



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 14, 2001

MEMORANDUM FOR CHIEF INFORMATION OFFICERS
GENERAL COUNSELS AND SOLICITORS

FROM: John D. Graham /s/
Administrator
Office of Information and Regulatory Affairs

Jay P. Lefkowitz /s/
General Counsel

SUBJECT: Ensuring Full Compliance with the Information Collection
Provisions of the Paperwork Reduction Act

We are writing to you to emphasize the importance of the Federal Government complying fully with the information collection provisions of the Paperwork Reduction Act of 1995 (PRA), and to ask for your assistance in eliminating existing PRA violations and preventing future violations.

The PRA requires agencies and OMB to ensure that information collected from the public minimizes burden and maximizes practical utility. The Act assigns to each agency's Chief Information Officer (CIO) the responsibility for ensuring that the agency complies with the PRA. The attached paper summarizes the PRA and its requirements for public, agency, and OMB review of collections of information. OMB's review is conducted by the Office of Information and Regulatory Affairs (OIRA).

In this year's *Information Collection Budget* (ICB), OMB documented 487 violations of the PRA, of which 191 remained unresolved as of the cut-off date for the ICB's publication. While these figures do represent a continuation in the recent downward trend in the number of PRA violations, we cannot allow this situation to continue. Our objective is to ensure that the Federal Government is in full compliance with the PRA by no later than the end of this fiscal year.

OMB would therefore like to work with each of your agencies to resolve existing violations and take whatever actions are necessary to avoid future violations.

As a first step, we are asking the CIOs of the 27 agencies identified in the *Information Collection Budget* to provide the following information to your agency's OIRA desk officer:

- For each violation of the PRA described in Appendix B.2 (i.e., the continued use of collections for which OMB approval has expired), please indicate affirmatively whether your agency (1) has already requested a reinstatement of the OMB approval, (2) is planning to request a reinstatement of the OMB approval, or (3) has discontinued its use. Each of these collections that falls into categories (1) or (2) represents a violation of the PRA until its approval is reinstated. Provide a timetable for resolution, including publication of all relevant *Federal Register* notices and submission to OMB, for each collection that your agency plans to continue using.
- For each violation of the PRA described in Appendix B.3 (i.e., for collections for which OMB approval has never been given), provide a timetable of resolution, including publication of all relevant *Federal Register* notices and submission to OMB.
- Describe the procedures that you (and your agency) have in place to prevent future violations, both through your monthly review of OMB's computer-generated reports and through your general oversight and participation in the agency's programmatic functions.

Please provide this information to your OIRA Desk Officer by December 14th.

In addition, as part of this effort, we are asking agency General Counsels and Solicitors to take whatever actions you can to assist the CIOs in ensuring your agency's full compliance with the PRA. Please inform personnel in your agency that OMB-OIRA is approving a very high percentage of the well-supported information collection requests and thus concern about OMB approval is not a legitimate basis for avoiding OMB review of a worthy information collection.

We are aware that OIRA has not always responded to PRA requests in a timely fashion. We are working diligently to correct this problem and to respond to all requests within the time frame described in the statute.

If you have any questions about this effort, please contact us directly or have agency staff contact your OIRA Desk Officer.

Attachment

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR Part 1320) requires that the Office of Management and Budget approve all collections of information by a Federal agency from the public before they can be implemented. Collections of information include (1) requests for information for transmission to the government, such as application forms and written report forms, (2) reporting or recordkeeping requirements, and (3) third-party or public disclosure requirements. Many information collections, recordkeeping requirements, and third-party disclosure requirements are contained in or authorized by regulations as monitoring or enforcement tools, while others appear in questionnaires and their accompanying instructions. An underlying goal of the Act is to minimize the Federal paperwork burden on the public. The Act also recognizes the importance of information to the successful completion of agency missions, and charges OMB with the responsibility of weighing the burdens of the collection on the public against the practical utility it will have for the agency.

In general terms, the 1995 Act requires agencies to plan for the development of new collections of information and the extension of ongoing collections of information well in advance of sending the proposal to OMB. Advance planning is necessary because agencies need to estimate potential burdens on respondents, prepare to disclose certain additional information to the public (e.g., time limits for recordkeeping requirements), seek public comment through 60-day notice in the Federal Register, and thereafter submit their clearance requests to OMB for review and approval. In developing a paperwork clearance request, the agency needs to demonstrate to OMB that the collection of information is the least burdensome way of obtaining information necessary for the proper performance of its functions, that the collection is not duplicative of others, and that the collection has practical utility. Additionally, the agency is required to certify that a proposed collection of information "reduces to the extent practicable and appropriate the burden" on respondents, including, for small business, local government, and other entities, the use of the techniques outlined in the Regulatory Flexibility Act.

To alert the public that OMB review has begun, agencies publish a notice in the *Federal Register* of the agency's submission to OMB of a request for approval and tell the public how to comment to OMB regarding the request. The public -- during OMB's review and at any other time -- is to have full opportunity to make its views known concerning any Federal data collection, both as to its perceived practical utility and the reporting burdens involved.

Under the Act, OMB approval for an agency to use each data collection instrument can last for a maximum of three years. Approval is evidenced by OMB granting an OMB control number for the information collection instrument. The Act prohibits agencies from penalizing those who fail to respond to Federal collections of information that do not display valid OMB control numbers. The Act also prohibits agencies from penalizing those who have not been informed that a response is not required unless the collection of information displays a valid control number. Both of these public protections "may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative

process or judicial action applicable thereto" (44 U.S.C. 3512(b)). Recent court cases discussing the Act and its "public protection" provision include Center for Auto Safety v. NHTSA, 244 F.3d 144 (D.C. Cir. 2001), and Saco River Cellular Inc. v. FCC, 133 F.3d 25 (D.C. Cir. 1998).