstances, not due to a lack of planning at the agency level. OIRA also pointed out however that they have observed numerous instances of agencies attempting to utilize the emergency process for non-emergency situations (e.g., the agency simply did not budget time appropriately to allot for public comment periods prior to a contract start date). Agencies may not be aware of their ability to ask for such a process in certain circumstances (see conditions ii and iii above) where there is a pressing need to collect information but not an "emergency."

Interviewees' perceptions of needed reform

I concluded my interviews by asking an open-ended question about other suggestions for reforms of the PRA clearance process. Respondents generally suggested ideas that were very much in the weeds of the information collection approval process. Most broadly, it was clear that agencies had a thirst for more training from OIRA on PRA processes generally and on the expedited processes. Agency confusion on some of the issues described above also reinforced the need for more training. OIRA acknowledged that although it provided significant training around the time it released the memos described above (particularly around the fast-track process), more training would help agencies. Unfortunately, because OIRA is also tasked with other significant responsibilities (e.g., regulatory review, information quality, and oversight of statistical policy), its resources (particularly time) for training are limited.

Of the more detailed issues raised by interview subjects, two appear to be amenable to possible fixes. With each submission of a proposed information collection to OIRA for review, agencies must fill out a supporting statement explaining the need for the collection and the burden it imposes. The supporting statement consists of the answers to eighteen questions.[44] For collections with a statistical component, there is a second part to the supporting statement consisting of five additional questions. Developing the supporting statement is a significant component of the time it takes agencies to prepare information collections for review (especially new collections).

The supporting statement allows OIRA to evaluate the collections against the statutory criteria in the PRA. These include the practical utility of the collection, the burden it imposes, privacy implications, and how agencies will manage and dispose of the information they collect. That said, it has been many years since the supporting-statement requirement has been examined or changed, and both OIRA and agency personnel were open to the possibility improving and/or streamlining it. I discuss this possibility further in the recommendations section below.

Agency personnel also expressed dissatisfaction with ROCIS, the internal computer system used to submit information collections to OIRA. They were less specific about their concerns, but some subjects did mention dissatisfaction with the user interface, particularly with the manner in which it requires entry of burden hours

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[44] See note 12, *supra.*

and costs. One respondent expressed a desire for a "department-level ROCIS" so that agencies within the department could submit collections to the department and the department could review them online before passing them on to OIRA.[45]

Recommendations

Recommendation 1: Training

OMB has taken many steps over the past eight years to facilitate the clearance of information collections under the PRA. They have used their discretion under the statute to carve out new, expedited approval processes in areas such as measuring customer satisfaction, while continuing to uphold the purpose of the Act. Our data collection and interviews reveal that agencies have adopted some of these new processes with enthusiasm. The fast-track process in particular was embraced by a wide swath of agencies shortly after its introduction.

The experience with the fast-track process is instructive. Upon issuance of the Sunstein memo announcing the availability of the new technique for PRA approval, 52 umbrella fast-track collections were approved by OIRA within a year. When the memo was issued, OIRA did a series of training exercises for agencies on how to use the fast-track process. In the years since 2011, the use of new fast-tracks has dwindled. This is in part because the most likely candidates for fast-track approval were the first ones submitted by agencies. But fast-track processes have likely also faded in the consciousness of agencies, and, with the turnover of agency personnel, some confusion has likely set in about their applicability.

The desire for training from OIRA was one of the most consistent themes I heard across my agency interviews, and additional training from OIRA would likely revive agencies' enthusiasm for fast-track and the other expedited approval

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[45] ROCIS is the system whereby cabinet departments and independent agencies submit their information collections to OIRA. The request is for a similar (or attached system) where sub agencies could submit their collections to the department (which reviews them before sending them to OIRA).

mechanisms. Such training should focus not only on the techniques described in this report (fast-tracks, generics, common forms, etc.) but also on the PRA generally.

Given its numerous responsibilities, OIRA is spread very thin.[46] For additional PRA training to be feasible, OIRA would require additional resources.

Recommendation 1: OIRA should increase the training opportunities for agencies on the Paperwork Reduction Act. The topics of such sessions could vary to include basic administration of the PRA, expedited clearance process, and other new and emerging topics in information collection. The method of delivery of training could also vary and could include in-person training, new training materials, and "training the trainers" at agencies. Congress should dedicate funding to OIRA for this purpose.

Recommendation 2: Common forms

OIRA has emphasized the use of "common forms" to expedite approval of collections, but agencies have not used them as often as fast-tracks and generics. Interview subjects cited "fiefdoms" throughout the government as an explanation for why agencies were not willing to cooperate in adopting forms initially created by other agencies. Even where common forms have been adopted (as in the case of grant-making), studies have shown that agencies use the common form but then require additional information to suit their needs.[47]

There is a great deal of potential for the use of common forms. Few things irritate respondents to information requests more than having to provide the same information over and over again to different government agencies. Other countries have experimented with the use of common forms or collection of common data elements which would reduce respondent burden.[48] To facilitate further adoption of common forms, OIRA could produce a list of common form candidates. If agencies were

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[46] Graham, John, and Broughel, James. "Stealth Regulation: Addressing Agency Evasion of OIRA and the Administrative Procedure Act." *Harvard Journal of Law & Pub. Pol'y: Federalist Ed.*, vol. 1, no. 1, 2014.

[47] See note 42, *supra*.

[48] See for example the "Smart Forms" project in Australia, https://www.business.gov.au/For-Government/smart-forms (last viewed January 17, 2018).

not willing to adopt common forms, then legislation may be necessary to force them to do so.

Recommendation 2: Agencies should develop a list, with guidance from OIRA, of candidates for common forms. This list should be publicized in the Annual Information Collection Budget which is submitted to Congress.

Recommendation 3: Supporting statements

The requirements for the supporting statement that accompanies agency submissions to OIRA has not changed in decades. As things currently stand, neither the agencies nor OIRA is satisfied with the supporting statements. From the agency's perspective, there is confusion about the process for calculating burden hours and costs, and frustration at the time needed to produce a supporting statement. Filling out parts of the form is a pro forma exercise to which agency staff give little thought, and filling out other parts is perceived as a needlessly time-consuming exercise. From OIRA's perspective, one desk officer said the following,

> People assume we only care about burden so they orient their discussion around that. There is not enough detail on the more substantive things we are interested in. The agencies miss the practical utility part of the conversation . . . there is a perverse incentive, the agencies think we don't want to see an increase in burden so they hide things. Sometimes an increase is justified; it makes response rates higher or improves the quality of the information. It is hard to pull it out of them because they think we'll be mad at the burden increase.

In the language of the Paperwork Reduction Act, refining the supporting statement has the potential to reduce the burden on agencies while increasing the practical utility of submissions for OIRA.

The same may be true of the computer system, ROCIS, used by agencies to submit information collections to OIRA. If agencies are confused by ROCIS or are

providing incorrect information to OIRA because of the interface, then improvements to ROCIS would both reduce agency burden and make agencies' submissions more useful to OIRA.

> **Recommendation 3:** Agencies should convene an interagency working group (CAPRA would be a logical home for this) to develop recommendations for revising the supporting statement requirements on information collection submissions and to examine whether changes are needed to ROCIS. OIRA should be represented in the working group.

Recommendation 4: Social media

When we examined agency use of social media, we found that agencies were very limited in their use of these means to gain public feedback. The memo from OMB had been intended to reassure agencies that they do not need clearance for general solicitations of public comment or feedback on social media.[49] It is unclear whether the rarity of agency information collections on Facebook and Twitter stems from agencies' fears of the PRA or from a simple lack of desire to engage the public on those fora.

Additionally, in my interview with OIRA, staff expressed surprise at the lack of generic clearances from agencies on usability testing for their web applications. As with the use of social media, there is uncertainty about the cause: Are agencies engaging in usability testing without PRA approval? Or are they avoiding such testing, which could improve their websites, because of continued uncertainty about PRA applicability?

Agencies are using social media: our non-scientific examination of agency Facebook pages and Twitter feeds revealed frequent posting. But the vast majority of the posts publicized agency events, rather than seeking public input on issues facing the agency. This is unfortunate, because social media could be used to increase public interest in filing comments on agency rulemakings or information collections, and other agency activities from people who would never think of visiting the webpage of the

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[49] See note 16, *supra*.

Federal Register or regulations.gov. According to the Sunstein memo, such use would not implicate the PRA.

Recommendation 4: Agencies should re-examine their use of social media and usability testing.

A. Agencies should make greater use of social media platforms for general solicitations of information from the public on agency policies including but not limited to proposed regulations and information collections.

B. Agencies should make greater use of generic clearances for usability testing of websites and other applications.

Recommendation 5: Use of Generic Clearances and Consolidation of Federal Register notices for unchanged collections

As noted above, generic clearances and fast-track processes have been very successful initiatives. This begs the question of whether they could be expanded to other areas. I discussed a number of ideas with my interview subjects, and agency respondents showed enthusiasm for the possibility of using a generic clearance for extensions of approval of information collections without changes (i.e., for the re-approval, required every three years, of an information collection that has not been changed since its last submission to OIRA). Doing so would save time at agencies and at OIRA on the clearances that typically raise the fewest substantive issues.[50]

Such a process would need to be carefully designed to ensure compliance with the PRA. One possibility would be a process with the following steps:

- An agency creates a generic clearance for all of its collections which expire in the next three years and for which it expects no changes in the format or the burden estimate.

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[50] In my 2012 report to ACUS, I found that approximately 50% of submissions to OIRA were "extensions without change," and that "[o]ver 90% of the active collections most recently submitted as 'extensions without changes' were approved without any [modifications] by OIRA." See note 1, *supra.*

- The agency then follows the generic clearance process including two Federal Register notices which clearly list which collections are being covered by the umbrella clearance.
- If OMB approves the clearance, when an individual collection listed on the clearance is scheduled to expire, the agency submits it to OMB and affirms that there are no changes to the collection. OMB then has ten days to approve the individual collection.
- If an agency does decide to make a non-trivial change to the collection, then they must go through the normal PRA process.

Such an approach is not without risk. If a faster generic clearance process was available for existing collections without change, it might incentivize agencies to shy away from making necessary changes to collections. (There would, however, still exist the abbreviated OIRA review applicable to all generic clearances.)

One interview subject suggested a solution that would be a partial move in this direction: Agencies could consolidate their first Federal Register notices for renewals of collections without changes. The agency would choose a time period (e.g., six months or a year) and review all of its collections that were coming up for renewal. It could then place a single notice in the Federal Register to inform the public that those collections were available for public comment. (As such collections rarely result in public comment, little benefit would be lost from the decreased visibility of the individual renewal requests.)[51]

Such an approach would not save as much time or as many resources as the solution outlined above. The "partial" approach would also require foresight and planning at agency PRA offices. I suggest that both techniques be piloted at selected agencies in an effort to reduce the time spent on collections whose reviews, even considered cumulatively, provide a relatively small benefit to the public.

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[51] During ACUS committee review of this report, OIRA and agency representatives agreed that agencies already have the authority to take this approach.

> **Recommendation 5:** OIRA should clarify that agencies may consolidate the first Federal Register notice for extensions of approval of information collections without changes. OIRA should also choose one or two agencies to experiment with a generic clearance for such collections and work with that agency to implement a generic clearance.

Recommendation 6: Survey of businesses and other institutions

Finally, the United States is not the only country that has grappled with the problem of government red tape in the form of information collection burdening its public. As noted above, some countries have experimented with common forms to reduce burdens on businesses.[52] The United Kingdom[53] and Belgium[54] each survey businesses to better understand which paperwork burdens are particularly challenging for them. Denmark's "burden hunters" project engages businesses and regulatory agencies in an effort to streamline paperwork requirements.[55]

There is evidence that businesses and individuals perceive paperwork requirements as the most burdensome aspect of government regulation (even if other regulatory requirements actually cost more).[56] The PRA was passed in part because of this phenomenon. But not all paperwork requirements are created equal in terms of their burden or their practical utility. Additionally, there has been very little effort to understand how businesses cope with the cumulative impact of paperwork requirements coming from different agencies (and from different levels of government).

In order to better understand these issues, the federal government should, yes, collect information from the communities affected by paperwork burden. Such an

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[52] See note 48, *supra*.

[53] See https://www.nao.org.uk/report/business-perceptions-survey-2014/ (last viewed January 18, 2018).

[54] See http://www.plan.be/databases/data-29-en-the+administrative+burden+in+belgium (last viewed January 18, 2018).

[55] See https://danishbusinessauthority.dk/burden-hunter-hunting-administrative-burdens-and-red-tape (last viewed January 24, 2018).

[56] OECD. *Cutting Red Tape: National Strategies for Administrative Simplification*, avail. by link from http://www.oecd.org/gov/regulatory-policy/cutting-red-tape-why-is-administrative-simplification-so-complicated.htm (last visited Jan. 29, 2018). OECD Publishing, 2006.

effort would first focus on businesses but could also be adapted for schools, hospitals, and other levels of government that are similarly burdened. Such a survey would better help OIRA and agencies fulfill the core mission of the PRA.

> **Recommendation 6:** OIRA should work with an agency (perhaps the Department of Commerce or the Small Business Administration) to develop a survey of businesses regarding the paperwork burden imposed by that agency, as well as the cumulative burden imposed by multiple agencies. Such a survey, once refined and adapted, could later be used by other departments to examine the paperwork burdens on schools (by the Department of Education), hospitals (by the Department of Health and Human Services) and other individuals and entities. A preliminary step in this direction could be to add NAICS[57] codes to individual collections to get a sense of which sectors are subject to the greatest volume of information collections.

Conclusion

There was one set of recommendations made by interview subjects that I did not make a formal part of this report. A number of the statutory constraints of the Paperwork Reduction Act have created a process whereby too much time is spent on by federal agencies on functions that do not reduce public burden or increase the practical utility of information provided to the government. In particular, interview subjects cited the requirements that approvals of information collections occur every three years, and the two required comment periods as being particular sources of frustration and "busy-work."

Recommendations to modify these statutory requirements were part of my 2012 report to ACUS. Both recommendations generated considerable controversy during the review of my report. Congress has not revisited the PRA in several decades and hence a legislative debate on the wisdom of these provisions has not occurred. Changes to the statute are outside the scope of ACUS's charge on this report so I am not

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[57] See https://www.census.gov/eos/www/naics/ (last viewed March 8, 2018).

repeating those recommendations here. I would be remiss, however, if I did not repeat the need for reconsideration of these provisions by Congress.

As this report indicates, OIRA has done a very good job of devising methods for working within the constraints of the PRA to ensure that there are ways for expedited approval of certain collections with minimal burden and little policy impact. Most prominent among these collections are agency attempts to measure customer satisfaction and thereby assess agency effectiveness at achieving their missions. The fast-track process in particular has been adopted across the government and can be classified as a success.

The recommendations in this report will hopefully build upon that success. Recommendations 1 through 3 require agencies and OIRA to work together. However, they are relatively modest and could be accomplished with only slight increases in resources for OIRA. Recommendation 4 requires agency action, but it too is a low-cost action, requiring only a reorientation of agencies' efforts to engage the public via social media. Recommendations 5 and 6 are broader initiatives and require the executive branch to think more "outside the box" about using the PRA for its intended purposes.

And those intended purposes are important. As concern rises about cumulative burdens imposed by the government,[58] the Paperwork Reduction Act, passed in 1979, seems prescient in its focus. However, in the attempt by its authors to address paperwork burden, a process was created that can hamstring the ability of the executive branch to do just that. The recommendations here are intended to encourage the executive branch to solicit the types of information it needs to perform its functions while also ensuring that careful oversight can be exercised in the service of relieving burdens on the public.

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[58] Mandel, Michael, and Carew, Diana G. "Regulatory Improvement Commission: A Politically-Viable Approach to US Regulatory Reform." *Progressive Policy Institute,* May 2013.