Reinvigorating the Paperwork Reduction Act

The 1980 legislation may not have achieved all its framers hoped, but it can be revised and improved for the 21st century.

BY STUART SHAPIRO

Congress passed the Paperwork Reduction Act (PRA) in 1980. While the PRA was revised twice in subsequent years, it has not been amended since 1995. Meanwhile, the world has changed considerably. Most obviously, much of what used to be on paper is now online (though in the case of government information collections, there are laggards). Further, the number of areas in which information collections are required has increased. Pre-1995 collections like the Census and IRS 1040 still exist; to those, the government has added mandatory collections from the Department of Homeland Security (created in 2002) and the agencies charged with implementing the 2010 Affordable Care Act, among many others.

Also, since 1995, scholars have taken more seriously both the cumulative burden of regulation and the role that paperwork plays in deterring people from claiming the benefits to which they are entitled. Issues of privacy, confidentiality, and paperwork burden have dimensions that were not even imaginable in 1995.

On the surface, the PRA appears to be a failure. After all, it is called the Paperwork *Reduction* Act, but the number of hours spent by each citizen every year submitting information to the government or retaining records required by the government has increased by about 20% since 1997. Both the Government Accountability Office and the Administrative Conference of the United States (ACUS) have criticized the PRA's information management provisions, and agencies hoping to collect information have long complained about the PRA's burdensome requirements and argued that it deters them from collecting useful information.

Yet, the situation is more ambiguous than those numbers indicate. Perhaps burdens would have been higher if there had

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been no PRA. Information collected also provides benefits in terms of regulatory compliance assurance and screening applicants for programmatic aid, so reducing the paperwork burden is not an unambiguous benefit. The Office of Information and Regulatory Affairs (OIRA), the agency charged with enforcing the PRA, has doubtlessly improved hundreds of information collections through its review process. OIRA has also strived to make the review process less burdensome where possible, within the confines of the statute.

But most people who have dealt with the PRA would argue that it could be improved significantly. This article draws on research I have done as both a consultant for ACUS and other work on the reaction of businesses to paperwork, as well as on research by others on the effects of paperwork in other policy areas. In it, I discuss the need to reboot the PRA and examine how the statute could be changed to become more effective. We need a Paperwork Reduction Act for the 21st century. And a well-constructed PRA could garner bipartisan support in Washington by focusing on the burdens imposed not just on businesses, but also on individuals and on the need for improved information management within the federal government.

THE PRA AND ACUS REPORTS ON REFORM

The PRA passed overwhelmingly in the House and unanimously in the Senate, and was signed into law by President Jimmy Carter on December 11, 1980. While the bill contained provisions on information management, government dissemination of information, and maximizing the usefulness of information provided to the government, Carter's signing statement made no mistake about the primary purpose of the act:

This legislation, which is known as the Paperwork Reduction Act of 1980, is the latest and one of the most important steps that we

have taken to eliminate wasteful and unnecessary Federal paperwork and also to eliminate unnecessary Federal regulations.… This legislation is another important step in our efforts to trim waste from the Federal Government and to see to it that the Government operates more efficiently for all our citizens.

Congress has amended the PRA twice since it was enacted. The first time was in 1986, amid much controversy over the role of OIRA in implementing the PRA. President Ronald Reagan had given OIRA authority over regulatory review in Executive Order 12291. This thrust the agency into the national spotlight and the center of political controversy. The 1986 amendments made OIRA's administrator subject to confirmation by the Senate (a key demand of opponents of OIRA's regulatory review function), emphasized information resource management as a goal of the act, and set paperwork reduction goals.

The 1995 amendments took place amid the flurry of regulatory reform efforts undertaken by the 104th Congress. According to Jeffrey Lubbers, those amendments are better described as an "entire recodification" of the act. They increased the scope of OIRA's oversight to include dissemination of information, maintenance of archives, acquisition of information technology, and numerous other functions, while maintaining the agency's authority over information collection and setting revised goals for paperwork reduction. They also required

that each agency establish an office, independent from program responsibilities, to conduct information collection clearance activities.

The PRA has remained unchanged since 1995. The process for securing an approval for an information collection from OIRA is also largely unchanged. If an agency wants to collect information from 10 or more people, it must undertake the following steps:

- Develop the information collection and supporting documentation. The supporting information consists of responses to 18 questions (or 23 in the case of information to be used for statistical purposes) about the burden of the collection and how the information will be used, maintained, and disposed of.
- Publish a notice in the *Federal Register* and allow the public up to 60 days to submit comments to the agency on the information collection.
- Submit the collection and supporting material to OIRA, including any responses to comments received.
- Simultaneous with submission to OIRA, publish a second *Federal Register* notice with a request to submit comments to OIRA within 30 days. (These last three bullets are statutory requirements.)

OIRA then has 60 days from submission (or 30 days from the close of the second comment period) to approve or disapprove the collection. It may approve the collection for up to three years, after which the requesting agency must repeat the process if it

wants to continue collecting the information.

In 2012, I was asked by ACUS to recommend reforms for the PRA. My recommendations focused on streamlining the information collection approval by reducing the number of comment periods from two to one, extending the permissible approval period from three years to five, and encouraging delegation of approval from OIRA to agencies for less critical information collections. I also recommended renewed emphasis on the information management provisions of the PRA.

None of these recommendations have been adopted by Congress or the Office of Management and Budget (OMB). OIRA did, under the Obama administration, emphasize several alternative techniques to speed approval of information collections. These include what are known as generic collections, fast-track approvals, and the use of common forms. I reviewed these approaches in a 2018 report for ACUS and made further recommendations for improving efficiencies within the current statutory framework.

The improvements under the Obama administration are indeed helpful. But the problems that prompted my 2012 report are still present. The paperwork burden hours imposed upon the American public as a whole increased at an almost constant rate (except in 2010, which was due largely to a change in the way that burden hours are computed by the Internal Revenue Service) over the past 15 years. While this is partly explained by a 15% increase in the U.S. population over this period, the burden hours per capita have also increased from 25.6 hours in 1997 to 30.7 hours. Changes in the economy also result in burden changes (for example, during a recession, more people will fill out paperwork to apply for benefits, which is especially relevant in the era of the Great Recession), but it is clear from OIRA's annual reports to Congress that the economy on its own cannot explain the change over the past decade and a half.

While the paperwork burden is cumbersome for citizens and firms, the process for evaluating information collections is overly difficult for agencies. The PRA should be a hurdle for information collections that impose large burdens, will be used to create new policies, or are potentially very intrusive. For example, in 2017 the President's Advisory Commission on Election Integrity asked states to turn over data on voters and claimed that this information collection was exempt from the PRA. States refusing to turn over their information cited the PRA (as well as other statutes) as justification for their refusal, as did advocacy groups that used the courts to overturn the commission's request. President Trump eventually disbanded the commission and abandoned the attempt to collect this information.

THE PROBLEM WITH PAPERWORK

There are thousands of information collections requiring approval each year, and the need for a process that takes six to nine months to assess each of them (many of which had been approved previously) is at best questionable and at worst a waste of taxpayer dollars. The need to reassess the information collection approval process remains a critical reason to reopen and revise the PRA. But it is not the only one. Below, I detail three more reasons that the time is ripe to revise and reinvigorate the PRA.

Cumulative burden on businesses / Congress passed the PRA to deal with a very real problem. The hearings preceding the passage of the act were filled with testimony about the burden of paperwork. Most of the complaints came from the business community. While the act is also intended to ensure that the information collected by the government produces practical utility and to improve the management and dissemination of information within the executive branch, the statute was not named the Paperwork *Reduction* Act by accident. Dating back to the 1942 Federal Reports Act, there has always been a perceived need to reduce paperwork burden.

Is that perception accurate? As part of a broader project to study regulatory burden, Debra Borie-Holtz and I conducted a survey and interviews of small business owners in the Midwest. We focused on the manufacturing sector because it is the locus of much of the rhetoric about regulatory burden. We surveyed 322 small-business owners and high-level managers about how they complied with regulations and how they formed their perceptions about regulation and government. After the survey was complete, we conducted eight interviews, which included five site visits to probe in greater depth the relationship between the businesses and government regulation.

While we did not go into the survey intending to focus on the role of paperwork, it emerged as a major theme surrounding business compliance with and sentiments regarding regulation. The need to maintain records and submit information was both a major part of the actual burden experienced by small businesses and a significant force in shaping their perceptions of government.

In the survey, we asked business owners for an estimate of how many hours their firms spent filling out government paperwork. (We did not differentiate between levels of government, although we asked separately about which level of government was the greatest source of their compliance burden.) Respondents reported that their employees spent an average of 2.8 hours per week filling out government forms. With 27.9 million small businesses (under 500 employees) in the United States, this translates to 4.1 billion hours per year for small businesses.

We also asked respondents whether particular types of regulation had a "significant impact" on their business. The results are shown in Table 1.

As the reader can see, aside from a concern about the overall volume of regulation (which may include concerns about the burden of paperwork requirements), small business owners see reporting and recordkeeping regulations as having the most significant effect on their businesses. They see the effect as greater than even the traditional regulatory bogeymen of environmental and worker safety regulations.

The interviews furthered our understanding of the outsized role that paperwork plays in people's perceptions of regulatory burden.

Table 1

Do the Following Types of Regulations Have a Significant Impact on Your Business?

	YES	NO
Licensing	25%	75%
Employee benefit	42%	58%
Worker safety	29%	71%
Recordkeeping/reporting	43%	57%
Environment	32%	68%
The overall volume of regulations	47%	53%

Respondents complained about overlapping reporting requirements from different levels of government. They were upset about regular reporting requirements (monthly or annual) for which no one explained the purpose to them. The requirement to keep records for long periods of time was also seen as a particular burden. As one respondent put it: "All the government crap … is duplicate of each other. You take the same numbers, fill it out in five different directions, city, county, state, federal, and other federal agencies."

As I walked into one interview, the owner of the business had prepared a visual aid for me. On one side of the desk was one binder. On the other was a pile of eight binders. Before I started the interview, he pointed to the one binder and said, "This is how we make [our product]." Then he pointed to the pile of binders and said, "These are the records we have to keep because of regulations." He later said: "There are lots of duplicative information. There are never-ending requests for information and you never have any idea where it goes, who reads it, what are the results."

This contrasted with sentiments about other regulatory requirements that created one-time obligations (e.g., buying particular equipment, changing a production process). Respondents admitted that those latter obligations were burdensome when they were first implemented, but they quickly became part of the regular routine and hence were no longer seen as arduous obligations. Our interview subjects also understood the purpose of the one-time requirements even if they did not love having to implement them. For reporting and recordkeeping requirements, on the other hand, they felt like they were doing work for no real purpose, compiling records that would never be seen by anyone.

None of this is to suggest that collecting information from businesses is unimportant. Recordkeeping in particular can be a critical way to ensure compliance with regulations protecting public health and the environment. Requirements such as the Toxic Release Initiative, which mandates that emissions from manufacturing facilities be submitted to the government and disclosed to the public, have been credited with incentivizing firms to reduce those emissions.

But our work suggests that cumulative burden is an issue. This echoes a 2013 report by Michael Mandel and Diana Carew that attempted to explain why cumulative burden was an issue

for businesses. They cite three reasons that regulatory accumulation may cause problems that are invisible when considering individual regulations:

- The aggregate cost of regulations may be too large for some businesses (particularly small businesses) to bear.
- There may be interactive effects between regulations (and the more regulations there are, the higher the probability of interactive effects).
- There is "behavioral overload," which Mandel and Carew describe as "management limitations stemming from compliance with regulations of all types."

Other countries have recognized and attempted to tackle the issue of cumulative burden. As part of its Better Business Regulation initiative, Denmark has created a program called Burden Hunters that seeks business input on the development of regulatory requirements in order to understand which requirements are most burdensome and could be scaled back. The Burden Hunter website notes:

> An example of a small, well-defined problem could be: How do we get more businesses to choose the right Nomenclature of Economic Activities (NACE) code when they start up their business? Whereas a more complex problem could be: How do we develop a smart and efficient Consumer law?

Several countries have used systematic surveys to better understand paperwork burdens. In Belgium, the Federal Planning Bureau does biennial surveys on administrative burden. In the United Kingdom, the Department for Business Innovation and Skills has done a regular "Business Perceptions Survey"; in the latest survey in 2014, more than half of respondents cited paperwork as a burden and 63% saw unnecessary duplication (needing to submit the same information to different offices) as a particular problem. These surveys may be the most easily replicable methods for better understanding paperwork burden, although it should be noted that efforts to measure the effectiveness of these surveys have yet to occur.

The PRA is not currently equipped to enable the government to examine the question of cumulative burden. Its information collection provisions are transactional in nature. The unit of evaluation is the individual information collection. This does not allow OIRA or any agency to think about the volume of forms or recordkeeping forced upon any individual business. In addition, some burdens on businesses come from state and local governments, which fall outside the jurisdiction of the PRA. For small businesses, cumulative burden from all sources is likely to be a considerable concern. Businesses are not the only entities affected by information collection requirements, however.

Paperwork as a barrier to securing benefits / Numerous scholars have noted the regressive effect of administrative burden, particularly in social welfare programs. Evelyn Brodkin and Malay Majmundar

coined the term "administratively disadvantaged" to describe those for whom red tape is a barrier to claiming benefits to which they are entitled. Pamela Moynihan and Donald Herd note, "Burdensome administrative rules can make citizens less trusting of the state and less confident of their own capacities as citizens." Paperwork burdens that make it more likely that someone forgoes benefits are particularly likely to afflict the disadvantaged.

Herd and Moynihan have done path-breaking work on the role of administrative burdens as a regressively redistributive force in public policy. While they focus on entitlement programs such as Medicare and Social Security and means-tested programs such as Medicaid and the Supplemental Nutrition Assistance Program (SNAP), they also highlight the role of administrative burdens in raising barriers to voting and citizenship. These mandates to provide the government information are often in the form of requirements that may be difficult to fulfill (a government identification) or easy for government officials to find fault with. In all of these cases, those that must bear the administrative burdens are those that have the greatest need.

One recent example of the regressive effect of paperwork is the imposition of state requirements that Medicaid applicants demonstrate employment in order to secure eligibility for benefits. The Center for Budget and Policy Priorities argues that the burdens of completing these reporting requirements could cost people (who are already the most likely individuals to have trouble finding time to fill out forms) eligibility for Medicaid even if they meet the standards by deterring them from applying for benefits. Indeed, states themselves vary the paperwork requirements for Medicaid recipients for a wide variety of reasons and those with more burdensome requirements have seen lower take-up rates from potential beneficiaries.

Work has been done on the negative aspects of paperwork burden in other policy areas. The National Academy of Sciences issued a report in 2016 describing (among other things) the excessive recordkeeping and reporting requirements associated with the federal scientific grant process. These requirements include both the application process for grants itself, progress-reporting requirements, and numerous other mandates from agencies like the National Institutes of Health, the National Science Foundation, and other grant-making agencies.

The process of applying for financial aid for higher education is another example of the problems of excessive paperwork having harmful effects. Leading scholars on access to higher education have described the process of applying for aid as "a serious obstacle to both efficiency and equity in the distribution of student aid" and noted "that complexity disproportionately burdens those with the least ability to pay and undermines redistributive goals."

As with burdens imposed on businesses, the collection of information from applicants for program benefits (or government grants) serves a purpose. Combating fraudulent claims and adhering to statutory time limits on benefits are worthy goals. But as the literature above describes, too often information collection

discourages those who benefit from programs such as Medicaid and SNAP from securing the benefits to which they are entitled. Excessive enforcement of information collection requirements also can be used to restrict benefits in a nontransparent way.

The PRA is better equipped to deal with some of these issues than it is to deal with the cumulative burden on businesses. But whether because of political will, inadequate resources, or an insufficient understanding of the deleterious effects of information collection on the least fortunate, the PRA has clearly left a great deal to be desired in this area. And some of the problems described above (having to fill out multiple forms for multiple benefit programs) could not be easily handled by the PRA as presently constructed.

While lessons on dealing with cumulative paperwork burden may come from abroad, dealing with the deterrent effect of the burden on deserving program beneficiaries may come from the states. In Wisconsin, governors Tommy Thompson and Jim Doyle reduced burdens for Medicaid enrollees through auto-enrollment, simplified application systems, and assistance for applicants. Practices that reduce burden, particularly by reducing learning costs and the psychological costs associated with completing stigmatizing paperwork, may hold particular promise in the social policy sphere.

Information resource management / In my 2012 report for ACUS, I highlighted the neglect of provisions in the PRA regarding information resource management. I described what the literature calls the "life-cycle" approach to information management. Under that approach, when information is collected from the public, agencies must give thought to how the information will be used by agencies, whether it will be disseminated by them (and, if so, what privacy concerns apply), how long it will be stored, and how and when it will be disposed of. These issues have obviously become more complicated with electronic processing of information than they were with paper. While, in part, the life-cycle approach was emphasized in the post-PRA statutes, there was still a consensus that information management was being ignored.

As with burden reduction, other countries have tried innovations in consolidating and managing information. Australia has utilized a service called "Smart Forms" that is "an online forms development, hosting, and support service." The service manages online submission of information and streamlines the data collection process by automatically filling in fields with information the respondent has provided elsewhere (minimizing duplication). For example, the country's Department of Education and Training used the service for its "Unique Student Identifier" registry system. The Smart Forms service reports that there have been burden reductions for training organizations using the system and efficiency gains for the government.

Given the many technological changes over the last 40 years, this may be the moment to think about the PRA as a holistic vehicle for improving efficiency and effectiveness while reducing

burden. The three failures of the PRA listed in this section—the growing cumulative burden on businesses, the imposition of paperwork to deter deserving populations from applying for benefits, and the need to re-establish information management as the center of information policy, combined with the problems with the information collection review process described above—provide a unique opportunity.

TIME TO REINVIGORATE THE PAPERWORK REDUCTION ACT

The PRA is not a failed statute. OIRA has regularly used its powers under the act to improve information collections and ensure that many proposed collections that are ill-considered or unnecessary never see the light of day. As the President's Advisory Commission on Election Integrity anecdote demonstrates, laws preventing the government from collecting personal information in order to advance dubious policy goals are both helpful and necessary.

But the statute is long overdue for a renewed debate and reenactment. Much in the world has changed since 1995, when it was last authorized, but little has changed more than the way the government handles information. As described above, the PRA has been unsuccessful in numerous ways. The challenges associated with information collections fall upon a wide spectrum of society. Cumulative burden is a challenge for businesses, particularly small businesses that do not have employees dedicated to compliance with government regulations. Burdens associated with applying for benefits are borne by the intended beneficiaries of those programs. The lack of attention to information management and the redundancies in the information collections approval process are spread across the government (and by extension to taxpayers).

The diverse constituencies affected by these challenges do provide an opportunity. Support for a revision of the PRA could potentially have wide bipartisan support. Conservatives often advocate the reduction of burdens on businesses while progressives champion streamlining access to benefits. The idea of making government work more effectively and focusing on the challenges associated with the management of information could have bipartisan support.

A revised PRA should:

- Revise the process for information collection approval, particularly by eliminating the duplicative comment periods, allowing the OMB to approve information collections for a longer period of time, and encouraging the OMB to delegate more approvals to agencies. Former OIRA administrator Cass Sunstein has suggested that the PRA require benefit–cost balancing as a part of information collection review. Like Executive Order 12866 for regulations, this could be required of the most burdensome information collections.
- Provide a mechanism for the OMB or some other entity (perhaps the Government Accountability Office) to study and make recommendations on cumulative burden and the extent to which benefits are not reaching their intended beneficiaries because of unnecessary information collection requirements.
- Re-center the PRA around information resource management and the principle of life-cycle management of information.

The hope for bipartisan support for this collection of goals may appear naïve. Partisanship in Congress is particularly high at this time, and just as there is something to support in each of these initiatives, there are constituencies that would oppose each of them as well. Many information collection requirements contained in regulations of business activities provide an accountability mechanism that helps ensure compliance with the underlying regulation. The loss of these requirements will justifiably make supporters of the goals of these regulations nervous. And fears of fraudulent claims of benefits (justified or otherwise) would generate support for collecting information from government program beneficiaries.

Paperwork has no constituency. Yet, it proliferates across policy sectors and erodes public confidence in government. The recognition that the government should be more careful about imposing burdens on the public goes back to the Federal Reports Act passed early in the era of the administrative state. Today, at a time when most issues appear to be hyper-partisan, a revised PRA, like the original statute in 1980, could be bipartisan.

Unnecessary red tape erodes faith in government and democratic processes. The problems caused by duplicative, excessive, and poorly understood information collection requirements hurt constituencies that support both major parties. Agencies across the government express dissatisfaction with the current PRA process for approving information collections. There is a great deal of policy space for both reducing the burden on the public and creating a process that agencies prefer to the current one. Tackling red tape in a meaningful way by revising the PRA is a task that is long overdue.   **R**

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