



Paperwork Reduction Act (PRA): OMB and Agency Responsibilities and Burden Estimates

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Summary

Federal agencies often collect information from the public to accomplish their missions, but those information collection requirements can also impose a substantial paperwork burden on the public. The Paperwork Reduction Act (PRA) (44 U.S.C. §§ 3501-3520) established the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) to provide central agency leadership and oversight of government-wide efforts to reduce unnecessary paperwork burden and improve the management of information resources. The PRA's scope is very broad, both in terms of the federal agencies that must comply with its requirements, and the types of information collection requirements and activities that are covered. The PRA requires agencies to justify any collection of information from the public by establishing the need and intended use of the information, estimating the burden that the collection will impose on respondents, and showing that the collection is the least burdensome way to gather the information. Agencies must receive OIRA approval for each information collection request (signified by an OMB control number displayed on collection) before it is implemented. Failure to obtain OIRA approval for an active collection, or the lapse of that approval, represents a violation of the PRA, and the public is not required to provide the requested information. As a result of OIRA initiatives in recent years, the number of reported violations of the act declined from more than 800 in FY1998 to 15 in FY2007.

Paperwork burden is most commonly estimated in terms of "burden hours," which is a function of (1) the frequency of an information collection, (2) the estimated number of respondents, and (3) the amount of time that the agency estimates it takes each respondent to complete the collection. As of May 2009, the government-wide estimate was about 9.9 billion burden hours, an increase of nearly 2 billion burden hours (25%) between 2004 and 2009. The Internal Revenue Service (IRS) represents nearly 80% of the government-wide estimate (about 7.7 billion burden hours), and more than 85% of the IRS estimate is driven by 10 large information collections. If the total labor cost to complete federal paperwork is \$40 per hour (including benefits and overhead), then the 9.9 billion burden hours cost providers nearly \$400 billion. About \$60 billion in other financial costs raises the total annual cost of federal paperwork to about \$460 billion. However, the benefits associated with these collections may far exceed these costs.

Some inspectors general (IGs) and the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) have expressed concerns that the PRA's commenting and review requirements affect their ability to conduct timely audits and investigations, and have proposed that they (like the Government Accountability Office) be exempted from the act's requirements.

The PRA of 1995 authorized appropriations for OIRA to carry out the PRA's requirements through September 30, 2001. Since then, OIRA has been funded through OMB's general appropriation. Historically, the reauthorization of appropriations for OIRA has provided an opportunity for Congress to amend the PRA and, in so doing, to try and improve the act's implementation. In the 111th Congress, the only proposed legislation to amend the PRA is H.R. 535, which would, if enacted, "provide for the suspension of fines under certain circumstances for first-time paperwork violations by small business concerns." Similar legislation was introduced but not enacted in the 110th Congress (H.R. 456 and S. 281).

This report will be updated as other information becomes available.

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Introduction

Federal agencies often must collect information from the public to accomplish their missions. For example, the Internal Revenue Service (IRS) collects information from taxpayers and their employers to know the correct amount of taxes owed. The Bureau of Labor Statistics (BLS) within the Department of Labor collects data that enable the President and Congress to gauge the condition of the U.S. economy. The Environmental Protection Agency (EPA) collects information to insure compliance with the agency's regulations, to evaluate the effectiveness of its programs, and for other purposes. The Department of Agriculture requires that applicants for food stamps and crop subsidies provide information to verify their eligibility. The U.S. Census Bureau periodically collects information that is used to apportion congressional districts and for many other purposes. Many agency information collections, recordkeeping requirements, and third-party disclosures are contained in or are authorized by regulations as monitoring or enforcement tools. In fact, these paperwork requirements are sometimes the essence of the agencies' regulatory provisions.¹ However valuable they are, though, federal information collection requirements can also impose a substantial paperwork burden on the public. That burden can be a function of the amount of information collected, the frequency with which the information is collected, and the number of entities required to provide the information.

The Paperwork Reduction Act (PRA) (44 U.S.C. §§ 3501-3520) was originally enacted in 1980, and was substantively amended in 1986 and again in 1995.² The stated purposes of the PRA include (1) minimizing the burden of federal paperwork on individuals, small businesses, state and local governments, and others; (2) ensuring the greatest public benefit from federal information; (3) coordination of federal information resources management policies; and (4) improving the quality and use of federal information.³ The PRA of 1980 established the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) to provide central agency leadership and oversight of government-wide efforts to reduce unnecessary paperwork burden and improve the management of information resources.⁴ The act assigns specific responsibilities to both OIRA and federal agencies regarding (1) general information resources management, (2) collection of information and the control of paperwork, (3) information dissemination, (4) statistical policy and coordination, (5) records management, (6)

¹ For example, EPA's Toxics Release Inventory (TRI) program is essentially a database created through collections of information imposed on businesses to inform the public about chemical hazards in their communities. TRI reports require businesses in certain industries to report the quantity of any of more than 600 chemicals entering each environmental medium on site, transfers of the chemicals in wastes to off-site locations, on-site treatment methods and efficiency, and source reduction and recycling activities. For more information and the underlying statutory requirements, see CRS Report RL32683, *The Emergency Planning and Community Right-to-Know Act (EPCRA): A Summary*, by (name redacted).

² In addition to the 1986 and 1995 amendments, the PRA has also been amended by other statutes that did not change the act's information collection requirements (e.g., the Information Technology Management Reform Act of 1996 and the Information Quality Act of 2000). For more information on the original PRA, the 1986 amendments, the 1995 amendments, and other statutes, see CRS Report RL30590, *Paperwork Reduction Act Reauthorization and Government Information Management Issues*, by (name redacted). For more information on the Information Quality Act, see CRS Report RL32532, *The Information Quality Act: OMB's Guidance and Initial Implementation*, by (name redacted).

³ 44 U.S.C. § 3501(1).

⁴ 44 U.S.C. § 3503. The PRA actually assigns these and other responsibilities to the Director of OMB, but requires the Director to delegate to the Administrator of OIRA "the authority to administer all functions under this chapter." Therefore, in this report, duties that the act assigns to OMB are characterized as assigned to OIRA. For information on OIRA and its regulatory review responsibilities, see CRS Report RL32397, *Federal Rulemaking: The Role of the Office of Information and Regulatory Affairs*, by (name redacted).

privacy and security, and (7) federal information technology.⁵ This report focuses on the PRA's requirements regarding information collection and the control of paperwork.⁶

Scope of the PRA

The scope of the PRA is very broad, both in terms of the federal agencies that must comply with its requirements, and the types of information collection requirements and activities that are covered. The PRA defines a covered “agency” as “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.”⁷ The act specifically excludes (1) the Government Accountability Office (GAO, formerly the General Accounting Office); (2) the Federal Election Commission; (3) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; and (4) government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities. Therefore, the PRA's requirements apply to virtually every executive branch agency, including independent regulatory agencies that are sometimes excluded from oversight and control by the President or OMB.⁸

The PRA generally defines a “collection of information” as the obtaining, causing to be obtained, or disclosure of facts or opinions by or for an agency by 10 or more nonfederal “persons.”⁹ A “person” is defined in the act as including individuals, partnerships, associations, corporations, groups, and any element of a state or local government.¹⁰ Therefore, if a covered agency wants to collect information from 10 or more of these non-federal entities, or to require 10 or more of these entities to provide information to a third party or to the public (e.g., via a product labeling requirement), that information collection or disclosure requirement is probably covered by the PRA.

“Burden” is also broadly defined in the act to include all of the “time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency,” including any time or other expenditure needed to review instructions, acquire technology, or search data sources.¹¹ For example, the paperwork burden associated with

⁵ See 44 U.S.C. § 3504 for the specific requirements placed on OIRA in these areas. See 44 U.S.C. § 3506 for the requirements placed on federal agencies in these areas.

⁶ OMB's regulations regarding controlling paperwork burden on the public are in 5 CFR Part 1320.

⁷ 44 U.S.C. § 3502(1). Section 3502(5) defines the term “independent regulatory agency” as including such entities as the Board of Governors of the Federal Reserve, the Federal Communications Commission, and the Securities and Exchange Commission.

⁸ For example, under Executive Order 12866, OIRA also reviews agencies' significant regulations before they are published in the *Federal Register*, but does not review rules issued by independent regulatory agencies that Congress created to be more independent of the President. However, if an independent regulatory agency's rule contains an information collection requirement, OIRA would review that requirement under the PRA.

⁹ As a result of the 1995 amendments to the act, the PRA covers collections of information “requiring the disclosure to third parties or the public.” The amendments effectively overturned the Supreme Court's decision in *Dole v. United Steelworkers of America*, 494 U.S. 26 (1990). As a result, agency-initiated labeling requirements and other disclosures to third parties are considered agency “collections of information” under the PRA.

¹⁰ 44 U.S.C. § 3502(10).

¹¹ 44 U.S.C. § 3502(2).

completing a tax return includes not only the amount of time required to fill out the relevant forms, but also the time and money needed to read the instructions, collect the required information, and purchase any necessary software or hardware. The PRA requires agencies to justify any collection of information from the public by establishing the need and intended use of the information, estimating the burden that the collection will impose on respondents, and showing that the collection is the least burdensome way to gather the information.

Paperwork burden is most commonly measured in terms of “burden hours.”¹² The burden-hour estimate for an information collection is a function of (1) the frequency of the information collection, (2) the estimated number of respondents, and (3) the amount of time that the agency estimates it takes each respondent to complete the collection. For example, if an agency estimates that an information collection conducted twice each year will take each of the 10,000 respondents 10 hours to complete each time, the annual burden-hour estimate for the collection is 200,000 burden hours (2 times 10,000 times 10). As discussed more fully later in this report, as of May 2009, the government-wide paperwork burden estimate is nearly 10 billion burden hours.

While federal paperwork requirements are often unwelcomed by those required to complete them, some information collection “burden” is voluntarily accepted by respondents in order to receive certain benefits. For example, recipients of federal crop subsidies or food stamps must complete Department of Agriculture application forms in order to receive payments. Similarly, certain taxpayers elect to complete longer tax forms (e.g., the Form 1040 instead of the 1040-EZ) in order to pay lower taxes. As a former OIRA administrator testified in 2008, “not all hours spent have the same consequences.”¹³

The PRA does not apply to collections of information “during the conduct of a Federal criminal investigation,” or “during the conduct of ... an administrative action or investigation involving an agency against *specific* individuals or entities.”¹⁴ However, the PRA does apply to “the collection of information during the conduct of *general* investigations ... undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.”¹⁵

Agency and OIRA Clearance Processes

The PRA generally requires OIRA to “oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions.”¹⁶ Agencies must receive OIRA approval (signified by an OMB control number displayed on the information collection) for each information collection request before it is implemented, and those approvals must be renewed at least every three years. As discussed in more detail later in this report, failure to obtain OIRA approval for an active collection, or the lapse of that approval, represents a

¹² As discussed later in this report, OIRA also reports measurable financial costs associated with information collections.

¹³ Ralph Lindeman, “House Small Business Panel Examines Need to Amend Paperwork Reduction Act,” *BNA Daily Report for Executives*, February 29, 2008, p. A-32, quoting Sally Katzen, who was administrator of OIRA during the Clinton Administration.

¹⁴ 44 U.S.C. § 3518(c)(1) (emphasis added).

¹⁵ 44 U.S.C. § 3518(c)(2) (emphasis added).

¹⁶ 44 U.S.C. § 3504.

violation of the act, and triggers the PRA's public protection provision.¹⁷ Under that provision, no one can be penalized for failing to comply with a collection of information subject to the act if the collection does not display a valid OMB control number, or if the agency does not inform the respondents that they are not required to respond unless the collection of information contains a valid OMB control number. OIRA can disapprove any collection of information if it believes the collection is inconsistent with the requirements of the PRA.¹⁸

Agency Clearance Process

The PRA requires that each federal agency establish its own paperwork clearance process within the agency's office of the Chief Information Officer (CIO), and requires that the process be "sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this subchapter."¹⁹ An agency cannot conduct a collection of information until after (1) undertaking a review by the agency before submission to OIRA; (2) evaluating public comments received in response to a 60-day notice in the *Federal Register* (or, if part of a proposed rule, comments received in response to the notice of proposed rulemaking); (3) submitting to OIRA a certification that the proposed information collection meets certain statutory requirements (e.g., that it is written in plain terms and is "necessary for the proper performance of the functions of the agency"); and (4) publishing a notice in the *Federal Register* that the certification has been submitted and providing other information about the proposed collection (e.g., a description of the proposed collection and an estimate of its burden).²⁰

In 2005, GAO reported that agency CIOs sometimes provided the required certifications despite missing or inadequate support from the program offices sponsoring the collections.²¹ As a result, GAO said that OMB, the agency, and the public have reduced assurance that the standards in the act (e.g., avoiding duplication and minimizing burden) have been consistently met.²² GAO suggested several options that Congress could consider to improve compliance (e.g., mandating pilot projects on burden reduction), and recommended that OMB change its guidance in relation to these issues. To date, neither Congress nor OMB has acted on GAO's recommendations.

¹⁷ 44 U.S.C. § 3512.

¹⁸ Independent regulatory agencies (e.g., the Federal Communications Commission and the Securities and Exchange Commission) can, by majority vote, void any OIRA disapproval of a proposed collection of information. See 44 U.S.C. § 3507(f).

¹⁹ 44 U.S.C. § 3506(c)(1). Section 3506(a) requires the head of each agency to appoint a Chief Information Officer, who reports directly to the agency head. The Information Technology Management Reform Act of 1996 (later renamed the Clinger-Cohen Act) established CIOs in each agency, replacing the original requirement in section 3506 of the PRA for a "senior official" to carry out these responsibilities. See CRS Report RS21260, *Information Technology (IT) Management: The Clinger-Cohen Act and the Homeland Security Act of 2002*, by (name redacted).

²⁰ 44 U.S.C. § 3507(a)(1).

²¹ U.S. Government Accountability Office, *Paperwork Reduction Act: New Approach May Be Needed to Reduce Government Burden on the Public*, GAO-05-424, May 20, 2005. See also U.S. Government Accountability Office, *Paperwork Reduction Act: Burden Reduction May Require a New Approach*, GAO-05-778T, June 14, 2005.

²² GAO-05-778T, p. 15.

OIRA Clearance Process

After an agency submits its proposed information collection request to OIRA (with the above-mentioned certification), the PRA requires OIRA to provide at least 30 days for public comment prior to deciding whether to approve the request.²³ If a new proposed information collection is not part of a proposed rule, the PRA requires OIRA to notify the submitting agency of its decision within 60 days of the agency's certification or *Federal Register* notice (whichever is later). If the collection is part of a proposed rule, OIRA must notify the agency "as soon as practicable," but no later than the date that the proposed rule is published in the *Federal Register*.²⁴ Before approving a proposed collection of information, OIRA must determine whether the collection is "necessary for the proper performance of the functions of the agency."²⁵

OIRA takes action on between 3,000 and 5,000 information collection requests (new approvals, renewals, or revisions) each year, and those approvals can be for up to three years. OIRA maintains a daily-updated PRA database showing each approved information collection by department and agency, collection requests that are currently under review, collections that have been reviewed in the previous 30 days, and collections that have recently expired. That database is publicly available online at <http://www.reginfo.gov/public/do/PRAMain>. As of May 14, 2009, there were a total of 8,674 approved information collections in the OIRA inventory.

Although most information collection requests are approved, OIRA sometimes disapproves agencies' requests. For example, in November 2008, OIRA disapproved an information collection requirement in a Federal Communications Commission rule that would have required wireline and wireless carriers to have an emergency backup power source for their networks. OIRA reportedly concluded that, contrary to the PRA's requirements, the agency did not seek and evaluate public comment on this reporting requirement and did not demonstrate the practical utility of the information.²⁶

Expedited and Delegated OIRA Reviews

The PRA also provides for "fast-track" OIRA reviews in emergency situations. Specifically, an agency may request that OIRA authorize a collection of information upon the agency head's determination that:

(A) a collection of information- (i) is needed prior to the expiration of time periods established ... ; and (ii) is essential to the mission of the agency; and

(B) the agency cannot reasonably comply with the provisions of [the PRA] because—(i) public harm is reasonably likely to result if normal clearance procedures are followed; (ii) an unanticipated event has occurred; or (iii) the use of normal clearance procedures is

²³ 44 U.S.C. § 3507(b). This comment period is in addition to the 60 days of public comment that are required prior to submission of the proposed collection to OIRA.

²⁴ Executive Order 12866 permits OIRA to review the substance of agencies' proposed rules for up to 90 days before they are published in the *Federal Register*.

²⁵ 44 U.S.C. § 3508.

²⁶ Cheryl Bolen, "OMB Disapproves New FCC Rule Requiring Backup Power for Wireless," *BNA Daily Report for Executives*, December 12, 2008, p. A-6.

reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.²⁷

Once the agency head requests an expedited authorization, the act requires OIRA to “approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number.”²⁸ If the agency head made such an authorization request of OIRA, he or she could then also specify a short time frame for OIRA to approve such a request, and conduct the collection of information “without compliance with the provisions of [the PRA] for a maximum of 180 days after the date on which the Director received the request to authorize such collection.”²⁹ OIRA would not need to provide 30 days of public comment prior to an approval or disapproval decision within the agency head-specified timeframe regarding the collection of information authorization request.³⁰ Nor would the agency head need to provide a 60-day notice in the *Federal Register* soliciting public comment.³¹

Also, the act permits OIRA to delegate final approval authority to an agency for specific programs or activities, or for all agency purposes, if OIRA concludes that the official in charge of the agency review process is “sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively.”³² OIRA can delegate this authority by publishing a rule in the *Federal Register*.

PRA and Congress

The PRA requires OIRA to keep Congress and congressional committees “fully and currently informed of the major activities” under the act.³³ Specifically, the act requires OIRA to submit an annual report to the President of the Senate and the Speaker of the House of Representatives describing, among other things, the extent to which agencies have reduced information collection burdens on the public. To satisfy this requirement, OIRA develops an annual Information Collection Budget (ICB) by gathering data from agencies.³⁴ The most recent ICB (published in October 2008) reflects changes in agencies’ information collections between fiscal years 2006 and 2007.

The congressional committees with general legislative jurisdiction regarding the PRA are the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on

²⁷ 44 U.S.C. § 3507(j)(1); *see also* 5 C.F.R. § 1320.13.

²⁸ 44 U.S.C. § 3507(j)(2).

²⁹ *Ibid.*

³⁰ 44 U.S.C. § 3507(b). Section 3507(b) states: “The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except as provided under subsection (j).” Subsection (c) addresses proposed collections of information not contained in a proposed rule.

³¹ 44 U.S.C. § 3506(c)(2)(A). Section 3506(c)(2)(A) states: “With respect to the collection of information and the control of paperwork, each agency shall ... except as provided under ... section 3507(j), provide 60-day notice in the *Federal Register*, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment.”

³² 44 U.S.C. § 3507(i)(1).

³³ 44 U.S.C. § 3514(a)(1)(A).

³⁴ To view copies of the ICBs from recent years, see http://www.whitehouse.gov/omb/inforeg_infocoll/#icbusg.

Oversight and Government Reform. The House and Senate Committees on Small Business may also have legislative jurisdiction regarding PRA amendments involving small businesses, and have held oversight hearings regarding the PRA's implementation.³⁵

Burden Reduction Goals in the 1995 Act

One of the key features of the PRA of 1995 was the requirement that OIRA, in consultation with the agency heads, set annual government-wide goals for the reduction of information collection burdens by at least 10% in fiscal years 1996 and 1997, and by at least 5% in each of the succeeding four fiscal years (i.e., fiscal years 1998 through 2001). The act also required OIRA to establish agency-specific burden reduction goals each year representing “the maximum practicable opportunity in each agency.”

At the end of FY1995 (i.e., just before the PRA of 1995 took effect), the government-wide burden estimate stood at about 7 billion burden hours. Therefore, if all federal agencies had been able to meet each of the government-wide burden reduction goals in the 1995 act, by September 30, 2001, the burden-hour estimate would have decreased by about 35% to about 4.6 billion hours. However, this reduction did not occur. In fact, as of September 30, 2001, the government-wide burden estimate was nearly 7.7 billion burden hours. By September 30, 2002, that estimate stood at more than 8.2 billion hours—a 17% increase since the PRA of 1995 took effect. Nearly half of that increase occurred during FY2002 alone, and about 70% occurred during fiscal years 2001 and 2002.

Agencies' Burden-Hour Estimates

No numerical government-wide burden reduction goals have been established since FY2001. As both **Table 1** and **Figure 1** below indicate, federal agencies' government-wide burden-hour estimates declined somewhat in 2003 and 2004, but those estimates have increased substantially since then (from just under 8 billion burden hours in 2004 to nearly 10 billion burden hours in 2009). Some of the most substantial increases occurred in the two-year period between 2005 and 2007, when the government-wide burden-hour estimates increased by a total of 17% (from about 8.2 billion burden hours to about 9.6 billion burden hours). Although OIRA has not published an ICB showing burden-hour estimates after 2007, the on-line PRA database indicates that as of May 2009, the government-wide paperwork estimate stood at more than 9.9 billion burden hours.

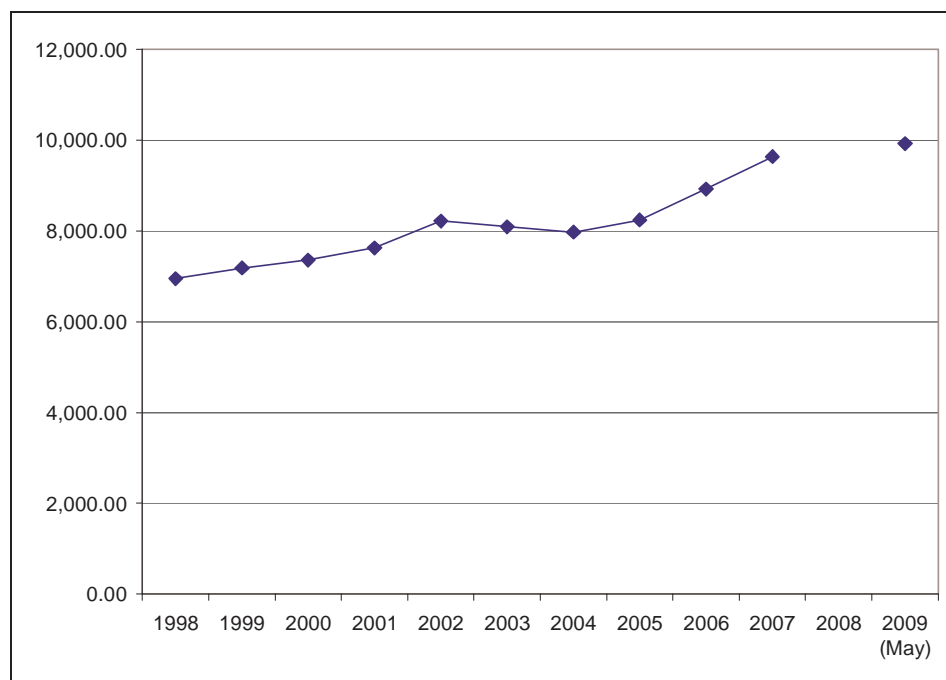
³⁵ For example, on February 28, 2009, the House Committee on Small Business held a hearing on “Improving the Paperwork Reduction Act for Small Businesses.” See <http://www.house.gov/smbiz/democrats/hearings/hearing-02-28-08-paperwork/hearing-02-28-08-paperwork.htm> for the testimony provided at this hearing. See also Ralph Lindeman, “House Small Business Panel Examines Need to Amend Paperwork Reduction Act,” *BNA Daily Report for Executives*, February 29, 2008, p. A-32.

Table I. Agencies' Burden-Hour Estimates, 1998-2009

Fiscal Year	Estimated Number of Burden Hours (in millions)		
	Department of the Treasury	All Other Agencies	Total
1998	5,702.24	1,248.90	6,951.14
1999	5,909.74	1,274.75	7,183.82
2000	6,156.80	1,204.92	7,361.72
2001	6,415.85	1,215.89	7,631.74
2002	6,750.43	1,472.74	8,223.17
2003	6,589.76	1,509.03	8,098.79
2004	6,406.18	1,565.00	7,971.18
2005	6,434.99	1,805.52	8,240.51
2006	6,965.63	1,957.87	8,923.50
2007	7,630.70	2,011.70	9,642.40
2009 (May)	7,747.88	2,176.29	9,924.18

Source: The data from 1998 through 2007 are from OIRA's Information Collection Budgets, 1999 through 2008. The May 2009 data are from OMB's online database at <http://www.reginfo.gov/public/do/PRAMain>.

Note: Neither OIRA's Information Collection Budgets nor OIRA's online database provide burden estimates for 2008. Those data will not be available until the next Information Collection Budget is published later in 2009.

Figure I. Agency Burden-Hour Estimates, 1998-2009

Source: The data from 1998 through 2007 are from OIRA's Information Collection Budgets, 1999 through 2008. The May 2009 data are from OMB's online database at <http://www.reginfo.gov/public/do/PRAMain>.

Notes: Neither OIRA's Information Collection Budgets nor OIRA's online database provide burden estimates for 2008. Those data will not be available until the next Information Collection Budget is published later in 2009.

As **Table 1** also indicates, the government-wide paperwork burden-hour estimate is largely driven by information collections at the Department of the Treasury. Until 2005, the Treasury estimate was more than 80% of the government-wide estimate. Since 2005, however, the Treasury proportion has fallen to slightly below 80%, primarily because of increases in the non-Treasury burden-hour estimates. The Department of the Treasury estimate is, in turn, driven almost entirely by the IRS. For example, as of May 2009, IRS information collections represented nearly 99.5% of the Treasury estimate of more than 7.7 billion burden hours.³⁶

Within the IRS, a few large information collections drive the agency's total estimate. **Table 2** below shows the 10 largest IRS information collections in May 2009, which totaled nearly 6.6 billion burden hours—85.6% of the IRS estimate (which was about 7.7 million burden hours), and 66.4% of the government-wide estimate (which was more than 9.9 million burden hours). Just one collection, the U.S. Individual Income Tax Return, accounts for nearly 3.8 billion burden hours.³⁷

Table 2. Ten Largest IRS Information Collections, May 2009

OMB Control Number	Title of Information Collection	Burden-Hour Estimate
1545-0074	U.S. Individual Income Tax Return	3,789,792,628
1545-0099	U.S. Return of Partnership Income	721,761,123
1545-0092	U.S. Income Tax Return for Estates and Trusts	446,272,566
1545-0130	U.S. Income Tax Return for an S Corporation	420,860,930
1545-0123	Form 1120, U.S. Corporate Income Tax Return	364,168,243
1545-0029	Forms 941, 941-PR and 941-SS, Employer's Quarterly Federal Tax Return	361,309,544
1545-0172	Depreciation and Amortization	217,399,275
1545-1974	Profit and Loss from Business	103,702,448
1545-0184	Sales of Business Property	100,633,248
1545-1466	Third-Party Disclosure Requirements in IRS Regulations	68,885,183
Total	—	6,594,785,188

Source: OIRA's PRA database, available at <http://www.reginfo.gov/public/do/PRAMain>, May 2009.

Other than IRS, the federal agencies with the largest estimated paperwork burdens as of May 14, 2009 were:

- the Department of Health and Human Services (HHS) (473.1 million burden hours);
- the Department of Transportation (DOT) (302.3 million burden hours);
- the Securities and Exchange Commission (SEC) (204.4 million burden hours);

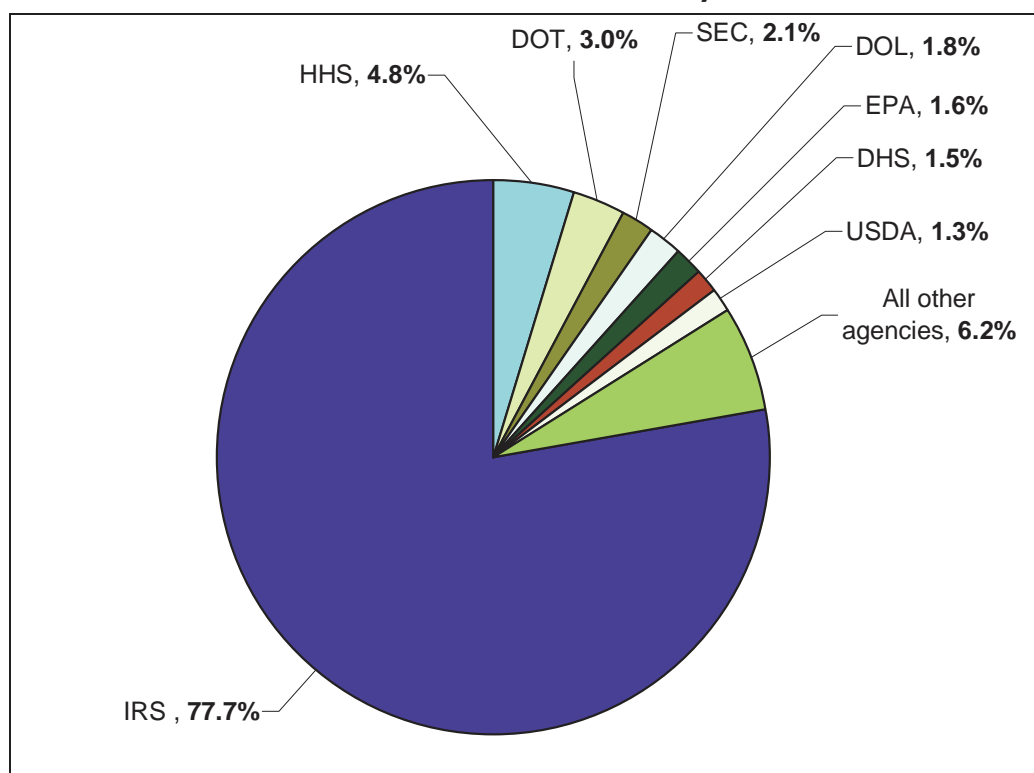
³⁶ As of May 14, 2009, OMB's online database indicated that the IRS burden-hour estimate was 7,707,115,181 (905 information collections), and the Treasury burden-hour estimate was 7,747,881,818 (1,281 information collections).

³⁷ Although considered a single information collection, the U.S. Individual Income Tax Return includes more than 200 forms and schedules (e.g., 1040, 1040-EZ, and W-4). For a complete list, see http://www.reginfo.gov/public/do/PRAICList?ref_nbr=200710-1545-038.

- the Department of Labor (DOL) (179.9 million burden hours);
- EPA (157.1 million burden hours);
- the Department of Homeland Security (DHS) (145.1 million burden hours); and
- the Department of Agriculture (USDA) (126.5 million burden hours).

As **Figure 2** below illustrates, however, the IRS burden-hour estimate is more than three times as large as all other federal agencies combined.

Figure 2. Agency Burden-Hour Estimates as a Proportion of the Government-wide Estimate, May 2009



Source: OIRA's PRA database, available at <http://www.reginfo.gov/public/do/PRAMain>, May 2009.

Notes: Percentages are based on a government-wide estimate of 9,924.18 million burden hours.

Program Changes and Adjustments

OIRA classifies modifications in agency burden-hour estimates as either “program changes” or “adjustments.” Program changes are the result of deliberate federal government action, and represent additions or reductions to existing paperwork requirements that are imposed either through new statutory requirements or an agency’s own initiative. Adjustments are not the result of deliberate federal government action, but rather are caused by factors such as changes in the population responding to a requirement or agency reestimates of the burden associated with a collection of information. For example, an increase in the number of burden hours required for the federal Food Stamp Program because of a downturn in the economy (resulting in an increase in the number of applicants) would be considered an adjustment. Similarly, a revision of the

burden estimate because of a better understanding of the number of applicants or the time required to fill out the application would also be considered an adjustment. On the other hand, a change in the number of questions asked on the application, or a change in the frequency with which applicants must provide information, would be considered a program change.

In recent years, most of the increases in the government-wide burden-hour estimates have been attributed to adjustments, not program changes. For example, OIRA reported that nearly 80% (562.8 million hours) of the 718.9 million hour increase in the government-wide burden estimates between fiscal years 2006 and 2007 shown in **Table 1** above (from 8,923 million burden hours to 9,642.4 million burden hours) was caused by adjustments, not program changes. Most of those adjustments were at the Department of the Treasury (503.2 million of the 562.8 million burden hours). Although OIRA indicated in its PRA report that these adjustments were for a “select set of tax forms accounts,” the report did not indicate whether they were caused by reestimates (and, as a result, did not represent real increases in paperwork burden) or by changes in the population required to complete these forms (reflecting actual increases in cumulative burden).

OIRA also reported that federal paperwork increased by 156.1 million burden hours between fiscal years 2006 and 2007 as a result of program changes, most of which (149.1 million burden hours) were attributed to “new statutes.” Within this category, OIRA said the largest single factor was the American Jobs Creation Act of 2004 (P.L. 108-357), which caused IRS to revise the individual taxpayer return (including the addition of Form 5695 on “Residential Energy Credits”), and caused the burden-hour estimate to increase by 71.5 million burden hours.³⁸

“Agency actions” unrelated to new statutes reportedly caused federal paperwork to increase by 23.8 million burden hours between fiscal years 2006 and 2007, almost all of which (21 million hours) was attributed to the Department of the Treasury. Major elements of this total included the following:

- the addition of several lines to tax Form 990 (7.5 million burden hours);
- additional information required in relation to the U.S. Return of Partnership Income (7.2 million burden hours);
- additional information required in relation to the U.S. Income Tax Return for an S Corporation (2.3 million burden hours); and
- revision of forms and schedules related to the Claim for Refund of Excise Taxes (2.4 million burden hours).

OIRA’s most recent report on the PRA also contains lengthy discussions of ongoing or completed agency efforts to reduce paperwork burden. For example, the report said that:

- U.S. Citizenship and Immigration Services within the Department of Homeland Security had an ongoing initiative that was expected to eliminate the need for applicants, employers, and attorneys to file redundant biographical or corporate data when requesting benefits (reducing estimated burden by more than 1.5 million burden hours);

³⁸ OIRA reported that this change was actually made because of court decisions that interpreted tax legislation, which OIRA then classified as a statutory change.

- the Department of Health and Human Services had an initiative to eliminate or revise obsolete forms, promote the use of electronic reporting and signatures, and reduce reporting frequency (expected to reduce estimated burden by more than 5.3 million burden hours); and
- the IRS is attempting to establish a more efficient and less burdensome process for filing the S-Corporation Form 2553 (preliminarily estimated to reduce burden by 8 million burden hours).

In at least one instance, however, agency burden reduction claims appear to have been overstated. In March 2000, GAO reported that most of EPA's claims to have reduced paperwork burden by 24 million burden hours and saved businesses and communities hundreds of millions of dollars between fiscal years 1995 and 1998 were "misleading," and in fact were the result of agency reestimates, changes in the economy or respondents' technology, or the planned maturation of program requirements.³⁹ GAO pointed out that agencies can also reduce their burden estimates by violations of the act (e.g., by allowing approvals to expire while continuing to collect the information), and said "it is not clear that burden-hour reductions that are based on reestimates, changes in the economy, or violations are what Congress had in mind when the PRA was enacted. Therefore, if Congress and the public want a fuller picture of how the PRA's burden-reduction goals are being implemented, they will have to carefully review the information in OIRA's ICB reports...."⁴⁰

The Cost of Paperwork

Although federal paperwork is most commonly measured in terms of burden hours, OIRA also collects information from federal agencies on the financial costs that are sometimes associated with information collection requirements—e.g., costs for equipment, supplies, information technology systems, and postage related to the collection of the information. These financial costs were not explicitly included in the PRA's definition of burden until the 1995 amendments to the act, and OIRA has said in the past that agency practices in developing these costs vary widely.⁴¹ As of May 2009, OIRA reported that that these annual financial costs totaled nearly \$62.5 billion for the active collections—about the same as they were 10 years earlier.⁴²

In the past, agencies were also required to convert their burden hours into dollar costs. To do so, agencies estimated a wage rate that was applicable to the burden hours associated with the collection. According to OIRA, this wage rate should also include overhead and fringe benefit costs associated with the relevant employees' time. Therefore, OIRA said, the appropriate wage rate to use for a technical employee who is paid \$20 per hour may well exceed \$40 per hour when

³⁹ U.S. General Accounting Office, *EPA Paperwork: Burden Estimate Increasing Despite Burden Reduction Claims*, GAO/GGD-00-59, March 16, 2000.

⁴⁰ *Ibid.*, p. 38.

⁴¹ U.S. Office of Management and Budget, *Information Collection Budget for FY1999*, p. 261, available at <http://www.whitehouse.gov/omb/assets/omb/inforeg/icb-fy99.pdf>.

⁴² For the May 2009 figure, see <http://www.reginfo.gov/public/do/PRAREport?operation=5>. In the FY1999 ICB, OIRA reported these costs as \$51.9 billion in FY1998, and estimated them at \$68.3 billion in FY1999. OIRA reported these costs from FY1999 to FY2002 as between \$59 billion and \$89 billion, but has not reported them in ICBs since FY2002.

other costs are added in (e.g., health and life insurance, retirement contributions, office space, heating and air conditioning, and office supplies).⁴³

Monetization of agency burden-hour estimates in this way can yield large dollar amounts. For example, if one assumes that the typical person filling out federal paperwork earns \$20 per hour (likely a conservative assumption, given the complicated nature of many information collection requirements),⁴⁴ and if overhead and fringe benefit expenses raise that hourly rate to \$40, then monetization of the May 2009 burden-hour estimate results in a total cost of \$396 billion (9.9 billion burden hours times \$40 per hour). Adding the other financial costs (\$62.5 billion per year in the most recent ICB) yields a total estimated annual cost of federal paperwork of \$458.5 billion. However, given the varied purposes of these requirements (e.g., verification of taxes owed, benefits payments, and regulatory enforcement), the benefits of federal paperwork may greatly exceed these costs.

PRA Violations

As noted earlier in this report, failure to obtain OIRA approval for an active information collection, or the lapse of that approval, represents a violation of the PRA. The public protection provisions of the act state that:

no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if (1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or (2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.⁴⁵

However, courts have held that agency violations of the PRA do not create a private right of action, and are therefore not judicially reviewable.⁴⁶

OIRA must include in its annual PRA report “a list of all violations” of the act.⁴⁷ OIRA’s PRA report for 2008 indicated that the number of violations have fallen sharply in recent years, from more than 350 in FY2002 to 15 in FY2007.⁴⁸ All 15 violations were new in FY2007 (i.e., no carry-overs from previous fiscal years). The Department of Transportation was rated as “poor” (with five or more violations), and five departments and agencies were rated as “need improvement” (one to four violations)—the Departments of Energy, Justice, and Health and Human Services; the Small Business Administration, and the Social Security Administration. All other departments and agencies had no violations.

⁴³ U.S. Office of Management and Budget, *Information Collection Budget for FY1999*, p. 35, available at <http://www.whitehouse.gov/omb/assets/omb/inforeg/icb-fy99.pdf>.

⁴⁴ For example, in *The Impact of Regulatory Costs on Small Firms*, by W. Mark Crain and Thomas D. Hopkins (available at <http://www.sba.gov/advo/research/rs264tot.pdf>), the authors used wage rates of more than \$37 per hour to calculate the cost of tax compliance in 2004.

⁴⁵ 44 U.S.C. § 3512(a).

⁴⁶ See *Association of American Physicians & Surgeons, Inc. v. U.S. Department of Health and Human Services*, 224 F.2d 1115 (S.D. Tex. 2002); *Tozzi v. EPA*, 148 F. Supp. 2d 35 (D.D.C. 2001).

⁴⁷ 44 U.S.C. § 3514(a)(2)(A)(ii).

⁴⁸ See http://www.whitehouse.gov/omb/assets/omb/inforeg/icb/2008_icb_final.pdf for a copy of this report.

OIRA's efforts to control PRA violations came in the wake of a series of critical reports by GAO. For example, in 2004, GAO reported that PRA violations had fallen from a high of 872 in FY1998 to 223 in FY2003.⁴⁹ While praising OIRA for taking action to address PRA violations (e.g., using its PRA database to identify information collections that have recently expired), GAO said that OIRA could do more, including notifying budget examiners within OMB that an agency is collecting information in violation of the PRA, and allowing them to put pressure on the agency to come into compliance with the act. In its 2007 PRA report, OIRA described its recent efforts to improve agency compliance (e.g., the enhancement of its database to enable agencies to prepare a "watchlist" of collections that will expire shortly).⁵⁰

PRA-Related Appropriations and Staffing Issues

The PRA of 1995 authorized \$8 million in appropriations to OIRA in fiscal years 1996 through 2001 to carry out the purposes of the act "and for no other purpose." Since 2001, the PRA and OIRA (which, as noted previously, was created by the PRA) have operated without an appropriations authorization. OIRA does not have a specific line item in the annual budget, so its funding is part of OMB's appropriation. Similarly, OIRA's staffing levels are allocated from OMB's totals.

In the 108th Congress, a provision in H.R. 2432 as originally introduced would have required the OMB Director to "assign, at a minimum, the equivalent of at least 2 full time staffers to review the Federal information collection burden on the public imposed by the Internal Revenue Service." As noted previously, the IRS accounts for about 80% of the estimated paperwork burden government-wide, but OIRA indicated that it devoted less than one full-time equivalent staff person to reviewing the agency's paperwork requests (reportedly because much of the burden is mandated by statute or is outside of the agency's control).⁵¹ The George W. Bush Administration objected to this specific direction of OIRA staff, so the sponsors of the bill agreed to delete this requirement before the legislation was approved by the House of Representatives in May 2004. No similar proposed legislation has been introduced in the 111th Congress.

The PRA and Small Businesses

One of the agency certifications that the PRA requires to be submitted to OIRA is that the proposed information collection reduces the amount of paperwork burden to the extent practicable, "including with respect to small entities."⁵² The act goes on to describe techniques that can be used to accomplish this goal, including "(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or (iii) an exemption from coverage of the collection of information, or any part

⁴⁹ U.S. General Accounting Office, *Paperwork Reduction Act: Agencies' Paperwork Burden Estimates Due to Federal Actions Continue to Increase*, GAO-04-676, April 20, 2004.

⁵⁰ See http://www.whitehouse.gov/omb/assets/omb/inforeg/icb/2008_icb_final.pdf, p. 11.

⁵¹ See, for example, U.S. General Accounting Office, *Paperwork Reduction Act: Implementation at IRS*, GAO/GGD-99-4, November 16, 1998.

⁵² 44 U.S.C. § 3506(c)(3)(C).

thereof.”⁵³ Some studies indicate that paperwork requirements are more burdensome on small businesses than larger companies.⁵⁴

In June 2002, Congress enacted and the President signed the Small Business Paperwork Relief Act of 2002 (P.L. 107-198). The act amended the Paperwork Reduction Act to, among other things, require each agency to establish a single point of contact to act as a liaison for small business concerns with regard to information collection and paperwork issues. It also directed agencies to make a special effort to reduce information collection burdens for small businesses with fewer than 25 employees. OMB was directed to publish in the *Federal Register* and make available on the Internet an annual list of the compliance assistance resources available to small businesses.⁵⁵ The act also established an interagency task force to study the feasibility of streamlining information collection requirements on small businesses. OIRA’s second and most recent report on this task force in June 2004 contained “findings and recommendations intended to reduce the burden imposed on small businesses by government paperwork information collection requirements.”⁵⁶ For example, it identified opportunities for improved consolidation or coordination of information dissemination efforts, and described an internet-based system to help small businesses understand and comply with existing paperwork requirements.⁵⁷

In the 111th Congress, H.R. 535 would, if enacted, amend the PRA to “provide for the suspension of fines under certain circumstances for first-time paperwork violations by small business concerns.” Fines would only be allowed under certain circumstances (e.g., when the head of the agency determines that the violation presents a danger to public health or safety, or was not corrected within six months). Similar legislation was introduced but not enacted in the 110th Congress (H.R. 456 and S. 281), and was a provision in other legislation that was not enacted (H.R. 1012).

The PRA and Inspectors General

One PRA-related issue of concern in recent years has been whether the act’s requirements should apply to audits and investigations being conducted by agency Inspectors General (IGs). OIRA considers the IGs to be subject to the PRA, and has required them to (1) allow the public to comment on their proposed collections of information, and (2) submit those proposed collections to agency CIOs and OIRA for review and approval. Several IGs have said that the PRA’s requirements have affected their ability to conduct timely audits and investigations, and that the requirement for agency and OIRA approval compromises their independence.⁵⁸ For example, IG

⁵³ *Id.*

⁵⁴ See, for example, W. Mark Crain and Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms* (available at <http://www.sba.gov/advo/research/rs264tot.pdf>), which indicated that the cost of tax compliance paperwork is 67% higher in small firms than in large firms.

⁵⁵ These lists of compliance assistance resources are available on the OMB website at <http://www.whitehouse.gov/omb/infocoll.html#sbpra> and on the SBA website at <http://www.sba.gov/ombudsman/compliance/complianceassist.html>.

⁵⁶ See <http://www.whitehouse.gov/omb/assets/omb/infocoll/sbpra2004.pdf> for a copy of the most recent report on SBPRA.

⁵⁷ In 1998, Congress enacted the Government Paperwork Elimination Act (44 U.S.C. § 3504 note), which required that by October 2003, federal agencies provide the public, when practicable, with the option of submitting, maintaining, and disclosing information electronically, instead of on paper.

⁵⁸ Memorandum from Howard Nicholson, Office of Counsel, U.S. Environmental Protection Agency, *The Paperwork* (continued...)

offices at the EPA and SEC have reported that they had limited certain surveys to fewer than 10 respondents in order to avoid the PRA's requirements.⁵⁹ Another IG office reportedly turned to GAO to undertake a survey that encountered "PRA compliance constraints."⁶⁰ One IG office reportedly conducted a congressionally-required audit without adherence to the PRA because obtaining agency and OIRA approval for the collection would have caused the office to miss the congressionally-established reporting deadline. Other IGs have decided not to undertake information collections because of the PRA requirements.⁶¹

Similar concerns regarding the effect of the PRA have been expressed by the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) in connection with his oversight of the Emergency Economic Stabilization Act (EESA).⁶² In January 2009, the SIGTARP was reportedly told by OMB that he could not send an inquiry letter to the recipients of TARP funds asking how those funds were being used without first obtaining comments from TARP recipients, and then explaining to OMB how he had taken the comments into account in redrafting the inquiry letter.⁶³ However, after Senator Grassley sent a letter to the Director of OMB questioning these requirements, the SIGTARP received emergency OMB approval for this collection of information.

Neither the PRA nor the Inspector General Act of 1978, as amended (IG Act), specifically indicates whether IGs should be considered covered "agencies" under the PRA,⁶⁴ nor whether IG audits and investigations should be covered. Although the PRA specifically excludes GAO and other entities from the act's coverage, IGs (which were created two years before the PRA was enacted in 1980) were not similarly excluded, and it could be argued that GAO has similar auditing and investigative functions to those of IGs.⁶⁵ Likewise, EESA does not exclude the

(...continued)

Reduction Act and its Impact on Inspectors General (Feb. 8, 2008) [hereinafter Nicholson memorandum]; Letter from J. Anthony Ogden, Chair, Legislation Committee, Council of the Inspectors General on Integrity and Efficiency, to Senators Joseph Lieberman and Susan Collins, Senate Committee on Homeland Security and Governmental Affairs, *Re: Proposed Amendment to Paperwork Reduction Act* (Mar. 24, 2009) [hereinafter Ogden letter].

⁵⁹ Ogden letter, *supra* note 58.

⁶⁰ Nicholson memorandum, *supra* note 58.

⁶¹ Ogden letter, *supra* note 58.

⁶² Information in this section was drawn from CRS Report R40099, *The Special Inspector General for the Troubled Asset Relief Program (SIGTARP)*, by (name redacted).

⁶³ Letter to The Honorable Peter R. Orszag, Director, Office of Management and Budget, from Senator Charles E. Grassley, Ranking Member of the Committee on Finance (Jan. 30, 2009).

⁶⁴ As mentioned previously in this report, the PRA defines "agency" as "any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency." Few court cases have explored or defined the definition of "agency" in the PRA. See, for example, *Shane v. Buck*, 658 F. Supp. 908 (D. Utah 1985) *aff'd* by 817 F.2d 87 (10th Cir. 1987) and *Kuzma v. United States Postal Service*, 798 F.2d 29 (2d Cir. 1986), *cert. denied*, 479 U.S. 1043 (1987), in which the courts concluded that the U.S. Postal Service was not subject to the requirements of the PRA.

⁶⁵ One principle of statutory interpretation, that the inclusion of one is the exclusion of others, may pertain to this situation: "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of a contrary legislative intent." *Andrus v. Glover Const. Co.*, 446 U.S. 608, 616-17 (1980) (citing *Continental Casualty Co. v. United States*, 314 U.S. 527, 533 (1942)). However, context may render this principle inapplicable, and the Supreme Court has also concluded that a statutory listing may be "exemplary, not exclusive." *Nations Bank v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 257 (1995). In *Kuzma v. United States Postal Service*, the court stated: "In contrast, the Postal Rate Commission is referred to specifically as an agency subject to the requirements of the PRA. See 44 U.S.C. § 3502(10). It is clear, therefore, that Congress could have explicitly subjected (continued...)"

SIGTARP from the PRA's requirements. As noted earlier in this report, the PRA applies to collections of information during *general* investigations “undertaken with reference to a category of individuals or entities,” but it does not apply to collections “during the conduct of a Federal criminal investigation” or “during the conduct of ... an administrative action or investigation involving an agency against *specific* individuals or entities.”⁶⁶ Legislative and non-legislative alternatives to address concerns about the application of the PRA to IGs are discussed below.

Concluding Observations

Although the burden reduction goals in the PRA of 1995 were not met, in the absence of a counterfactual (i.e., if the PRA had not been enacted), it is less clear how successful the act has been in achieving the more general goal of “minimizing” paperwork burden on the public. Agency and OIRA reviews of agencies’ information collection requests have presumably had some effect in keeping federal paperwork burden lower than it would have been in the absence of the PRA and those reviews. It is also important to keep in mind that the benefits that flow from federal information collection requirements (e.g., determining whether the appropriate amount of taxes have been paid, and whether federal environmental laws are being obeyed) may exceed the costs they impose on the reporting public. Also, the costs associated with regulatory information collections may be far less than if more “command-and-control” regulatory approaches had been used. Nevertheless, the nearly 2 billion burden-hour growth in the government-wide paperwork estimate between 2004 and 2009 (a 25% increase in five years) is likely to suggest to some that more should be done to minimize federal paperwork burden.

Burden-Reduction Approaches

The most appropriate approaches to reduce federal paperwork burden depend on the source of that burden. If, as the IRS and other agencies suggest, most of the burden associated with their information collections is statutorily required, then the primary responsibility for reducing that burden rests with Congress. There is some evidence to indicate that this is true in at least some instances. In 1999, GAO reported that the statutes underlying 13 of 27 regulatory concerns gave the rulemaking agencies no discretion in establishing the regulatory requirements at issue, and in 12 other concerns the agencies had only some discretion in establishing those requirements.⁶⁷

However, in some cases, agencies have claimed that their paperwork burden increases are statutorily required, but then later claimed reductions in that burden as agency initiatives (e.g., by reducing the frequency of the collection from twice a year to once a year, or by shortening a form). This sequence of events suggests that while Congress may require agencies to collect certain types of information, it may also give the agencies discretion regarding how much information is required, how often, and from what precise population of respondents. In such situations, federal agencies and OIRA may bear much of the responsibility for reducing federal paperwork burden.

(...continued)

the USPS to the terms of the PRA had it wished to do so.” 798 F.2d 29, 32 (2d Cir. 1986).

⁶⁶ 44 U.S.C. § 3518(c)(1) (emphasis added).

⁶⁷ U.S. General Accounting Office, *Regulatory Burden: Some Agencies’ Claims Regarding Lack of Rulemaking Discretion Have Merit*, GAO/GGD-99-20, January 8, 1999.

OIRA and federal agencies may also be able to play a greater role in burden reduction. As noted earlier in this report, some in Congress have proposed that OIRA devote a certain minimum number of staff to the review of IRS information collections.⁶⁸ Another possible approach is for OIRA to focus its efforts on the larger information collections—similar to the way that OIRA’s regulatory reviews have focused only on draft rules that are at least “significant” under Executive Order 12866.⁶⁹ As **Table 3** below indicates, most of the nearly 8,700 active information collections as of May 2009 had estimated paperwork burdens of less than 4,000 hours. Clearances for information collections below a certain threshold could be delegated to federal agencies, thereby potentially expediting the review and clearance process, and allowing OIRA to spend more time on the collections with the largest burden. However, GAO’s 2005 report on agency certifications suggests that such delegations of clearance authority may need to be limited to those agencies with demonstrated capabilities in this area.⁷⁰

Table 3. Number of Collections of Information by Size Category, May 2009

Number of Burden Hours in Collection of Information	Number of Collections of Information in Size Category	Cumulative Number of Collections of Information
0 - 50	853	853
51 - 200	831	1,684
201 - 500	761	2,445
501 - 1,000	687	3,132
1,001 - 2,000	752	3,884
2,001 - 4,000	732	4,616
4,001 - 8,000	685	5,301
8,001 - 15,000	663	5,964
15,001 - 30,000	555	6,519
30,001 - 50,000	401	6,920
50,001 - 100,000	433	7,353
100,001 - 500,000	719	8,072
500,001 - 1,000,000	203	8,275
1,000,001 - 10,000,000	314	8,589
10,000,001 - 100,000,000	68	8,657
100,000,001 +	10	8,667

Source: OMB’s PRA database, available at <http://www.reginfo.gov/public/do/PRAMain>.

⁶⁸ In the 108th Congress, a provision in H.R. 2432 as originally introduced would have required the OMB Director to “assign, at a minimum, the equivalent of at least 2 full time staffers to review the Federal information collection burden on the public imposed by the Internal Revenue Service.”

⁶⁹ Under Executive Order 12291, from 1981 until 1993, OIRA reviewed the substance of all covered agencies’ regulations—about 2,000 to 3,000 rules each year. Under Executive Order 12866, OIRA has reviewed only about 500 to 700 “significant” regulations each year, thereby allowing OIRA to spend more time on each rule.

⁷⁰ U.S. Government Accountability Office, *Paperwork Reduction Act: New Approach May Be Needed to Reduce Government Burden on the Public*, GAO-05-424, May 20, 2005.

The PRA and the IGs/SIGTARP

If Congress decided to respond to recent concerns about the application of the PRA to IGs or the SIGTARP, Congress could exempt all or certain types of information collections by these entities from the act's requirements—similar to the way that the PRA currently exempts GAO's information collections.⁷¹ Those exemptions could be accomplished by amending the PRA's definition of an "agency," or by amending the IG Act or EESA. The Legislation Committee of the Council of the IGs on Integrity and Efficiency has proposed an exemption for IGs from PRA collection of information requirements, which would amend 44 U.S.C. § 3518(c) to exclude from the PRA information collections "during the conduct of any investigations, audits, inspections, evaluations, or other reviews" by federal statutory IG offices.⁷² S. 976, introduced by Senator Grassley, would amend 44 U.S.C. § 3518(c) to exclude such collections of information. This bill would exempt such collections of information by IGs established in the IG Act, Special IGs established by statute (such as SIGTARP), the Council of the IGs on Integrity and Efficiency, and the Recovery Accountability and Transparency Board, which is comprised of IGs from several departments and agencies.

Alternatively, there are non-legislative options. If OIRA wanted to do so, it could use its authority under the PRA to exempt certain IG and/or SIGTARP collections from review (e.g., those involving specific individuals or entities), or OIRA could provide expedited reviews to those entities' information collection requests. Another option would be for an IG (including the SIGTARP) to use the subpoena powers of its office to compel the production of the information needed. Section 6(a)(4) of the IG Act states that "each Inspector General, in carrying out the provisions of this Act, is authorized ... to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the functions assigned by this Act." IG subpoenas are judicially enforceable by order of a United States district court.

Reauthorization of OIRA

The PRA of 1995 authorized appropriations for OIRA to carry out the PRA's requirements through September 30, 2001. Since then, OIRA has been funded through OMB's general appropriation. Historically, the reauthorization of appropriations for OIRA has provided an opportunity for Congress to amend the PRA and, in so doing, to try and improve the act's implementation. Although the Subcommittee on Regulatory Affairs of the House Committee on Government Reform and Oversight held general hearings on the PRA in March and July 2006, no legislation was before the subcommittee at the time, and no legislation to reauthorize OIRA appropriations has been submitted since 2001.

⁷¹ The former President's Council on Integrity and Efficiency, a council of presidentially-appointed IGs that has now been codified, reconstituted, and renamed under the Inspector General Reform Act of 2008, has previously suggested amendments that would add a new 44 U.S.C. § 3502(1)(E) exemption for federal IGs to the PRA definition of "agency." See President's Council on Integrity and Efficiency (PCIE), *Conflict between the Paperwork Reduction Act of 1995 and the Independence of Inspectors General under the Inspector General Act of 1978*, March 2007.

⁷² Ogden letter, *supra* note 58.

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