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July 19, 2005

The Honorable Candice S. Miller
Chair
The Honorable Stephen F. Lynch
Ranking Minority Member
Subcommittee on Regulatory Affairs
Committee on Government Reform
House of Representatives

Subject: *Paperwork Reduction Act: Subcommittee Questions Concerning the Act's Information Collection Provisions*

This letter responds to your request of June 22, 2005, that we provide answers to questions relating to our June 14 testimony¹ on the Paperwork Reduction Act (PRA). At the June hearing, we discussed the estimates of government paperwork burden provided in the annual PRA report (known as the Information Collection Budget) that the Office of Management and Budget (OMB) recently released, as well as results from our report on agencies' PRA processes and compliance.² Your questions, along with our responses, follow.

1. *With the passage of the Paperwork Reduction Act (PRA) of 1995, the intent of the Congress was to reduce the burden imposed on the public by federal agencies. Is the PRA in its current form an effective tool for reducing public burden?*

As discussed in our report, the PRA in its current form contains mechanisms intended to reduce the public burden. Among these is the requirement that OMB review all information collections, as well as the requirement put in place by the 1995 amendments to the PRA, that agencies establish a process to review program offices' proposed collections before the OMB review. This agency review process is to be carried out by the official responsible for the act's implementation—now the agency's

¹GAO, *Paperwork Reduction Act: Burden Reduction May Require a New Approach*, [GAO-05-778T](#) (Washington, D.C.: June 14, 2005).

²GAO, *Paperwork Reduction Act: New Approach May Be Needed to Reduce Government Burden on Public*, [GAO-05-424](#) (Washington, D.C.: May 20, 2005).

Chief Information Officer (CIO)³—who is to be sufficiently independent of program responsibility to evaluate fairly whether information collections should be approved. As part of this process, the CIO is to certify that information collections meet 10 standards set forth in the act, including that they reduce the burden on the public to the extent practicable and appropriate.

However, as discussed in our report, the current implementation of this CIO review offers opportunities for improvement. As the case studies in our report demonstrate, the review has been reduced to a routine administrative process, rather than the rigorous analytical process envisioned by the Congress, and does not appear to be effective in reducing the burden. Accordingly, we recommended that agency CIOs strengthen support for certifications, a process that has the potential to improve the effectiveness of the review mechanism as a means to reduce the burden. More effective implementation would make the PRA in its current form a more effective tool for reducing the burden.

In addition, we described more targeted approaches to burden reduction that have been pursued at the Internal Revenue Service (IRS) and the Environmental Protection Agency (EPA). Both IRS and EPA have reported success with these efforts, and we suggested in our report that the Congress may want to consider mandating the development of pilot projects to test and review the value of such approaches. However, we also noted that targeted reviews of the kind that IRS and EPA perform would require more resources than are now devoted to the CIO review process, and may not be warranted at agencies that do not have the extensive paperwork issues that these two agencies have.

2. True reductions in the burden should take place due to program changes—either statutory or agency-initiated. Additionally, certain adjustments, such as those caused by the decreased burden associated with subsequent collections following the initial request, can reflect a real change in the burden experienced by the public.

Federal agencies may use adjustments to lessen the true burden increases caused by discretionary agency actions. How can current law be modified to ensure that agencies engage in activities that truly reduce the burden through discretionary program changes and not through simple adjustments?

First, there may be opportunities to achieve such burden reduction without modifications to the law. Under the current law, agency CIOs are required to certify that for each information collection, the agency has reduced the associated burden to the extent practicable. However, as we describe in our response to question 1, the certification process is currently more administrative than analytical. Improving the

³The 1995 amendments used the 1980 act's reference to the agency "senior official" responsible for implementation of the act. A year later, the Congress gave that official the title of agency Chief Information Officer (the Information Technology Management Reform Act, Pub. L. 104-106, Feb. 10, 1996, which was subsequently renamed the Clinger-Cohen Act, Pub. L. 104-208, Sept. 30, 1996).

execution of this process could increase agencies' activities to reduce the burden through program changes.

A second way to potentially achieve such burden reductions—which does involve changes to the PRA—was discussed in our report. The Congress could consider mandating the establishment of pilot projects to test and review the targeted approaches to burden reduction used by IRS and EPA. Such pilot projects would encourage agencies to explore different possible activities having the potential to truly reduce the burden. However, as mentioned earlier, targeted reviews of the kind that IRS and EPA do would require more resources than are now devoted to the CIO review process, and may not be warranted at agencies with less extensive paperwork issues than there is at these two agencies.⁴

3. As the Congress considers reauthorization of the PRA, what changes to the information collection requirements of the act should the Congress consider?

In our report, we identified two changes that we believe the Congress should consider. First, we suggested that the Congress consider amending the act to mandate pilot projects similar to the targeted efforts being implemented by IRS and EPA and to measure and evaluate the success of these projects. Second, we suggest that the Congress consider eliminating the additional public comment period (the 60-day notice) added by the 1995 amendments (see the answer to question 8). In addition, in light of the lack of understanding of the current PRA requirement that public consultation occur on all collections, the Congress might consider clarifying what level of public consultation it expects for new and existing collections (see the answer to question 9).

4. The GAO recommends the Director of the Office of Management and Budget (OMB) take five actions to improve agency compliance with the PRA. Furthermore, the GAO recommends five actions to be undertaken by the agencies subject to its investigation. What actions could the Congress take to ensure these recommendations are realized by agencies governmentwide?

Some of the actions we recommended to OMB would, if implemented, have governmentwide impact, such as clarifying its guidance in various ways and directing agencies to review forms on agency Web sites for PRA compliance. As part of our standard processes, we systematically follow up on recommendations and make information on their status available to the Congress. Accordingly, we will be reviewing the actions of OMB and the other agencies to respond to our recommendations. In addition, the Congress could continue to hold regular oversight hearings where it could monitor follow-up on our recommendations and their governmentwide effect.

⁴IRS and six other agencies account for more than 90 percent of the federal burden; thus, relatively small reductions in the burden imposed by these agencies could have a major effect on reducing the paperwork burden governmentwide.

5. *What are some problems associated with specific burden reduction goals, such as those mandated by the 1995 PRA? How can the Congress mandate specific burden reductions caused by agency-initiated program changes?*

A major problem associated with these goals is that, so far, they have not produced the intended results. We commented in our testimony on the government's lack of success in meeting the specific burden reductions mandated by the 1995 PRA. Our recommendation that the CIO review process be strengthened is one possible approach to improving agencies' success in reducing the burden.

A second problem is the intrinsic difficulty of accurately estimating the burden. As we said in our testimony, "Because of limitations in the ability to develop accurate burden estimates, the degree to which agency burden-hour estimates reflect the real burden is unclear." It is challenging to estimate the amount of time it will take for a respondent to collect and provide the information or how many individuals an information collection will affect.⁵ OMB's latest report⁶ on the paperwork burden also alludes to this difficulty, observing with regard to IRS that "... in an effort to more accurately measure the paperwork burden, IRS is currently evaluating its current methodology which, although vastly more sophisticated than that used by most federal agencies, has recognized shortcomings. The current methodology is based on survey data almost 20 years old and measures only certain types of taxpayer compliance burdens. It has limited ability to predict changes in the compliance burden resulting from changes in tax policy or tax system administration."

In regard to mandating specific burden reductions, we made a related suggestion in our report. Specifically, we suggested that the Congress may wish to mandate the development of pilot projects to test and review the value of approaches such as those used by IRS and EPA. As part of this pilot, agencies could identify specific burden reduction goals for the targeted collections and report on reductions achieved.

6. *The Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) stated that OMB is considering changing instructions for agencies to align them more closely to the 10 standards in the PRA. How can the Congress ensure that any proposed revisions to OMB guidance are aligned with relevant statutes, either existing or new?*

As part of our standard recommendation follow-up, we will be reviewing OMB's actions to revise its guidance in the ways we recommended, and we will make the results of this follow-up available to the Congress. The Congress could also continue to hold regular oversight hearings where it could monitor OMB's actions.

⁵See GAO, *EPA Paperwork: Burden Estimate Increasing Despite Reduction Claims*, [GAO/GGD-00-59](#) (Washington, D.C.: Mar. 16, 2000) for how one agency estimates the paperwork burden.

⁶Office of Management and Budget, Office of Information and Regulatory Affairs, *Managing Information Collection: Information Collection Budget of the United States Government, Fiscal Year 2005* (May 2005), http://www.whitehouse.gov/omb/infoleg/2005_icb_final.pdf.

7. *Has the PRA been effective in facilitating communication between federal agencies and the public as information collections are developed and reviewed? Are there any provisions of the PRA that agencies have cited as being a disincentive to reach out to the public?*

Although the act provides mechanisms to encourage communication between federal agencies and the public, the implementation of these mechanisms could be more effective. That is, the act explicitly states in section 3506 (c)(2)(A) that, in addition to providing a 60-day notice in the *Federal Register*, each agency shall otherwise consult with members of the public and affected agencies concerning *each* proposed collection of information. However, agencies have not complied with this requirement. We reported that a key reason for this noncompliance is OMB's guidance that such consultation is optional. According to this guidance, agencies should "otherwise consult," or affirmatively reach out to the public, only on those collections that OMB says "deserve such effort." As we stated in our report, if agencies do not actively consult with the public, they limit their ability to determine whether proposed collections adequately satisfy the act's standards. As a result, their collections may be unnecessarily burdensome because of lack of clarity, unnecessarily onerous recordkeeping requirements, or other reasons.

We also concluded that the 60-day *Federal Register* comment period has had limited effectiveness in obtaining the views of the public. As we reported, most agencies provided the required 60-day *Federal Register* notice, but only an estimated 7 percent of those notices generated one or more comments. We believe the *Federal Register* notice is not effective in facilitating communication between federal agencies and the public because it generates so few comments. Moreover, in the act's second required *Federal Register* notice, the public has another opportunity to provide its views. For these reasons, other types of consultation are important and should be encouraged. For example, some agencies post proposed collections on their Web sites and ask the public to comment. Similarly, OMB could establish links on its Web site to each agency's proposed collections (as is done with agencies' proposed regulations on (www.regulations.gov) and ask for public comments.

Agencies have cited another disincentive to undertaking active consultation: The act defines a collection of information requiring approval as the obtaining of facts or opinions by an agency that calls for answers to identical questions posed to 10 or more persons. According to agencies, this 10-person provision restricts their ability to consult with the public on their proposed information collection requests. We reported in 2000, for example, that EPA officials "noted that the extent and nature of the agency's public consultations is limited by the PRA's requirements. . . . A survey or a series of meetings with 10 or more potential respondents to a proposed information collection would itself constitute a collection of information, thereby triggering the [OMB] approval process and adding the burden associated with the collection to the agency's total."⁷ OMB's instructions to agencies acknowledge this constraint and state that "agencies should not conduct special surveys to obtain

⁷GAO/GGD-00-59, 23.

information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable.”

However, OMB has the option of developing alternatives to allow agencies to consult on these matters. For example, it could devise and approve a standard public consultation survey asking for responses to proposals for (or renewals of) information collections that agencies could use without further OMB approval.

8. *In its report, the GAO suggests that the Congress may want to consider eliminating the requirement that agencies publish an initial 60-day notice in the Federal Register for proposed collections. Can you elaborate on this suggestion? Would eliminating the required 60-day notice decrease public involvement in the development of an agency’s information collection? Is there a legislative alternative to eliminating the 60-day notice requirement? For example, how could the Congress change existing law to create an exemption for routine information collections and/or for collections that impose a minimal amount of burden on the public?*

Our suggestion that the Congress consider eliminating the publication of the initial 60-day notice in the *Federal Register* is based on our observation that this notice had limited effectiveness in generating public involvement. (We did not analyze the responses generated by the second 30-day *Federal Register* notice as part of our review.) In our view, eliminating this notice would not, therefore, appreciably decrease public involvement in the development of information collections. If agencies instead performed other types of consultation, as we recommended, we see the potential for a net increase in public involvement.⁸

If the Congress chooses not to eliminate this notice, it could create exemptions for certain types of collections, such as extensions (currently approved collections that are being extended with no change) or “voluntary” collections (that is, where the public is under no obligation to respond; for these, agencies have an incentive to minimize burden so as to encourage the public to respond when there is no legal obligation to do so). Alternatively, the Congress could create an exemption for proposed collections that impose a minimal number of burden hours or affect only a small number of respondents. Such exemptions could free up agency resources that could be devoted to improving compliance on more significant collections. We have not studied the relative merits of these alternatives, however.

9. *In the GAO report, OMB and three agencies disagreed with GAO’s assertion that public consultation occur on each collection in addition to the required 60-day Federal Register notice. The Department of Labor’s CIO expressed concern that additional public consultation, particularly for routine renewals of collections,*

⁸Other types of consultation might include holding meetings with representative groups, posting information on Web sites, and so on. For example, IRS convenes periodic meetings between its personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings there are opportunities for those attending to make comments on forms used for information collection.

would not be a good use of agency resources.

If the Congress were to consider altering this particular provision to improve its effectiveness as a tool to improve public consultation, can legislative corrections be made to differentiate between significant collections and routine collections and/or collections that impose a minimal amount of burden? If so, how can the Congress modify the PRA to facilitate public outreach without forcing agencies to spend valuable resources engaging in such activities for routine information collections or when such actions are considered unnecessary?

If the Congress wants to alter the existing public consultation requirements in the PRA, it has various alternatives for creating exemptions. For example, it could create an exemption for certain types of collections, such as extensions of currently approved collections or voluntary collections. Alternatively, the Congress could create an exemption for proposed collections that impose a minimal amount of burden on the public or affect only a small number of respondents. We have not studied the relative merits of these alternatives, however.

Agency Comments and Our Evaluation

We provided a draft of this letter to OMB officials for comment. The Chief for the Health, Transportation and General Government Branch in OMB's Office of Information and Regulatory Affairs stated that OMB had no comments.

In responding to these questions, we relied on past work related to our review of agencies' processes for reviewing paperwork collections under the act. We conducted our work in accordance with generally accepted government auditing standards during June and July 2005.

We are sending copies of this letter to the Director of OMB and to other interested parties. Copies will also available at no charge at our Web site at www.gao.gov.

Should you or your offices have any questions on matters discussed in this letter, please contact me at (202) 512-6240 or by e-mail at koontzl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this correspondence include Al Stapleton, Assistant Director; Barbara Collier; Nancy Glover; David Plocher; and Warren Smith.

A handwritten signature in black ink that reads "Linda D. Koontz". The signature is written in a cursive style with a large initial "L" and "K".

Linda D. Koontz
Director, Information Management Issues

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