



December 28, 2009

VIA ELECTRONIC MAIL

Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
1650 Pennsylvania Avenue, NW
Washington, DC 20503

RE: Office of Management and Budget
74 Fed. Reg. 55269-55272
Request for Comments on Implementation of the Paperwork Reduction Act

Dear Administrator Sunstein:

The National Association of Manufacturers (NAM) is pleased to submit these comments on improving implementation of the Paperwork Reduction Act (PRA). The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Eighty percent of the NAM's members are small manufacturers with fewer than 500 employees and a full one-third have fewer than 50 employees. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country. We represent the more than 12 million men and women who make and invent things in America.

The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth, and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards.

In the current recession, American manufacturing has lost more than 1.5 million jobs. At a time like this, when firms are fighting for their survival and trying to emerge as stronger companies when the economy recovers, unnecessary incremental burdens caused by paperwork and recordkeeping requirements can cost jobs. Reducing the burden imposed on the public by information collections of the federal government is important to creating a healthy business climate in the United States. We are pleased to offer these comments on implementing the PRA.

How can OMB improve the PRA review process in a way that increases efficiency and timeliness for agencies while ensuring practical utility and minimizing burden on the public?

The efficiency of government agencies is in the interest of all stakeholders in the information collection process. But Congress wrote and amended the Paperwork Reduction Act in part to impose some strictures on agencies and their desire for information. The collection of that information imposes a cost on citizens and businesses and the use and interpretation of that information includes costs to the agency. So any increase in the efficiency or timeliness for agencies engaged in PRA review could come at a cost of dramatically increased burden on the public and should be considered with caution.

The simplest and most direct route to increase the efficiency of this process would be to provide the Office of Information & Regulatory Affairs (OIRA) in the Office of Management & Budget (OMB) with additional staff to conduct the review process. This would allow for the shortest time necessary to conduct review of agency submissions. As noted in previous comments from the NAM, OIRA has suffered a significant reduction in staffing from its founding. From a FTE ceiling high of 90 in 1981 to fewer than 60 today, OIRA has shrunk significantly while the number of collections and the burden imposed has increased substantially. The addition of another 10 FTE would increase the timeliness of review and provide additional opportunities for burden reduction and increased utility of the information collected.

Another opportunity for increased efficiency would require a legislative change. But OMB should request that Congress amend the PRA to allow for the elimination of the second public comment period when no comments are received during the first 60 day window. This would reduce the time necessary by at least 30 days for approval of information collection that does not capture the attention of stakeholders. A relatively small number of collections receive comments from the public. But the extended comment period is only necessary for those collections that have active participation from stakeholders.

OMB can increase the efficiency of the process and create an opportunity for more meaningful public comment by grouping similar collections together. Some examples are clear like facilitating the approval of both Form R and Form A for the Toxics Release Inventory collections together rather than having separate expirations. Other opportunities will require some thoughtful categorization of similar collections in an agency or similar collections at separate agencies.

Another workload management efficiency improvement could be achieved by purposely rebalancing the annual number of collections for consistency across the three year maximum approval period. In one year, it could be possible to have 5,000 collections up for approval while there might be 1,000 the next year based on individual approval periods. An attempt to rebalance the annual workload for information collection review should be conducted every five to ten years.

Under the PRA, what are the relevant differences among collections that are mandatory, mandatory to receive a benefit, and voluntary, and what practices could OMB implement in its review processes to recognize these differences? In addition, how would such practices achieve the PRA goals of reducing current paperwork burdens and increasing the practical utility of information collected by the Federal Government?

The appetite of the federal government for information is unlimited. The government's ability to use all of the information it currently collects is limited. And the government imposes a cost on the public in time and money to collect that information. The Paperwork Reduction Act (PRA) and its subsequent amendments seek to balance the unlimited appetite with the practical ability to use the information and the cost born by others to provide it. Despite the significant efforts of OIRA/OMB, agency CIOs and agency program officials – administrations have been unable to achieve some of the PRA's more ambitious goals, which included a net reduction in the total burden placed on the public by government information collection. Administrations have, however, managed to balance that appetite against the ability to use the information and the costs imposed. As a result, any changes to the implementation of the PRA should be considered with extreme caution. Any dramatic change could unbalance the careful compromises that were made in law and in practice.

With that balance in mind, any movement to change the review of a "voluntary" collection should be met with questions and skepticism. First, there is a question of whether a "voluntary" request from an agency of government that has significant regulatory and enforcement power can truly be deemed "voluntary." When an agency that regulates an entity asks that business for information there are strong incentives to comply. That, however, does not reduce the burden imposed upon that business or citizen by complying.

Second, the fact that a business or individual may want to receive a benefit that comes with filling out a form or transmitting data to the government, does not eliminate the burden imposed by that data collection. If a student fills out the federal application for student aid (FAFSA OMB# 1845-001), she derives a benefit from the submission of that form. But if the form had 20 fewer questions, if an entire page was eliminated or the ease of the form was increased, the student would still receive the same benefit. Burden reduction is as important to collections that a business or citizen fills out voluntarily as the ones that are mandatory.

Third, Congress made no distinction between voluntary and mandatory collections. Among the clarifications of the Paperwork Reduction Act of 1995 was to make clear that all "collections of information" were included within the scope of the law including agency requirements to disclose information to third parties or the public. It specifically overturned a more limited interpretation of "collections" in *Dole v. United Steelworkers of America*, 494 U.S. 26 (1990). And both the House and Senate Committee Reports on the legislation included identical explanations of the terms "collection of information" and "regardless of form or format" from the Title 44, Section

3502. The Senate Committee Report for S. 244 (S. Rpt. 104-008) which became P.L. 104-13 and the final Conference Report 104-99 retained the following explanation:

It also includes information collection activities regardless of whether the collection is formulated or communicated in written, oral, electronic or other form, and regardless of whether the compliance is mandatory, voluntary, or needed to obtain a benefit or contract with the Federal government.

The intent of Congress is clear in this instance. OMB is to take an expansive view of information collections so that someone in government is paying attention to the larger picture. No one can expect one agency to have deep knowledge of what another agency is doing or how much cumulative burden is being imposed on the same industry sector or businesses. But through the PRA review process, OMB is able to use its unique knowledge base to implement the purposes of the act with careful weighing of the necessity of information collections versus their utility and the burden imposed.

Although, OMB may wish to have greater knowledge of voluntary collections and have more information about them, there should be no difference in the PRA review process of those collections than for mandatory ones. Creating an exclusion or an inappropriate differentiation could cause an explosion of “voluntary” burdens to be newly imposed on the public.

What new steps, if any, might be taken under the PRA to eliminate any redundant or excessive mandatory information collections, especially in connection with programs that now impose the most significant burdens, including tax, health, and transportation programs?

Among the innovations of the Paperwork Reduction Act of 1995 was to require agencies to certify and provide a record supporting such certification that the collection of information is not unnecessarily duplicative of information that the agency has available to it. This certification statement is regularly attested to without any affirmative action on the part of the agency. Agency staff responsible for this certification simply rely upon the program office determination. And that is the extent of their research or review. They do not attempt to review other approved agency collections to determine if duplication exists. Agencies, as part of their information resources management responsibilities, should have a database of information fields or elements which are collected. This should be reviewed, along with other methods, to be able to justify a certification of no unnecessary duplication.

As part of the annual Information Collection Budget (ICB) report of the government, agencies are asked to undertake projects to reduce the burden on the public. This has encouraged some successful innovations and programs in agencies to find useful burden reduction. But frequently these projects for burden reduction result in very small improvements. The PRA anticipated that agencies would deliver significant burden reductions including as much as 10% reductions of total burden hours in the early years

of the act. To achieve these kinds of reductions, agencies would need additional flexibility, often not originally granted by statute. Congress intended for agencies to recommend legislative changes to allow for greater burden reductions. Agencies should be encouraged to recommend legislative changes to allow for more substantial burden reduction in significant information collections. Such changes could include the elimination of the requirement for the information collection itself, when it is warranted.

One of the methods suggested in the Federal Register notice might be to create online one-stops to consolidate forms to reduce burden. Manufacturers appreciate this technique when the forms are truly similar and would result in a net reduction of the burden. If deadlines are moved up to accommodate this change, then it might create a greater transition burden. And this technique may not be appropriate in all circumstances. Among the hoped for outcomes of recent e-government initiatives was the creation of a Business Compliance One Stop (BCOS) which was to create a cross-agency platform for business to better understand its obligations and to facilitate easier compliance and to eliminate duplication. The effort was folded into the business.gov website but does not seem to have moved past a library of forms and some helpful consolidation of links for basic business licensing and start up activities. In coordination with stakeholders, some use of the “one-stop” and consolidation of forms can be helpful.

Another important tool is greater monitoring of agencies that assert an exclusion from the requirements of the PRA. A recent example is the implementation of the Consumer Product Safety Improvement Act (CPSIA P.L. 110-314). One of the new requirements that applies to hundreds of thousands of businesses and imposes millions of burden hours on the public is the requirement to provide general conformity certificates for any product subject to a rule, ban, or standard of the Consumer Product Safety Commission. These certificates are a recordkeeping requirement imposed on thousands of businesses requiring identical fields of information to be recorded, that the information be furnished to third parties in the supply chain and to the Commission upon request. In the Federal Register notice setting out the requirements (73 Fed. Reg. 68328-32) of the conformity certification, the Commission claims that it is exempt from the PRA because it is merely restating statutory requirements rather than imposing information collection requirements. This is clearly not the case based on the scope of this final rule. And Congress did not exempt agency implementation of its statutory requirements. If it had, then nothing that an agency collects would be subject to the PRA since the claim for “necessity” of the information collection is almost always substantiated by the fact that it is statutorily required. OMB should act to bring this collection within the PRA approval process and better police agency assertions of exemption.

What practices could OMB implement under the PRA to facilitate the use of new technologies, such as social media, as well as future technologies, while supporting the Federal Government's responsibilities for Information Resource Management?

While the use of social media and other new technologies may have great promise, it is still unclear if statistically relevant information can be collected through

these approaches. Questions regarding the ability to collect information from an appropriate sample, verification of the identity or accuracy of submissions, and other challenges are presented by reliance on information obtained through social media. Agencies should be able to pursue innovation in their practices, but the type of information being collected will often dictate the method used to collect it.

How do we improve practices for estimating burden, should there be separate burden estimates for small entities, should burden be monetized and how?

There is no simple or magic formula for estimating the burden of information collection. Each industry sector functions differently and each size and configuration of business functions differently, even when filling out identical forms or complying with identical recordkeeping requirements. Depending on the industry and size of the business different levels of technology may be utilized or may be integrated to greater degrees. This means that some businesses will have systems that lend themselves to more easily comply with certain information requirements. And some may have to create completely new systems to gather the necessary information. This may lead to differences in burden by as much as a factor of ten between respondents. It means that agency officials responsible for estimating burden must understand the industries/businesses from which they are collecting and important characteristics from size, age, capital intensity, use of technology, etc. to appropriately estimate burden. Small entities deserve special consideration because of the disproportionate share of information collections burdens that they bear. A separate accounting for small entity burden may not be necessary in the aggregate, but to create a fair estimation of burden there must be a real understanding of the compliance burden of a small business.

Anecdotal information will not be sufficient to improve burden estimation but it is necessary. A greater understanding of the workings of various industries including manufacturing, at all levels and sizes, is important for both agency and OMB officials. The NAM would encourage OMB and agency staff charged with review responsibilities under the PRA to visit manufacturing facilities for an information collection burden tour. This would inform burden estimates with a richness and understanding of the unique challenges and differences between facilities and sectors. This would not be helpful for a specific collection but would be generally applicable to all collections.

The monetization of burden has similar challenges. No one methodology is appropriate for all collections. Some companies will outsource some of their information collection compliance to an outside consultant and will cost them mostly in dollars. While others will do all of their compliance work on-site and will cost them mostly in staff-hours. Each industry and region will have different wage rates and different layers of review and approval including inside or outside counsel review. Methodologies must account for this variation. To provide truly accurate estimates of burden, they should be monetized. Consistency within a regulatory program or within an agency is more important than consistency across the government. These monetized burden estimates will be more useful within an agency rather than aggregated across the government.

Conclusion

In order to meet the President's goal of adding millions of new jobs to the economy and leading us out of this economic crisis, a coordinated effort from all agencies of government is necessary. Reducing the burden of information collection on the public must be a part of that coordinated response to restoring the economy. The only place where all the interests of the American people and the entire economy can be weighed against competing priorities in information collection is through the President's staff and advisors in the Office of Information and Regulatory Affairs in the White House Office of Management and Budget. Whether the collections are mandatory, voluntary, or required to claim a public benefit matters little to the business who has lost time and money due to unnecessarily duplicative information collections or overly burdensome and outdated forms. The Paperwork Reduction Act and its implementation over the last thirty years may be far from perfect but it has helped to balance the appetite of the government for information with the costs imposed to collect it and use it effectively.