

**APPENDIX 12. SUGGESTED REVISIONS TO THE PAPERWORK
REDUCTION ACT (44 U.S.C. CHAPTER 35) AND OMB CIRCULAR A-130**

**SUGGESTED REVISIONS PAPERWORK REDUCTION ACT (44 U.S.C. CHAPTER 35),
OMB CIRCULAR A-130 AND OTHER KEY PUBLIC INFORMATION LAWS³⁷**

The centerpiece of the Commission's *Comprehensive Assessment of Public Information Dissemination*³⁸ is its recommendation that public information resources must be recognized as a strategic national asset, needed by all sectors and segments of the U.S. economy and society. All of its other recommendations are based on the expectation that this primary recommendation will be accepted and implemented.

As part of its report, the Commission concluded that the existing federal public information infrastructure is seriously flawed and outdated, and it needs significant reform, not simply adjustments. In the view of the Commission, attempting to deal with the myriad and complex problems documented in the study merely by amending a variety of existing laws, authorities, policies, and programs would be completely unresponsive and inappropriate.

Nevertheless, the Commission was asked to recommend changes to the Paperwork Reduction Act, and does so in this Appendix. The Commission has not attempted to restructure the PRA, or OMB Circular A-130, to accommodate all of the recommendations in the *Comprehensive Assessment*, but does identify those changes that would make a significant improvement, pending enactment of its legislative proposal, The Public Information Resources Reform Act of 2001 (PIRRA).³⁹

The Commission's report and the legislative and regulatory proposals in this volume reflect only the views of the Commission. Although a wide variety of stakeholders were encouraged to review and comment on drafts of the report and the legislative proposal in Appendix 12, and their comments were extremely useful to the Commission, this appendix does not necessarily represent a consensus of stakeholders. In addition, the report and the legislative and regulatory proposals in this volume do not necessarily reflect the views of the current, or former, Administration or any other agency.

INTRODUCTION

In his July 17, 2000 letter to NCLIS Chairperson Martha Gould, Senator Joseph Lieberman asked "that the Commission include in that review any relevant sections of the Paperwork Reduction

³⁷ Available at <http://www.nclis.gov/govt/assess/assess.appen12.pdf>.

³⁸ The Assessment web page is <http://www.nclis.gov/govt/assess/assess.html>. The Commission's findings, conclusions and recommendations are available in Volume 1 of the report and at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

³⁹ The Commission's proposal for The Public Information Resources reform Act of 2001 is available as Appendix 11 and at <http://www.nclis.gov/govt/assess/assess.appen11.pdf>.

Act (PRA)⁴⁰ that may need revision, because the Committee will be considering the law's reauthorization next Congress."⁴¹ As this document is prepared in early 2001, the First Session of the 107th Congress has begun and the Senate Committee on Governmental Affairs is planning reauthorization of the PRA in either the first or second session.

While the Commission gives first priority here to recommending suggested changes for the Committee to consider as a part of the PRA reauthorization process, several additional statutes and information policies were identified during the course of the Commission's *Comprehensive Assessment of Public Information* for which suggested revisions were also made in the final report⁴² and those are addressed here as well. For the sake of comprehensiveness, suggested revisions to other existing public information laws and policies are included in this appendix, not just revisions pertaining to the reauthorization of the Paperwork Reduction Act and OMB Circular A-130, Management of Federal Information Resources.⁴³

In the case of the PRA, because of Senator Lieberman's request, suggested revisions are formatted in quite specific and concrete terms by tying them to an exact title and paragraph of the organic legislation. However, in the instance of other laws such as the Government Paperwork Elimination Act (GPEA)⁴⁴ and the Government Performance and Results Act (GPRA),⁴⁵ the recommendations are couched in general terms because the Commission believes a thorough consideration by the Congress of the necessity for, and the precise impact of suggested changes on, these other laws should precede the articulation of precise revisions. Moreover, recommendations related to these statutes are restricted to two suggested revisions that could be accomplished through what are sometimes referred to as "technical amendments."

One of the Commission's strategic recommendations, Recommendation 5, proposes new legislation, The Public Information Resources Reform Act of 2001 (PIRRA).⁴⁶ It should be noted that if this proposal is accepted by the Congress and enacted, then additional legislative changes (including some new statutory or policy provisions) may be required, ultimately, to bring the provisions of the Paperwork Reduction Act and other public information laws and policies even more closely in line with the PIRRA.

The Commission believes that, while it is theoretically possible, it would be ill advised for the Congress to amend the Paperwork Reduction Act to achieve the aims of the proposed Public Information Resources Reform Act (PIRRA). The reason is that the PRA is oriented primarily to reducing the paperwork burden *on* the American public, whereas the PIRRA is oriented primarily to enhancing the government information flow *to* the American public. The two laws (one extant,

⁴⁰ The Paperwork Reduction Act is codified in 44 U.S.C. Chapter 35.

⁴¹ Senator Lieberman's letter is available as Appendix 3 in Volume 1 of this report and at <http://www.nclis.gov/govt/assess/assess.appen11.pdf>.

⁴² The Commission's recommendations are available in Section F in Volume 1 of this report and at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

⁴³ U.S. Office of Management and Budget, "Management of Federal Information Resources," OMB Circular A-130, Washington, DC: Office of Management and Budget, November 30, 2000; <http://www.whitehouse.gov/omb/circulars/a130/a130trans4.html>.

⁴⁴ The Government Paperwork Elimination Act (GPEA) is in Public Law 105-277, October 21, 1998. It sets deadlines for agencies to transfer their paper-based transaction systems to electronic-based systems, including most transactions that take place between the government and the public, such as filing tax returns and applying for benefits and other entitlements, and sets 2003 as target date for completion of medium transference for most transactions

⁴⁵ Government Performance and Results Act (GPRA) is Public Law 103-62, August 3, 1993. It holds agencies more directly accountable for achieving positive results by using observable and measurable performance indicators and other means to verify and validate agency performance by comparing actual results achieved with expected and projected results.

⁴⁶ The legislative proposal is available as Appendix 12 and at <http://www.nclis.gov/govt/assess/assess.appen11.pdf>.

the other proposed) address opposite ends of the government information life cycle—the PRA to information collection and creation (the front end), the PIRRA to dissemination (the back end).

It is also important to note that the suggested revisions made here for consideration as a part of the PRA reauthorization are not conditioned on the passage of the new legislation proposed by NCLIS, but, rather, are suggestions to strengthen the Paperwork law in general, *and are applicable and appropriate whether the Commission's proposed new legislation is enacted or not*. In short, the suggested PRA revisions do not duplicate or overlap with the Commission's proposed PIRRA legislation, but, rather, make it consistent with and complementary to the PIRRA legislation if the Congress should choose to enact that proposed law.

For convenience, both the Paperwork Reduction Act and OMB Circular A-130 are closely juxtaposed and addressed in detail here because they are complementary instruments—the one statutory, the other policy. However, in some cases a recommendation is made pertaining to Circular A-130 without a corresponding recommendation to change to the PRA for "technical reasons" (i.e. the Circular gets into a greater level of technical detail than does the statute). It is fully realized that the Circular is under the authority and control of the President and OMB, and therefore A-130 revisions would be made by the Executive Branch, whereas the PRA is under the authority and control of the Congress and therefore changes would be made by the Legislative Branch.

Finally some of the recommendations the Commission makes require amendments to existing legislation and new provisions pertaining to the public information resources management operations and responsibilities of the Legislative and Judicial Branch establishments.

SECTION 1. SUGGESTED REVISIONS TO THE PAPERWORK REDUCTION ACT

The fundamental statutory basis for enabling public access to government information is found in Titles 5, 17, and 44 of the U.S. Code. A provision of the Copyright Act, 17 U.S.C. 105, specifically prohibits copyright of federal information.⁴⁷ In so doing, it places government information in the public domain and reinforces the principle that public information resources belong to the people. Other major public information laws, such as the Freedom of Information Act (FOIA), the Electronic Freedom of Information Act (E-FOIA), the Administrative Procedure Act (APA), the Government in the Sunshine Act, and the Paperwork Reduction Act (PRA) are codified as sections in one of those three titles, and they are closely coordinated by cross-referencing.

Hundreds of other federal laws have one or more quite specific and detailed provisions for disseminating government information to the public, or providing public access to government information resources.⁴⁸ However, only the major, general ones that "interface" with the Commission's proposed new legislation are addressed here. Additional analysis of the remainder of the laws will be undertaken later, pursuant to Recommendation 19 in the Commission's *Comprehensive Assessment of Public Information Dissemination*.⁴⁹

⁴⁷ The prohibition of copyright for federal government information is contained in Title 17 U.S.C. 105: "Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise."

⁴⁸ Examples of these provisions are provided in Appendix 35 in Volume 4 of this report, A Compilation of Recent Federal Statutes Pertaining to Public Information Dissemination, and at <http://www.nclis.gov/govt/assess/assess.appen35.pdf>.

⁴⁹ Recommendation 19 is available as Section F in Volume 1 of this report and at

A. Recommendations With Respect 44 U.S.C. 3501, Purposes

Modify 44 U.S.C. 3501, Purposes, by replacing existing subparts. (2) and (7) with new purpose statements as follows:

(2) ensure the greatest possible public benefit from information created, collected, maintained, used, shared and disseminated by or for the federal government; government information is regarded as a strategic national asset, that is owned by the people, held in trust by the government, and should be permanently available to the people except where restricted by law,⁵⁰ not simply a routine resource or a by-product of government operations; the proactive diffusion of public knowledge (government data, documents, and literature) for the benefit of all Americans is a matter of the highest national priority; providing access tools, such as portals, indexes, or other locator aids, to enable users to find available government information is a necessary, but insufficient, condition to meeting the full intention and requirements of this legislation;

(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology; to this end, agencies should identify their aggregate public information dissemination resource requirements as a distinct line item in their respective budgets, and in their accounting systems, and not budget and account for such requirements in overhead or indirect accounts; a government-wide Information Dissemination Budget (IDB) should be prepared by the Office of Management and Budget (OMB) for inclusion in the President's annual budget to the Congress that aggregates individual agency information dissemination budgets into an overall, government-wide total;⁵¹

B. Recommendations With Respect to 44 U.S.C. 3502, Definitions

Modify 44 U.S.C. 3502, Definitions, by adding the following new definitions:

- "*Authentication*" means the process by which an information product or service is attested to, and certified by an agency or agency official as an authorized, official government information resource and not a derivative, unauthorized or unofficial copy or representation of an official information resource.
- "*Federal Depository Library*" means a library that has been designated under 44 U.S.C. Chapter 19 to assist the public, without charge, in finding and using government information; such libraries are participants in the Federal Depository Library Program;

<http://www.nclis.gov/govt/assess/assess.vol1.pdf>. It states: "The Congress should request that the National Commission on Libraries and Information Science (NCLIS) undertake a comprehensive assessment of public laws which contain provisions for establishing and maintaining public information resources in order to identify (1) specific legislative changes necessary to implement the treatment of public information as a strategic national asset, (2) gaps where existing laws do not meet known public needs for government information and (3) inconsistencies and unnecessary overlap and duplication in public information dissemination provisions. The assessment could also be extended to include current statutory, grant, procurement, and other government rules, regulations, and guidelines that permit government-funded research to avoid dissemination through the NTIS and FDLP."

⁵⁰ Recognition of government information as a strategic national asset is Recommendation 1 in Volume 1 of this report. Volume 1 is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

⁵¹ Creation of an Information Dissemination Budget (IDB) line item is Recommendation 4 in Volume 1 of this report. Volume 1 is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

- "*Federal Depository Library Program*" refers to the program established under 44 U.S.C. Chapter 19 and managed by the Superintendent of Documents at the Government Printing Office to assist the public, without charge, in finding and using government information through designated "*Federal Depository Libraries*."
- "*Inherently Governmental Functions*" (with respect to government information resources) means those activities that should be undertaken by the government, or at government expense, so that public information resources are bibliographically verified (author, title, identifying numbers, etc.), complete, correct, authentic, timely, cataloged, indexed, abstracted, and maintained for current and future public access. Such activities, which may be performed by the agency that originates the information or by a central information services agency acting on behalf of the originating agency, include (a) creation, collection or acquisition of information resources; (b) the indexing, abstracting and cataloging of these resources; (c) the further processing of these resources by scanning, microficheing or converting to an alternative electronic format for retention and use; (d) the creation and maintenance of a database which provides searching and locating information for this information collection including the maintenance of a system to maintain accessibility to information on agency Web sites; (e) the mounting and maintaining of a searchable bibliographic database on a Web site for free public access; (f) the mounting of the full text of the reports on servers for free public access; and (g) the maintenance of archive files to insure permanent public access to material not otherwise available.
- "*Internal Information Resources*" means any "*Government Information Resources*" that are *both* (1) created primarily for internal official use *and* (2) excluded from public use because they either (a) have been determined by the issuing components to be required for official use only or (b) have been determined by the issuing components to be for strictly administrative or operational purposes and have no public interest or educational value, (c) are classified for reasons of national security, or (d) are constrained from disclosure by another statute.
- "*Medium or Media*" means the type of physical substrate utilized to record and communicate information regardless of format, such as magnetic tape, paper, microfiche, CD-ROM, cable, broadcast, or the Internet and the World Wide Web.
- "*Permanent Public Availability*" means making "*Public Information Resources*" available to, and accessible by, the public on an indefinite, continuing basis. This public availability is distinguished from the deposit of an official copy for "*Permanent Records Retention*" by the National Archives and Records Administration and includes information resources that may not come under the Federal Records Act definitions of a federal record because they are acquired, organized and preserved solely for convenience of public reference; furthermore, public availability is meant to convey immediate access through the World Wide Web (or its successor technology) or availability through collections, both digital and non-digital, held by a widely distributed national network of libraries such as "*Federal Depository Libraries*".
- "*Permanent Records Retention*" means the scheduling, preservation, and indefinite retention of an agency record, regardless of its physical form or characteristics, pursuant to the Federal Records Act of 1950 and related legislation at the direction and under the guidance of the National Archives and Records Administration; this permanent retention is distinguished from "*Permanent Public Availability*" and refers to information resources that are within the definition of a federal record under the Federal Records Act and are scheduled for permanent retention by the National Archives and Records Administration; it does not include copies of record scheduled

for permanent retention that are acquired, organized and preserved solely for convenience of public reference and made available for immediate access through the World Wide Web (or its successor technology) or a widely distributed national network of libraries such as "*Federal Depository Libraries*".

- "*Preservation*" means taking steps to safeguard physical and intellectual accessibility of information resources, i.e., the format and mediums employed to store government information, so that it neither disintegrates physically, nor becomes inaccessible or unreadable because of the obsolescence of the technologies originally used to create, organize, access, or store the information; it also includes the need to preserve the original provenance and origins context necessary to fully understand why the information was created in the first place, by whom, how, when, where, and other relevant information.
- "*Private Sector*" means private enterprise, for-profit and not-for-profit, as well as organizations such as professional societies and trade associations, hybrids that are joint government/private enterprise, and organizations such as libraries and academic institutions (even though they may be financed by state or local government funds or subsidized by federal funds).

Replace the existing definition of "Government Publication" in 44 U.S.C. 3502 with the definition of "Government Information Resources" as follows and substitute the new term wherever "Government Publication" currently occurs in the statute:

- "*Government Information Resources*" means all information products or services that are created, compiled, produced, or maintained by or for the federal government, at government expense, or as required by law, regardless of form, format or medium; the term includes both "*Internal Information Resources*" and "*Public Information Resources*." Government Information Resources are a strategic national asset, owned by the people and held in trust by the government, and should be permanently available to the people except where restricted by law.

Replace the existing definition of "Public Information" in 44 U.S.C. 3502 with the definition of "Public Information Resources" as follows and substitute the new term wherever "Public Information" currently occurs in the statute:

- "*Public Information Resources*" means "*Government Information Resources*" that are *either* (1) created primarily for public use *or* (2) created primarily for internal use, but *not* excluded from public use because they (a) have been determined by the issuing components to be required for official use only or (b) have been determined by the issuing components to be for strictly administrative or operational purposes and have no public interest or educational value, (c) are classified for reasons of national security, or (d) are constrained from disclosure by another statute such as the Privacy Act.

C. Recommendations With Respect to 44 U.S.C. 3504, Authority and Functions of Director

44 U.S.C. 3504(a)(1) should be amended to acknowledge that public information resources are a strategic national asset and to require the Director of OMB to ensure proactive dissemination and permanent availability of public information resources. It should be amended as follows:

- (1) The Director shall oversee the use of public information resources as a strategic national asset, owned by the people and held in trust by the government, which should be permanently available to the people except where restricted by

law.⁵² This oversight shall both improve the efficiency and effectiveness of governmental operations to serve agency missions, including service delivery to the public, and ensure the proactive dissemination of public information resources so that all Americans may benefit from them.

In addition, 44 U.S.C. 3504(d) should be amended to add a new paragraph 3504(d)(3) providing for an appeal to the Director of OMB of agency determinations that a government information resource is an internal information resource under the definitions recommended in Section 1.B above. It should read as follows:

Any determination by a government establishment that one of its government information resource is an internal information resource under 44 U.S.C. 3502 can be appealed to the Director by any interested party; the Director will consult with the issuing agency before making a determination, and will use a public interest standard, which provides that a government information resource can be withheld as an internal information resource only where the public interest in maintaining the exception outweighs the public interest in disclosure; if the matter is not resolved through consultation with the issuing agency, the Director will make a recommendation to the President.

D. Recommendations With Respect to 44 U.S.C. 3506, Federal Agency Responsibilities

44 U.S.C. 3506(d)(1) should be amended to reflect the new definitions recommended above. It should be amended to read: "... ensure that the public has timely and equitable access to the agency's public information resources, including ensuring such access through ..." A similar change should be made in 3506(d)(1)(A), 3506(d)(1)(B), and 3506(d)(1)(C) by replacing the words "public information" with "public information resources."

44 U.S.C. 3506(d)(1)(C) should be amended to reinforce the requirement for agency participation in the Federal Depository Library Program. It should be amended to read: "... agency dissemination of public information resources in an efficient, effective, and economical manner, including availability of public information resources through the Federal Depository Library Program or its successors."

44 U.S.C. 3506(d)(2) should be amended to acknowledge agency responsibility to determine public information needs.⁵³ It should be amended to read: "... regularly solicit and consider public input on the need for the agency's public information resources and on the agency's public information dissemination activities."

44 U.S.C. 3506(d)(3) should be amended to require that notice be provided through publication in the *Federal Register* and other appropriate means. The current legislation does not stipulate a specific and consistent means for giving notice. Furthermore, the current language uses the undefined term "significant" to characterize the information dissemination products for which notice is required. It should be amended to read: "... provide adequate notice through publication in the *Federal Register* and other appropriate means when initiating, substantially modifying, or terminating public information resources."

⁵² Recognition of government information as a strategic national asset is Recommendation 1 in Volume 1 of this report. Volume 1 is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

⁵³ Identification of the public's most critical unmet needs for public information resources is Recommendation 30 in Volume 1 of this report. Volume 1 is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

44 U.S.C. 3506(d)(4) should be amended to reflect the new definitions recommended above. It should be amended to replace the words "public information" with "public information resources" in sections 3506(d)(4)(A), 3506(d)(4)(B), 3506(d)(4)(C) and 3506(d)(4)(D).

SECTION 2. SUGGESTED REVISIONS TO OMB CIRCULAR A-130, MANAGEMENT OF FEDERAL INFORMATION RESOURCES

Section 8(a)5 of OMB Circular A-130 is entitled "How must an agency provide information to the public?" It directly coincides with the principal subject matter of the Commission's *Comprehensive Assessment of Public Information Dissemination*. Although some of the Commission's recommendations could be addressed by revisions to Circular A-130, particularly Section 8(a)5, an OMB Circular is not the most appropriate vehicle to accomplish the substantial reforms that are needed. For that reason, specific revisions to Section 8(a) are not recommended here. However, the Commission does identify those changes to Section 9(h) on the responsibilities of the Director of OMB that would make a significant improvement, pending enactment of legislation to reform and revision of the circular to reflect the new legislation.

A. Recommendations for Development and Testing of Government Information Life Cycle Management Software

Section 9(h) should be amended to include a new subparagraph 13 that reads as follows:

h. Office of Management and Budget. The Director of the Office of Management and Budget will:

13. Coordinate the design, development, testing, and implementation of a prototype government information life cycle management software module that would satisfy multiple information policy requirements in a single, comprehensive, systematic, and orderly manner.⁵⁴ The software module must:

- Manage both agency internal and agency external (public) information resources because they are inseparably inter-related. Decisions made in one domain inevitably affect the other domain, at each stage of the information life cycle.
- Manage all kinds of official agency information and communication instruments, regardless of form, format, or medium.
- Include a nested hierarchy of decision option choices based on the most common and important types of communications an agency official initiates; these "profiles" will be developed taking into account all three levels of requirements (government-wide, agency, and office, program or individual), and designed so that a series of "defaults" can be pre-determined, and pre-programmed (but later changed if necessary) for each decision option.
- Satisfy as many information policy requirements as feasible, including scheduling the information as an official agency record, re-disseminating the information to various recipients, including the agency libraries and information

⁵⁴ This issue is discussed in depth in the White Paper on Government Information Life Cycle Management available as Appendix 16 in Volume 3 of this report and at www.nclis.gov/govt/assess/assess.appen16.pdf. Improving Government Information Life Cycle Management is Recommendation 21 in Volume 1 of this report. The use of XML to report data elements under the Government Paperwork Elimination Act is Recommendation 33. Volume 1 is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

centers, agency central files and records centers, agency webmasters, the National Archives and Records Administration (NARA), Federal Depository Libraries, as well as providing for the information's authentication, addressing how the information will be preserved, determining whether non-disclosure statutes apply, creating a government information locator record, and so forth.

B. Recommendations for Development and Testing of a Current Awareness System for Public Information Resources

Section 9(h) should be amended to include a new subparagraph 14 that reads as follows:

h. Office of Management and Budget. The Director of the Office of Management and Budget will:

14. Coordinate the design, development, and pilot testing of a comprehensive public information current awareness system to enable affirmative and proactive agency dissemination of public information.⁵⁵

C. Recommendations for Development and Testing of a Federal Identifier Classification Scheme

Section 9(h) should be amended to include a new subparagraph 15 that reads as follows:

h. Office of Management and Budget. The Director of the Office of Management and Budget will:

15. Coordinate the design, development, and pilot testing of a standard and consistent federal identifier classification scheme that can be used to assist agencies and the public to obtain information residing in different agencies.⁵⁶

D. Recommendations for Harmonizing Federal, State, Local and Tribal Identifiers

Section 9(h) should be amended to include a new subparagraph 16 that reads as follows:

h. Office of Management and Budget. The Director of the Office of Management and Budget will:

16. Conduct a comprehensive analysis and make recommendations addressing the most efficient ways to crosswalk, coordinate, and harmonize the many federal, state, local, and tribal government level uniquely assigned identifiers.⁵⁷

⁵⁵ Modernizing current awareness systems for public information resources is Recommendation 22 in Volume 1 of this report, which is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

⁵⁶ Making federal identifiers consistent across all agencies is Recommendation 23 in Volume 1 of this report. Recommendations 20 on strengthening interagency and intergovernmental information sharing, Recommendation 24 on harmonizing federal, state and local identifiers, and Recommendation 26 on developing guidelines for availability of public information resources from federal, state and local governments are also applicable. Volume 1 is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

⁵⁷ Evaluating non-digital government information resources for conversion is Recommendation 25 in Volume 1 of this report. Recommendations 20 on strengthening interagency and intergovernmental information sharing, Recommendation 23 on making federal identifiers consistent across all agencies, and Recommendation 26 on developing guidelines for availability of public information resources from federal, state and local governments are also applicable. Volume 1 is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

E. Recommendations for an Analysis of Non-Digital Information That Should Be Converted to Digital Information

Section 9(h) should be amended to include a new subparagraph 17 that reads as follows:

h. Office of Management and Budget. The Director of the Office of Management and Budget will:

17. In close coordination with the Legislative and Judicial Branches, conduct a comprehensive analysis regarding which currently non-digital government public information holdings and transactions should be converted to digital mediums, and the benefits as well as costs to do so. This effort should address the role of digital libraries with respect to public information resources.⁵⁸

F. Recommendations for Development of Guidelines for Identification of Public Information Resources

Section 9(h) should be amended to include a new subparagraph 18 that reads as follows:

h. Office of Management and Budget. The Director of the Office of Management and Budget will:

18. In close coordination with the Legislative and Judicial Branches, and with state, local and tribal governments, develop guidelines regarding the identification and availability of public information resources holdings by each branch of the federal government and by state, local and tribal governments. Such public information resources should be differentiated with respect to the branch of the government originating the information, as well as whether the information is federal only, state only, local only, tribal only, or some permutation of these categories.⁵⁹

G. Recommendations for Design of Comprehensive and Authoritative Inventory and Database of Public Information Resources

Section 9(h) should be amended to include a new subparagraph 19 that reads as follows:

h. Office of Management and Budget. The Director of the Office of Management and Budget will:

19. Coordinate the preliminary design work for the development of a single, central, comprehensive and authoritative online inventory and database of public information resources by reviewing the developments to-date, both positive and negative, to establish major portals and search engines for public information databases, including NTIS FedWorld, GPO Access, Library of Congress Thomas, StatUSA, and FirstGov.⁶⁰

⁵⁸ Developing guidelines for availability of public information resources from federal, state and local governments is Recommendation 26 in Volume 1 of this report, which is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

⁵⁹ Harmonizing information identifiers at all levels of government is Recommendation 24 in Volume 1 of this report, which is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

⁶⁰ Establishing a comprehensive, authoritative inventory and database of public information resources is Recommendation 27 in Volume 1 of this report, which is available at <http://www.nclis.gov/govt/assess/assess.vol1.pdf>.

SECTION 3. SUGGESTED REVISIONS TO OTHER EXISTING PUBLIC INFORMATION LAWS

A. Recommendations Pertaining to Amendments to the Administrative Procedure Act

5 U.S.C. 522, Public Information, Agency Rules, Opinions, Orders, Records, and Proceedings, should be amended as follows:

Paragraph (a) is renumbered as paragraph (c), paragraph (b) is renumbered as paragraph (d), and so forth, and new paragraphs (a) and (b) are added as follows:

(a) The United States government affirms that government information resources as defined in 44 U.S.C. 3502⁶¹ are a strategic national resource, owned by the people and held in trust by the government, and should be permanently available to the people except where restricted by law; therefore, agencies shall take steps to proactively make such public information resources available to, accessible by, and preserved indefinitely for the public to the maximum extent permitted by law.

(b) Dissemination of public information resources is a primary agency responsibility, integral to its mission. Agencies should diffuse among the people of the United States useful information on subjects directly connected with their respective missions and programs.

B. Recommendations Pertaining to Amendments to the Freedom of Information Act and the Privacy Act

5 USC 552 is popularly known as the Freedom of Information Act (FOIA) and was amended in 1996 by the Electronic Freedom of Information Act Amendments (E-FOIA). 5 U.S.C. 552a is the Privacy Act. The suggested addition to Section 522, discussed in Section 3.A above, would affect agency implementation of the Freedom of Information Act and the Privacy Act by incorporating the responsibility for treating government information resources as a strategic national resource.

In addition, Paragraph 552(a)(3) should be amended to include a statement emphasizing that the public interest in disclosure of information is paramount and that exemptions should be weighed using a test that favors disclosure unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

Paragraph 552a(3)(B) is renumbered as paragraph 552a(3)(C), paragraph 552(3)(C) is renumbered as paragraph 552(3)(D), and so forth, and a new paragraph 552(3)(B) is added as follows:

(B) In making determinations about disclosure of any record available to a person under this Section, an agency shall favor disclosure of a record over withholding it and shall exercise the privilege of exemption in subsection (b) pursuant to which a denial is made only when the public interest in maintaining the exemption outweighs the public interest in disclosure.

⁶¹ This recommendation presumes that recommendations for amendments to the Paperwork Reduction Act in Section 1 above are accepted and implemented.

C. Recommendations Pertaining to Amendments to the Federal Records Act

44 U.S.C. 3101, Definition of Records, is sufficient to support the treatment of government information resources as a strategic national resource, owned by the people and held in trust by the government, that should be permanently available to the people except where restricted by law. Amendment of the Administrative Procedure Act, as recommended in Section 3.A above, and of the Paperwork Reduction Act, as recommended in Section 1 above, will require that agencies, and NARA, place greater emphasis on the phrase "appropriate for preservation ... because of the informational value of data" in scheduling records for permanent retention.

In addition, 44 U.S.C. 3303, Lists and Schedules of Records to be Submitted to the Archivist by Head of Each Government Agency, should be amended to ensure that the head of each agency documents public information resources that must be maintained for permanent public availability, whether or not NARA schedules those records for permanent retention.

Section 3303(1) is amended to include a new paragraph (4) as follows:

(4) lists any public information resources in the custody of the agency that should be maintained for permanent public availability because of the informational value of the data and identifies the means that the agency will employ to ensure permanent public availability.

D. Recommendations Pertaining to Amendments to the Information Technology Management Reform Act (The Clinger-Cohen Act)

The modifications to the Paperwork Reduction Act, discussed in Section 1.A above, would simultaneously serve to amend the Clinger-Cohen Act by incorporating the responsibility for treating government information resources as a strategic national resource, since 40 U.S.C. 1425(b)(1) states that each agency Chief Information Officer is "to ensure that ... information resources are managed for the executive agency in a manner ... consistent with chapter 35 of title 44."

In addition, 40 U.S.C. 1425 should be amended to assign to each agency Chief Information Officer (CIO) explicit responsibility for management of government information as a strategic national asset. Paragraph 1425(b) should be amended by renumbering paragraph 1425(b)(2) as paragraph 1425(b)(3) and renumbering paragraph 1425(b)(3) as paragraph 1425(b)(4) and inserting a new paragraph 1425(b)(2) as follows:

(2) providing advice and other assistance to the head of the executive agency and other senior management personnel of the executive agency to ensure that the public information resources of the agency are permanently available to the people except where restricted by law;

Paragraph 1425(b)(4) should be amended as follows:

(4) promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency and facilitation of the availability, accessibility, and proactive dissemination of agency public information resources to the maximum extent permitted by law.

E. Recommendations Pertaining to Amendments to the Government Performance and Results Act (GPRA)

The Government Performance and Results Act should be amended to ensure that information services are considered an indispensable component of government service to the public.

31 U.S.C. 1115(a) should be amended to add a new paragraph (7) as follows:

(7) ensure that performance goals include responsibility for managing government information resources as a strategic national asset and performance indicators are established to measure the effectiveness of the delivery of public information resources to the public.

F. Recommendations Pertaining to Amendments to the Printing Act and the Depository Library Act

Amendments to these two laws are explicitly addressed in the provisions of the proposed new legislation, the Public Information Resources Reform Act of 2001 (PIRRA). However, even if the PIRRA is not enacted, 44 U.S.C. 1901, Definition of Government publication, should be amended so that the definitions of government information resources and public information resources are consistent with those in Section 3502 of the PRA, and so that it is clear that public information resources from all government establishments, regardless of form or format, are to be included in the Federal Depository Library Program. Section 1901 should be amended to read:

1901. Definitions.

"*Government Information Resources*" means all information products or services that are created, compiled, produced, or maintained by or for the federal government, at government expense, or as required by law, regardless of form, format or medium; the term includes both "*Internal Information Resources*" and "*Public Information Resources*." Government Information Resources are a strategic national asset, owned by the people and held in trust by the government, and should be permanently available to the people except where restricted by law.

"*Public Information Resources*" means "*Government Information Resources*" that are *either* (1) created primarily for public use *or* (2) created primarily for internal use, but *not* excluded from public use because they (a) have been determined by the issuing components to be required for official use only or (b) have been determined by the issuing components to be for strictly administrative or operational purposes and have no public interest or educational value, (c) are classified for reasons of national security, or (d) are constrained from disclosure by another statute such as the Privacy Act.

The balance of Chapter 19 must then be amended to incorporate the new definitions. For example, 44 U.S.C. 1902, Availability of Government publications through the Superintendent of Documents, should be amended to read:

1902. Availability of Government information resources through the Superintendent of Documents; lists of public information resources not ordered from Government Printing Office

Public information resources shall be made available to depository libraries through the facilities of the Superintendent of Documents for public use. Each component of the Government shall furnish the Superintendent of Documents a list of such public information resources it issued during the previous month, that were obtained from sources other than the Government Printing Office.

Furthermore, 44 U.S.C. 1711, Catalog of Government publications, should be amended to read:

Sec. 1711. Catalog of Government information resources

The Superintendent of Documents shall prepare and offer for free public access an online catalog of Government information resources which shall identify public information resources within one month of the time they become available, where obtainable, and if the information is for sale by the government, the price. All government establishments shall promptly notify the Superintendent of Documents of the availability of new government information resources in a manner to be prescribed by the Superintendent and shall either provide the Superintendent with access to, or copies of such public information resources for cataloging or provide cataloging information acceptable to the Superintendent. Notification, acceptable cataloging information, and/or access to or copies of public information resources must occur within 10 working days of the availability of public information resources.

G. Recommendations Pertaining to Amendments of the Government Paperwork Elimination Act (GPEA)

This law should be amended to ensure that each data element in the agency reporting requirements for the Government Paperwork Elimination Act (GPEA) should be reported in XML and stored in a comprehensive and authoritative registry. The registry should be accessible to the public through the World Wide Web or its successor technology. A survey of the impact of changing the submission format to successor technologies should be undertaken at least once every two years to maintain the utility of the registry.

SECTION 4. SUGGESTED ADDITIONS TO LAWS GOVERNING LEGISLATIVE AND JUDICIAL BRANCH RESPONSIBILITIES FOR PUBLIC INFORMATION DISSEMINATION

A. Recommendations Pertaining to the Legislative Branch

1. The Congressional Information Resources Office (CIRO)

The Congress should establish and fund a new office, the Congressional Information Resources Office (CIRO), with appropriate authorities, functions, funding, and programs necessary to

support the full range of Legislative Branch public information resources management responsibilities.⁶²

2. Standard clause provision relating to public information dissemination

The inclusion of a standard clause in the mission statement in the enabling legislation and major programs, incorporating dissemination of public information resources as a primary responsibility, integral to its mission, should also apply to each operating establishment in the Legislative Branch.

3. Extension of applicability of key provision of Paperwork Reduction Act

The scope of the Paperwork Reduction Act of 1995 currently applies only to the Executive Branch. However, selected provisions of Section 3506, particularly Section 3506(d), should be extended to the Legislative Branch as well. To accomplish this, a new Chapter 27 should be added to Title 2 of the U.S. Code.

Chapter 27. Public Information Resources

Section 1701. Legislative Branch establishment responsibilities

(a) The head of each Legislative Branch establishment shall oversee the use of public information resources as a strategic national asset, owned by the people and held in trust by the government, which should be permanently available to the people except where restricted by law. This oversight shall both improve the efficiency and effectiveness of governmental operations to serve establishment missions, including service delivery to the public, and ensure the proactive dissemination of public information resources so that all Americans may benefit from it.

(b) With respect to dissemination of public information resources, each establishment shall -

(1) ensure that the public has timely and equitable access to the establishment's public information resources, including ensuring such access through

(A) encouraging a diversity of public and private sources for information based on government public information resources;

(B) in cases in which the establishment provides public information resources maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and

(C) establishment dissemination of public information resources in an efficient, effective, and economical manner, including availability of public information resources through the Federal Depository Library Program or its successors;

⁶² This suggestion provides for a limited implementation of the more comprehensive and detailed recommendations in Section 7 of the proposed PIRRA and provides a minimal coordinating office for public information resources management.

- (2) regularly solicit and consider public input on the need for the establishment's public information resources and on the establishment's public information dissemination activities;
- (3) provide adequate notice through publication in the *Federal Register* and other appropriate means when initiating, substantially modifying, or terminating public information resources; and
- (4) not, except where specifically authorized by statute -
 - (A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information resources to the public;
 - (B) restrict or regulate the use, resale, or redissemination of public information resources by the public;
 - (C) charge fees or royalties for resale or redissemination of public information resources; or
 - (D) establish user fees for public information resources that exceed the cost of dissemination.

B. Recommendations Pertaining to the Judicial Branch

1. The Judicial Information Resources Office (JIRO)

The Judicial Branch should establish, and Congress should fund, a new office, the Judicial Information Resources Office (JIRO), in the Administrative Office of the U.S. Courts, with comparable authorities, functions, funding, and programs necessary to support the full range of Judicial Branch public information resources management responsibilities.⁶³

2. Standard clause provision relating to public information dissemination

The inclusion of a standard clause provision in the enabling legislation incorporating public information dissemination as a primary agency responsibility integral to its mission should also apply to each operating establishment in the Judicial Branch.

3. Extension of applicability of key provision of Paperwork Reduction Act

The scope of the Paperwork Reduction Act of 1995 currently applies only to the Executive Branch. However, selected provisions of Section 3506, particularly Section 3506(d), should be extended to the Judicial Branch as well. To accomplish this, a new Section 465 could be added to Title 28 of the U.S. Code.

Section 465. Judicial Branch establishment responsibilities

- (a) The head of each Judicial Branch establishment shall oversee the use of public information resources as a strategic national asset, owned by the people and held in trust by the government, which should be permanently available to

⁶³ This suggestion provides for a limited implementation of the more comprehensive and detailed recommendations in Section 7 of the proposed PIRRA and provides a minimal coordinating office for public information resources management.

the people except where restricted by law. This oversight shall both improve the efficiency and effectiveness of governmental operations to serve establishment missions, including service delivery to the public, and ensure the proactive dissemination of public information resources so that all Americans may benefit from it.

(b) With respect to dissemination of public information resources, each establishment shall -

(1) ensure that the public has timely and equitable access to the establishment's public information resources, including ensuring such access through

(A) encouraging a diversity of public and private sources for information based on government public information resources;

(B) in cases in which the establishment provides public information resources maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and

(C) establishment dissemination of public information resources in an efficient, effective, and economical manner, including availability of public information resources through the Federal Depository Library Program or its successors;

(2) regularly solicit and consider public input on the need for the establishment's public information resources and on the establishment's public information dissemination activities;

(3) provide adequate notice through publication in the *Federal Register* and other appropriate means when initiating, substantially modifying, or terminating public information resources; and

(4) not, except where specifically authorized by statute -

(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information resources to the public;

(B) restrict or regulate the use, resale, or redissemination of public information resources by the public;

(C) charge fees or royalties for resale or redissemination of public information resources; or

(D) establish user fees for public information resources that exceed the cost of dissemination.

