



Administrative Conference Recommendation 2018-1

Paperwork Reduction Act Efficiencies

Adopted June 14, 2018

The Paperwork Reduction Act (PRA) created the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget to oversee information policy in the executive branch.¹ OIRA's oversight responsibilities include the review and approval of federal agencies' information collections from the public. Information collections are government requests for structured information, such as those requests for information issued through report forms, application forms, schedules, questionnaires, surveys, and reporting or recordkeeping requirements.² The goal of the OIRA review process is to ensure that the burden of information collection on the public is justified by the utility of the information to the government. This Recommendation primarily concerns the interaction between agencies and the OIRA review process.

Under the OIRA review process, when an agency seeks to collect structured information from ten or more members of the public,³ it must follow a series of steps.⁴ It must first publish a notice in the Federal Register and give the public sixty days to comment. Once the comment period ends, the agency must submit the proposed information collection to OIRA with a

¹ The PRA was enacted in 1980 and has since been amended twice, in 1986 and 1995. *See* Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501–3521).

² 5 C.F.R. § 1320.3(c)(1), (h)(4) (2018). The PRA applies to the collection of structured information, meaning requests for information calling for either answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, or answers to questions posed to agencies which are to be used for general statistical purposes. *See* 44 U.S.C. § 3502(3) (2018).

³ *See* 44 U.S.C. § 3502(3)(A)(i); 5 C.F.R. § 1320.3(c)(4).

⁴ *See* 44 U.S.C. §§ 3506–3507; 5 C.F.R. pt. 1320.



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detailed supporting statement, ordinarily using the Regulatory Information Service Center and Office of Information and Regulatory Affairs Combined Information System (ROCIS), the computer system used by agencies to submit information collections to OIRA. At the same time, the agency must also publish a second notice in the Federal Register asking for comments on the information collection it provided to OIRA. After the thirty days for public comments have elapsed, OIRA has another thirty days to decide whether to approve or disapprove the information collection.

Expedited Clearance Processes

The process of obtaining OIRA approval for an information collection can be lengthy.⁵ To address this, OIRA has issued a series of memoranda designed to highlight existing processes that shorten the review time of certain types of information collections, while maintaining the integrity of the review process.⁶ The memoranda discuss several categories of information collections that may qualify for expedited clearance from OIRA, such as generic clearances, fast-tracks, and common forms.⁷ Generic clearances are generally intended for “voluntary, low-

⁵ 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).

⁶ See Cass Sunstein, OIRA Administrator, *Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act* (Apr. 7, 2010), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf; Cass Sunstein, OIRA Administrator, *Paperwork Reduction Act – Generic Clearances* (May 28, 2010), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf; Cass Sunstein, OIRA Administrator, *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, OIRA Administrator, *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.

⁷ 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, challenges or prizes, and certain requests for information through social media. See Shelanski, *supra* note 6.



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burden, and uncontroversial collections,” not for ones with substantive policy impacts.⁸ The fast track process, a subset of generic clearances, was designed to encourage agencies to solicit feedback about their services, and is generally used for information collections that focus on customer service feedback.⁹ Common forms are information collections that can be used by two or more agencies, or government-wide, for the same purpose.¹⁰

Agencies’ Use of Expedited Clearance Processes

Agencies have used the expedited clearance processes offered by OIRA in varying degrees. Agencies’ use of new generic clearances and fast tracks increased after OIRA publicized them and provided training to agencies on their use in 2011, but has since decreased (although agencies continue to seek OIRA approvals extensively under preexisting generic clearances).¹¹ This is in part because the most likely candidates for generic clearances and fast-track approval were the first ones submitted by agencies. But these techniques have likely also faded in the consciousness of agencies, particularly with the turnover of agency personnel. There also appears to be very little use of the generic clearance and fast track processes to test the usability of forms or obtain feedback to improve agency websites, even though OIRA has indicated that usability testing is a good fit for these processes.¹²

⁸ 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. *See id.*

⁹ The fast track process borrows heavily from the generic clearance process, but fast tracks have a narrower range of uses primarily concerning customer feedback and OIRA reviews requests under the fast-track clearance within five working days. *See id.*

¹⁰ 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. *Id.*

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

¹² *See id.* at 26–27. 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 Shelanski, supra* note 6.



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Common forms could also be used to expedite approval of collections and to promote data sharing among agencies, limiting the need for duplicative information collection. Agencies have not used common forms, however, as often as fast-tracks and generic clearances. This may be due to barriers that make it difficult for agencies to collaborate with one another to develop common forms.¹³ There also appears to be confusion at agencies about how they should report the burden created by an information collection conducted through a common form.¹⁴ Finally, agencies sometimes avoid common forms because they want to ask for information to suit particular agency needs.¹⁵ Regardless, it appears that there is a great deal of untapped potential for the use of common forms.¹⁶

Other Opportunities for Facilitating the Clearance Process

Aside from the expedited clearance processes outlined by OIRA, there are other opportunities for making the information collection clearance process more efficient, while still maintaining its integrity. One possibility would be for an agency to review all of the collections that are coming up for renewal without changes for a particular time period and to consolidate the Federal Register notices for those renewals. While there is a concern that combining unrelated collections might be confusing to the public, there are also offsetting benefits in terms of consistent information collection—especially for those collections that have previously undergone the review process.

Another opportunity to achieve efficiencies is to update the supporting statement that agencies must submit with each submission of a proposed information collection to OIRA for

¹³ See Shapiro, *supra* note 11, at 17–19.

¹⁴ *Id.* Federal “agencies must report their annual burden as part of OIRA’s required submission to Congress of an Information Collection Budget.” *Id.* at 18 n.38.

¹⁵ 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.

¹⁶ *Id.* at 17–19, 24.



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review.¹⁷ The supporting statement is intended to allow OIRA to evaluate the collections against the statutory criteria in the PRA. Developing it is a significant component of the time it takes agencies to prepare information collections for review, especially new collections. Currently, neither agencies nor OIRA are satisfied with it.¹⁸ Refining the supporting statement with the input of agency PRA clearance officers has the potential to reduce the burden on agencies while increasing the practical utility of submissions to OIRA.

Finally, some agencies have also reported difficulties and confusion in using ROCIS.¹⁹ Improvements to ROCIS could reduce agency burden, make agency submissions more useful to OIRA, and increase the usability of the data collected by ROCIS to agencies and the public.

RECOMMENDATION

1. To the extent practicable, the Office of Information and Regulatory Affairs (OIRA) should provide training opportunities for agencies on the Paperwork Reduction Act (PRA). The training topics could include basic administration of the PRA; expedited clearance processes, including generic clearances and the use of common forms; and other new and emerging topics in information collection. The method of training could include in-person training of PRA clearance officers, as well as new training materials.
2. Agencies should make greater use of generic clearances to comply with the PRA when engaging in usability testing of websites and other applications.
3. OIRA should encourage the development of common forms. OIRA should ask agencies to provide a list of potential common forms, and facilitate agency coordination and

¹⁷ 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.*

¹⁸ 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 25.

¹⁹ *Id.* at 22–23, 25–26.



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implementation of promising candidates. This list should be included in the Annual Information Collection Budget report that OIRA submits to Congress every year.

4. For information collection requests without changes from previous approvals, OIRA should clarify that agencies may consolidate the first Federal Register notice for extensions by taking the following steps:
 - a. The agency would choose a time period (e.g., six months or a year) and review all of its related collections that are coming up for renewal during that period.
 - b. The agency would then place a single notice in the Federal Register to inform the public that those collections are available for public comment.
5. OIRA, in consultation with agency PRA clearance officers, should revise the supporting statement requirements on information collection submissions to ensure the requirements minimize preparation time and remain practically useful.
6. OIRA, in consultation with agency PRA clearance officers, should make improvements to ROCIS, the internal computer system used to submit information collections to OIRA. OIRA should consider, for example, improvements to the user interface, workflow, and the usability of ROCIS, data to agencies and to the public.
7. OIRA should continue to consult with a working group consisting of agency PRA clearance officers, and with other appropriate experts, to continue improving the PRA clearance process.