

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

Memorandum

To: Members, Committee on Small Business
From: Committee Staff
Date: October 10, 2017
Re: Hearing: "Evaluating the Paperwork Reduction Act Part II: Are Burdens Being Reduced?"

On Wednesday, October 11, 2017 at 11:00 a.m., the Committee on Small Business will meet in Room 2360 of the Rayburn House Office Building for the purpose of examining the Paperwork Reduction Act (PRA or Act).¹ The goal of the Paperwork Reduction Act (PRA) is to reduce the paperwork burden on individuals and small businesses while also reducing the cost to the federal government of collecting and using information. The Committee held a hearing on March 29, 2017 on the PRA's effectiveness and small business issues with the PRA.² This hearing will continue to examine the PRA and will discuss how agencies are reducing paperwork burdens on small businesses and potential solutions to address agencies' PRA compliance issues.

I. Background on the Paperwork Reduction Act

Congress has been concerned for decades about the burden of federal paperwork on individuals and businesses, particularly small businesses. As the number of federal programs has increased, so has federal paperwork, including: tax forms; recordkeeping and reporting requirements related to regulations or compliance; reports, surveys, polls, and studies; and paperwork related to obtaining a government benefit (e.g., disability, social security, veterans, or unemployment benefits, jobs, grants or contracts).³ Congress's growing concern led it to pass the Paperwork Reduction Act in 1980.⁴

The PRA's primary purposes include: minimizing the paperwork burden on individuals, small businesses, and others; reducing the cost to the federal government of collecting and using information; and maximizing the usefulness of information created, collected, maintained and used by the federal government.⁵ In 1986, the Act was reauthorized and amended, and in 1995, major changes were made and the PRA was entirely recodified.⁶ In 2002, the PRA was further amended by the enactment of the Small Business Paperwork Relief Act of 2002.⁷

¹ 44 U.S.C. §§ 3501-21.

² See *Hearings: Evaluating the Paperwork Reduction Act: Are Burdens Being Reduced?*, HOUSE SMALL BUS. COMM. (Mar. 29, 2017), <https://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=399797>.

³ William F. Funk, *The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law*, 24 HARV. J. ON LEGIS. 1, 2-4 (1987).

⁴ Pub. L. No. 96-511, 94 Stat. 2812 (1980).

⁵ 44 U.S.C. § 3501.

⁶ Jeffrey S. Lubbers, *Recent Developments: Regulatory Reform & the 104th Congress: Paperwork Redux: The (Stronger) Paperwork Reduction Act of 1995*, 49 ADMIN. L. REV. 111, 111 (1997). The PRA was last authorized in the 1995 Act. The legislation authorized \$8 million annually for OIRA to carry out the law's provisions through 2001. 44 U.S.C. § 3521.

⁷ Pub. L. No. 107-198, 116 Stat. 729 (2002).

The Committee's March 29, 2017 hearing memorandum provides a detailed overview of the PRA and the paperwork clearance process.⁸ Significantly for this hearing, the PRA makes each agency's Chief Information Officer (CIO) responsible for compliance with the Act. The CIO is responsible for identifying information needs with the agency and developing strategies necessary to meet those goals.⁹ Specifically, the PRA charges the CIO with many activities related to managing information resources, including coordinating information resource management policies and practices to improve the productivity, efficiency, and effectiveness of the agency's programs, conduct training programs to educate agency officials about information resource management, improve service delivery to the public, provide information to the public on a timely basis, and reduce information collection burdens on the public.¹⁰

Before an agency submits an information collection request to the Office of Information and Regulatory Affairs (OIRA), the CIO of the agency must review and approve the information collection. Specifically, the CIO must ensure that the information collection evaluates the need for the collection, contains a functional description of the information to be collected, a plan for the information collection, a specific, objectively supported estimate of burden, a test of the collection of information through a pilot program (if appropriate), and a plan for the efficient and effective management and use of the information to be collected.¹¹

II. Issues for Consideration

Although the PRA has been in place for many years, problems with the PRA continue to exist. The paperwork burden as a whole continues to increase, agencies struggle to accurately estimate paperwork burdens and costs, agencies do not always find ways to reduce the paperwork burden on small businesses, and agencies continue to violate the PRA in other ways.

A. *The Paperwork Burden Continues to Increase*

OMB's annual reports to Congress on the federal paperwork burden are called Information Collection Budgets (ICBs).¹² Those reports were routinely late during the previous administration.¹³ While the reports have described burden reduction initiatives of agencies, the overall burden continues to grow at a significant pace. For example, in Fiscal Year (FY) 1999, the reported burden was 7.18 billion hours.¹⁴ By FY 2015, the burden was

⁸ See Memorandum from House Comm. on Small Bus. Comm. Staff to Members of the Comm. on Small Bus. (Mar. 27, 2017), available at https://smallbusiness.house.gov/uploadedfiles/3-29-17_hearing_memo.pdf.

⁹ 44 U.S.C. § 3506(c)(1); 5 C.F.R. § 1320.8. The CIO must be sufficiently independent from the program offices of the agency to fairly evaluate the collections of information. 44 U.S.C. § 3507(c)(1).

¹⁰ 44 U.S.C. § 3506(b); see also JULIE M. ANDERSON, THE EVOLUTION OF THE ROLE OF CIO IN THE U.S. FEDERAL GOVERNMENT 6 (Mar. 2016), http://bettergovernment.jp/resources/201603_Evolution_of_the_Role_of_CIO_in_USG.pdf.

¹¹ 44 U.S.C. § 3506(c)(1)(A); 5 C.F.R. § 1320.8. The PRA also requires the CIO to ensure that the information collection is inventoried; displays a control number and expiration date; indicates the collection is in accordance with section 3507 of the PRA; and informs the person receiving the collection of the reasons for the collection; the way the information will be used; an estimate of the burden; whether responses are voluntary, required to obtain a benefit, or mandatory; and the fact that the collection must display a valid control number. *Id.* § 3506(c)(1)(B).

¹² OMB is required to annually report to Congress under the PRA. 44 U.S.C. § 3514.

¹³ *Still Overdue: Answers from OMB on Paperwork Reduction Requirements*, U.S. HOUSE SMALL BUS. COMM. (Dec. 5, 2016), <http://smallbusiness.house.gov/news/documentsingle.aspx?DocumentID=399411>.

¹⁴ OMB, OIRA, INFORMATION COLLECTION BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2006 REVISED DECEMBER 2006, at 1, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/inforeg/icb/fy2006_icb_revised.pdf.

estimated to be 9.78 billion hours.¹⁵ As of October 5, 2017, OIRA estimates that the annual burden is 11.5 billion hours and is costing over \$117 billion annually. In addition, it currently has approved a total of 9,343 collections of information, some which have hundreds of forms associated with them.¹⁶

Below are OIRA’s estimates on the current inventory of approved information collections for the Environmental Protection Agency, Department of Labor, Fish and Wildlife Service, and Food and Drug Administration as of October 5, 2017.¹⁷ The burden, however, may be higher as questions have arisen regarding the accuracy of agencies’ burden estimates.

ENVIRONMENTAL PROTECTION AGENCY TOTALS:

ACTIVE OMB CONTROL NOS.	TOTAL ANNUAL RESPONSES	TOTAL ANNUAL HOURS	TOTAL ANNUAL COST
410	364,343,792	173,908,930	2,480,445,601

DEPARTMENT OF LABOR TOTALS:

ACTIVE OMB CONTROL NOS.	TOTAL ANNUAL RESPONSES	TOTAL ANNUAL HOURS	TOTAL ANNUAL COST
467	2,675,341,140	168,081,001	5,689,470,434

DOI-FWS TOTALS:

ACTIVE OMB CONTROL NOS.	TOTAL ANNUAL RESPONSES	TOTAL ANNUAL HOURS	TOTAL ANNUAL COST
43	2,589,431	1,669,270	11,360,763

HHS-FDA TOTALS:

ACTIVE OMB CONTROL NOS.	TOTAL ANNUAL RESPONSES	TOTAL ANNUAL HOURS	TOTAL ANNUAL COST
272	946,773,524	181,504,369	3,736,628,228

¹⁵ OMB, OIRA, INFORMATION COLLECTION BUDGET OF THE UNITED STATES GOVERNMENT, 2016, at i, https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/icb/icb_2016.pdf [hereinafter 2016 ICB].

¹⁶ OIRA, *Inventory of Currently Approved Information Collections*, <https://www.reginfo.gov/public/do/PRAREport?operation=11> (last visited Oct. 5, 2017). The total annual hours and costs, which are updated daily, can vary dramatically as old collections expire and new ones are added.

¹⁷ OIRA, *Inventory of Currently Approved Information Collections*, <https://www.reginfo.gov/public/do/PRAMain> (last visited Oct. 5, 2017).

B. The Burden Estimates Struggle with Accuracy

The accuracy of paperwork burden estimates has been a longtime concern.¹⁸ While some agencies may have made improvements in recent years, OIRA has continued to identify the accuracy of burden estimates as a concern.¹⁹ A 2012 report for the Administrative Conference of the United States characterized the burden estimates as “highly questionable at best and random numbers at worst.”²⁰ The report also stated that the lack of trust in the burden estimates was due to agencies estimating the burdens “without testing their collections on the affected populations.”²¹ If an agency is not accurately estimating the burden—and therefore does not understand the burden it is imposing—it will not have the information it needs to determine if the burden could be reduced on small businesses, as the PRA requires.

C. Agencies Do Not Always Try to Find Ways to Reduce Burdens on Small Businesses

The PRA requires agencies to certify that each information collection reduces, to the extent practicable, the burden on small entities, which includes small businesses, small nonprofits, and small governmental jurisdictions.²² The Act suggests using techniques such as: establishing different requirements or timetables; consolidating or simplifying reporting requirements; or exempting, in part or in whole, small entities from the information collection request.²³ In 2005, the Government Accountability Office (GAO) found that in 12 case studies it reviewed, CIO certifications lacked rigorous support to ensure that all requirements of the PRA were met.²⁴ In four of the case studies, the agencies did not have complete information to support the CIO’s certification that the information collection reduced, to the extent possible, the burden on small business as required by Section 3506(c)(3) of the PRA.²⁵ It is unclear whether agencies have improved their certifications. If agencies, however, do not adequately assess the burden imposed, their ability to consider alternatives is significantly diminished.

¹⁸ In its 1999 Information Collection Budget, OIRA stated:

[A]gency estimation methodologies can produce imprecise and inconsistent burden estimates. . . . While these officials are experts in their areas of responsibility and are usually familiar with the public’s experience with responding to information collections they oversee, in many cases their estimates are not based on objective, rigorous, or internally consistent methodologies. This is a particular concern in the case of large collections, the burden of which may be measured in millions of hours or tens of millions of dollars.

OMB, OIRA, INFORMATION COLLECTION BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1999, at 35, <https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/inforeg/icb-fy99.pdf>.

¹⁹ Improving Implementation of the Paperwork Reduction Act, 74 Fed. Reg. 55,269, 55,270 (Oct. 27, 2009).

²⁰ STUART SHAPIRO, THE PAPERWORK REDUCTION ACT: RESEARCH ON CURRENT PRACTICES AND RECOMMENDATIONS FOR REFORM, REPORT TO THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES 21 (2012), <https://www.acus.gov/sites/default/files/documents/Draft-PRA-Report-2-15-12.pdf>.

²¹ *Id.*

²² 44 U.S.C. § 3506(c)(3)(C).

²³ *Id.*

²⁴ *Another Year, Another Billion Hours: Evaluating Paperwork Efforts in the Federal Government: Hearing Before the Subcomm. on Regulatory Affairs of the H. Comm. on Gov’t Reform*, 109th Cong. 57 (2006) (statement of Linda D. Koontz, Director, Information Management, GAO).

²⁵ *Id.* at 80–81 (prepared statement of Linda D. Koontz, Director, Information Management, GAO).

D. Other Ways Agencies Violate the PRA

Other PRA compliance issues have been identified as well. OMB annually reports on two types of agency violations: 1) information collections that are not approved but in use; and 2) lapses in renewal or discontinuation.²⁶ In FY 2015, there were 283 violations, an increase of 58 from FY 2014's total of 225.²⁷ An additional issue that has been raised in public comments is agencies avoiding the PRA completely by relying on the "nine person loophole." Since the PRA only applies to information collections that are for 10 persons or more, an agency can avoid the PRA by only sending collections to nine people.²⁸

III. Proposed Reforms

The Committee's March 29, 2017 hearing on the PRA highlighted some proposals to reform the PRA process and reduce the burden of paperwork on small businesses, including stronger enforcement for monetizing costs and setting reduction targets, online reporting, and beta testing.

A. Stronger Enforcement for Monetizing Costs and Setting Reduction Targets

Too often, agencies do not accurately estimate the burden of its information collections. Additionally, while Congress has set hard caps on the growth of paperwork burdens and reduction targets, agencies consistently fail to meet these reduction targets, and the amount of paperwork burden continues to increase. While calculating hourly burdens and costs of paperwork can be difficult, agencies should attempt, at the very least, a "back-of-the-envelope" calculation of the hourly burdens and costs.²⁹ The PRA clearly states that "financial resources expended" is a burden that must be considered, but this calculation does not always appear on OIRA's website.³⁰ It is unclear whether the agencies decline to calculate these burdens or whether OIRA, for whatever reason, fails to report these calculations on its website.³¹

A proposed reform is having Congress issue a legislative mandate, which sets hard caps on the growth of paperwork burdens and targeted reductions that should be enforced.³² Agencies have failed to meet reduction targets in the past, but Congress could provide for strict standards to control the growing burden of paperwork through incentives or penalties.³³

B. Greater Utilization of Online Reporting

Agencies could allow more forms to be completed and submitted online. This could not only reduce the amount of time that small business owners spend filling out forms, but would also streamline the information collection process for agencies by reducing the amount of time it takes to receive information. For example, EPA finalized an electronic reporting rule

²⁶ 2016 ICB, *supra* note 15, at 8.

²⁷ *Id.* at 9.

²⁸ Policy Navigation Group, Comment Letter on Improving Implementation of the Paperwork Reduction Act (2009), <https://www.regulations.gov/document?D=OMB-2009-0020-0066>.

²⁹ *Evaluating the Paperwork Reduction Act: Are Burdens Being Reduced?*, 115th Cong. 35 (2017) (written statement of Sam Batkins, Dir. of Regulatory Policy, Am. Action Forum) [hereinafter *PRA Part 1 Hearing*].

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

for its National Pollutant Discharge Elimination System that requires information to be reported online instead of by paper.³⁴ EPA claimed that this final rule saved a total of \$156 million over 10 years, \$23.9 million annually, and reduced the number of paperwork hours by 197,237 hours.³⁵

More steps should be taken to allow for public access to forms online and electronic submissions. However, concerns with how agencies handle information that is submitted electronically should be considered, including issues related to privacy, data quality, security, ownership, and competition.³⁶ Businesses want to ensure that any data that is submitted electronically to agencies will be handled appropriately and will not put them at a competitive disadvantage if that data is shared with the public.³⁷

C. Beta Testing

Agencies could allow small businesses to provide input on information collections prior to implementation. While the opportunity for the public to comment on an information collection in the Federal Register is an important opportunity for small businesses to share their input, agencies should work with small businesses to “beta” or pilot test a paperwork requirement that an agency plans to implement.³⁸ Indeed, the PRA even provides for pilot testing of information collections when appropriate.³⁹ Allowing the potential respondents to test how a paperwork requirement would work in the real world before it is finalized will allow the users to identify whether the form is redundant and where potential issues might occur.⁴⁰ It would also allow agencies to more accurately calculate the total amount of time it would take a small business to complete the paperwork requirement.

IV. Conclusion

Despite its name, the PRA has not been successful at minimizing the amount of federal paperwork on individuals and small businesses. While information collected from the public is required to implement statutes and administer programs, the burden of federal paperwork must be reduced, particularly so that individuals and small businesses can devote their limited resources to more productive endeavors. Additionally, minimizing overlapping and duplicative information collection requirements could increase the efficiency and effectiveness of the federal government’s operations at a lower cost to taxpayers. This hearing will allow the Committee to evaluate how effectively the PRA is operating from the agencies’ perspective and consider whether legislation or other actions should be taken to reduce the federal paperwork burden.

³⁴ National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule, 80 Fed. Reg. 64,063 (Oct. 22, 2015) (to be codified at 40 C.F.R. pts. 122, 123, 124, 127, 403, 501, 503, & 9).

³⁵ *Id.* at 64,085; see also *Regulation Summary for NPDES Electronic Reporting Rule*, REGRODEO.COM, [http://regrodeo.com/?year\[0\]=&year\[1\]=2017&year\[2\]=2016&year\[3\]=2015&year\[4\]=2014&year\[5\]=2013®ulation=NPDES%20Electronic%20Reporting%20Rule--2015---156000000](http://regrodeo.com/?year[0]=&year[1]=2017&year[2]=2016&year[3]=2015&year[4]=2014&year[5]=2013®ulation=NPDES%20Electronic%20Reporting%20Rule--2015---156000000) (last visited Oct. 4, 2017).

³⁶ *PRA Part 1 Hearing*, *supra* note 29 at 42, 50 (written statement of Leah Pilcons, Env’tl. Law & Policy Advisor, Associated Gen. Contractors of Am.).

³⁷ *Id.*

³⁸ *PRA Part 1 Hearing*, *supra* note 29, at 58–59 (written statement of Frank Cania, Soc’y. For Human Res. Mgmt.).

³⁹ See 44 U.S.C. § 3506(c)(1)(A)(v).

⁴⁰ *PRA Part 1 Hearing*, *supra* note 29, at 58–59 (written statement of Frank Cania, Soc’y For Human Res. Mgmt.).