



Paperwork Reduction Act

Committee on Administration and Management

Draft Recommendation

1 The Paperwork Reduction Act (PRA), enacted in 1980 and revised upon its
2 reauthorization in 1986 and 1995, created the Office of Information and Regulatory Affairs
3 (OIRA) within OMB to oversee information policy within the executive branch. The Act
4 requires, among other things, that agencies secure OMB approval before collecting information
5 from the public. Since 1995, this has meant that agencies must put a proposed information
6 collection request out for public comment for 60 days before finalizing it and submitting it for
7 OIRA’s approval. An additional 30-day comment period is opened while OMB reviews the
8 request. One of the statute’s goals is to reduce the burden on the public of agency information
9 requests. The burden of such requests on small businesses was of particular concern to
10 Congress in drafting and revising the Act. OMB review also ensures that agencies employ solid
11 methodologies in designing information collections, particularly those seeking to gather
12 statistical data. Another, broader goal of the PRA was to encourage agencies to implement a
13 life-cycle approach to information management. This means that, from the initial stage in
14 which information is collected from the public, agencies must give thought to how the
15 information will be used, disseminated, stored, and disposed of throughout the entire process.

16 Experience has shown that, in practice, parts of the PRA have not operated as its
17 drafters intended. For example, the 60-day comment period was originally intended to
18 facilitate an interactive dialogue between an agency and the public, enabling the agency to
19 better craft its information collection plan. In practice, however, agencies tend to view
20 information collection plans as final before this first comment period begins, and members of
21 the public infrequently submit comments. These realities undermine the promise of the



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

22 | comment ~~period structure~~periods as a means for facilitating a meaningful dialogue between
23 | agencies and the public.

24 | A related problem is that the PRA was last amended in 1995, and has not been updated
25 | to account for evolved technologies. Although OMB has provided some helpful guidance
26 | regarding the application of the PRA to social media,¹ there is concern that provisions of the law
27 | adopted during the era of the hard-copy information collection paradigm may inadvertently
28 | create disincentives to agencies' use of modern technologies capable of facilitating faster,
29 | easier, and more effective communication with the public. Finally, over time, the PRA's
30 | regulation of information collections has come to be viewed as its primary component and has
31 | overshadowed the law's broader information management goals.

32 | Some current and former agency officials have expressed concern that the PRA may be
33 | unduly restrictive, imposing delays and costs on the agencies that are disproportionate to the
34 | benefits to the public. This is not a new concern, and it appears that much of the delay occurs
35 | within agencies and is not a product of OMB review. Indeed, OMB has recently taken steps to
36 | make the process easier for agencies, including by offering a process for approving generic
37 | clearances.² Nonetheless, there seem to be occasions in which the PRA ~~sometimes~~ impedes
38 | agencies from undertaking information collections that would not be burdensome to the public
39 | and would provide information necessary to craft better, less burdensome policies. For
40 | example, some ~~agencies~~agency officials have complained that the PRA prevents them from
41 | using focus groups or related methods to collect the information necessary to complete a full,
42 | nuanced regulatory analysis. Also, if an agency's approach shifts as a regulatory action moves

¹ ——— See Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act (April 7, 2010).

² See Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, Paperwork Reduction Act – Generic Clearances (May 28, 2010).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

43 forward, so too may its information collection needs. In such cases, agencies must initiate the
44 entire PRA process again, even if they have already spent significant time and resources
45 securing approval for an earlier, slightly different information collection request.

46 Agencies that rarely undertake information collections also may find the process
47 challenging because they are unfamiliar with the PRA and find it difficult to obtain reliable
48 guidance or sufficient assistance to navigate the process smoothly. ~~There also appears to be~~
49 ~~some lack of clarity regarding the application of the PRA to Special Government Employees and~~
50 ~~Inspectors General.~~

51 This recommendation is intended to address these concerns. ~~Taken together, the~~
52 ~~recommendations seek~~ It seeks to serve the ~~Congressional~~congressional purpose of allowing
53 OMB and the agencies to better focus on those collections that impose the greatest burden on
54 the public and those that can benefit most from OMB review. ~~It will~~ It focuses on the areas
55 where modest reforms can make substantial improvements, seeking to maintain the benefits of
56 the current OMB review process while reducing the costs.

DRAFT RECOMMENDATION

57 58 **Exemptions**

59
60 ~~1. OMB should, on a pilot basis, delegate to several selected agencies review of~~
61 ~~information collections below a particular burden-hour threshold (recommended to be 100,000~~
62 ~~hours total, that do not raise novel legal, policy, or methodological issues—perhaps with a~~
63 ~~condition that collections that impose a large burden on a small number of individuals be~~
64 ~~cleared with OMB). OMB should audit the results of such delegations after two years; then, if~~
65 ~~no abuse of delegation authority has occurred, and time savings have resulted from the~~



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

66 ~~delegation, OMB should consider expanding the delegation to other agencies. Regular audits of~~
67 ~~agency review processes should then follow.~~

68
69 ~~2. OMB should solicit comment from agencies on the applicability of the PRA to Special~~
70 ~~Government Employees and provide guidance on the matter.~~

71
72 ~~3. OMB should issue guidance regarding the requirements of 5 CFR 1320.4(a)(2), which~~
73 ~~determines the circumstances in which investigations by Inspectors General are exempt from~~
74 ~~the PRA.~~

75
76 ~~4. Congress or OMB should consider crafting a more lenient standard or fast track~~
77 ~~procedure for voluntary agency focus groups or for information collections that are certified by~~
78 ~~the agency to be needed to perform a regulatory analysis required by law or Executive Order.~~

79
80 **Other Reforms**

81
82 ~~5. Congress should amend the Paperwork Reduction Act to grant OMB discretion to~~
83 ~~approve collections for up to five years.~~

84
85 ~~6. Agencies and OMB should take measures to revitalize the sixty day comment~~
86 ~~period~~ **Improving Public Engagement**

87
88 1. Agencies and OMB should take measures to revitalize the sixty-day comment period
89 (in which, under the Paperwork Reduction Act, agencies must put a proposed information
90 collection request out for public comment for 60 days before finalizing it and submitting it for
91 OIRA's approval) to better serve the statutory goal of facilitating an interactive dialogue
92 between the public and the agencies sponsoring an information collection and to enable the



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

93 agencies to better design new information collection requests before submitting them to OMB
94 for approval.

95

96 (a) For new collections or collections with significant changes:

97

98 (1) Agencies should make affirmative efforts to engage the public in efforts to design
99 information collection requests.

100

101 (2) The Chief Information Officer (CIO) Council, in consultation with OMB and the
102 Office of the Federal Register, should develop best practices for Federal Register
103 notices, including the use of plain language, to improve public understanding of
104 requests and the information collections they cover. Such best practices should
105 include guidance on 60-day notices, 30-day notices, and notices of proposed and
106 final rulemakings.

107

108 ~~(2)~~(3) Agencies should post notices of information collection requests on a
109 centralized website to create a one-stop location for the public to view such
110 requests- and comments received. The eRulemaking Program Management
111 Office (PMO) should consider creating a dedicated page on Regulations.gov to
112 facilitate implementation of this recommendation.

113

114 ~~(3)~~(4) Agencies should avoid viewing an information collection request as final
115 prior to the 60-day comment period. Instead, agencies should use public
116 engagement as a way of improving their preliminary information collection plans.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

117 The preliminary information collection plan should provide sufficient detail for
118 the public to meaningfully comment.³

119
120 (4)(5) Agencies and OMB should consider use of alternative means of engaging
121 the public (in addition to a formal Federal Register notice), such as identifying
122 and reaching out to interested parties, during the 30-day comment period that
123 occurs simultaneously with submission to OMB.

124
125 (b) OMB should, as soon as feasible, post on its website or on Regulations.gov or
126 Reginfo.gov any comments received during the 30-day comment period.⁴

127
128 (c) Congress and OMB should look at ways to streamline the public participation
129 requirements when agencies seek renewal of approval from OMB for collections
130 with no significant changes.

131
132 Using Available Tools to Make the Process Easier

133
134 2. Each agency CIO should take a greater role in assistance and training of agency staff
135 to increase awareness of the PRA within each agency and better customize training to each
136 agency's unique organizational challenges. The CIO Council, in consultation with OMB, should
137 develop and disseminate training best practices.

³ Taking this approach would not require the agency to put the information collection request out for a second 60-day comment period prior to submission to OIRA.

⁴ See Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Memorandum for the President's Management Council on Increasing Openness in the Rulemaking Process—Improving Electronic Dockets at 2 (May 28, 2010) ("OMB expects agencies to post public comments and public submissions to the electronic docket on Regulations.gov in a timely manner, regardless of whether they were received via postal mail, email, facsimile, or web form documents submitted directly via Regulations.gov.").



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159

3. Agencies should use all available tools to secure OMB approval for information gathering via voluntary collections (e.g., focus groups), including OMB’s available generic clearances and fast track procedures. OMB is encouraged to continue to use its generic clearance authority for this and other purposes, as appropriate and permitted by law.

4. OMB should evaluate existing delegations of ICR review authority to determine how they are working and what is required to make them work well.⁵ OMB should use the information drawn from that evaluation to, on a pilot basis, consider delegating for two years to selected agencies review of information collections below a particular burden-hour threshold (e.g., up to 100,000 hours total), that do not raise novel legal, policy, or methodological issues—perhaps with a condition that collections that would impose a large burden on a small number of individuals must be cleared with OMB. OMB should audit the results of such delegations after two years; then, if no problems have occurred, and time savings have resulted, OMB should consider reauthorizing existing delegations and providing similar delegations to other agencies. Delegations should include a requirement to consult with OMB on burden estimates (for delegations based on burden) and provide a clear opportunity for OMB and the public to request OMB review. Regular audits of agency review processes should then follow.

Reforms to Improve Efficient Use of Resources

⁵ Currently OMB has long-standing delegations to the Federal Reserve Board and the Managing Director of the Federal Communications Commission. 5 C.F.R. pt. 1320 App. A. (2010).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

160 5. Congress should amend the Paperwork Reduction Act to grant OMB discretion to
161 approve collections for up to five years when such collections are being reapproved without
162 significant change.

163
164 6. Congress should change the annual reporting requirement for OMB to require only a
165 reporting and analysis of the data on Reginfo.gov and a discussion of developments in
166 government management and collection of information. OMB should not solicit information
167 from agencies for the annual report except as necessary to ~~report on~~ analyze and discuss these
168 two areas.

169
170 87. If Recommendations ~~2, 4, 6, and 7~~ are adopted, OIRA should devote some of the
171 resources that have been saved to providing compliance assistance and training for agencies.
172 (including training on burden estimation with the goal of standardizing the estimation of
173 respondent burden). If they are not adopted, then Congress should consider expanding the
174 OIRA staff ~~should be expanded~~ in order to facilitate this function.

175
176 **Information Resource Management**

177
178 8. To the extent feasible, OMB should emphasize integration of life-cycle management
179 of information into the existing information collection process. Agencies (with OMB's support)
180 should redo their Strategic Information Resource Management plans, to make clear how they
181 are complying with the PRA and implementing a life-cycle approach.