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MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES AND INDEPENDENT REGULATORY AGENCIES

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SUBJECT: Flexibilities under the Paperwork Reduction Act for Compliance with Information Collection Requirements

Federal departments and agencies must comply with the Paperwork Reduction Act of 1995 (PRA)[1] when they seek to collect information from the public. The PRA sets out processes designed to ensure that both the value of collecting the information and the public burden of providing that information are considered carefully.[2]

At the same time, the PRA is not a one-size-fits-all statute. Over the years, the Office of Information and Regulatory Affairs (OIRA) has clarified and streamlined the required PRA processes in order to adapt to emerging technologies and new approaches to engaging with the public.[3] Agencies, however, have varied in their use of the flexibilities that the PRA allows. This Memorandum provides an overview of the administrative flexibilities available to assist agencies in complying with their statutory obligations under the PRA.

The discussion that follows is intended to help Federal agencies understand where and how they can use more streamlined processes to satisfy their public notice requirements through an initial plan for future information collections; how they can make certain minor changes to information collections without lengthy review; and how they can receive expedited clearance for information collections in certain situations. The discussion also addresses how agencies can

[1] 44 U.S.C. chapter 35, *available at* https://www.gpo.gov/fdsys/pkg/USCODE-2011-title44/pdf/USCODE-2011-title44-chap35.pdf; 5 C.F.R. Part 1320, *available at* http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=454df3e4dfcaaaf0af817c4e0c858cef&mc=true&n=pt5.3.1320&r=PART&ty=HTML. Note that, in addition to the flexibilities discussed in this Memorandum, PRA regulations also contemplate exclusions to the definition of what constitutes "information" under the PRA. See https://www.whitehouse.gov/sites/default/files/omb/inforeg/memos/2014/appendix-data-search-tools-calculators.pdf

[2] For more information on the standard PRA process, please consult OIRA's PRA Primer, *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf.

[3] Section 4 of the Office of Management and Budget (OMB) Open Government Directive instructed the Administrator of OIRA to "review existing OMB policies, such as Paperwork Reduction Act guidance[,] . . . to identify impediments to open government and to the use of new technologies and, where necessary, issue clarifying guidance and/or propose revisions to such policies, to promote greater openness in government." https://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf. Since 2010, OIRA has released numerous documents, including memoranda, frequently asked questions, guidance to agencies, and similar products, clarifying the application of the PRA, many in response to the Open Government Directives. The goal of this memorandum is to summarize this body of work into an accessible, summary format.

identify instances in which the PRA does not apply to certain uses of social media or other web-based technologies. In identifying these different flexibilities that are permissible under the PRA, OIRA has sought to balance Federal agencies' obligations to fulfill their missions with the public's interest in having an opportunity to engage with Federal agencies prior to agency action.

Generic Clearance and Fast-Track Process

Generic Clearance and Fast-Track Process

A "generic clearance" is an OIRA approval of a plan for conducting more than one information collection using very similar methods. An agency might, for example, have a general plan to gather views from the public through a series of customer satisfaction surveys in which the agency asks the public about certain agency activities. As part of this plan, the agency would construct, distribute, and analyze the surveys in a similar manner, and the agency would customize each survey. The initial plan would need to go through the standard notice and comment process, but the agency would not need to seek further public comment on each specific information collection that falls within the plan. Instead, for such specific information collections, the agencies would need only obtain OMB approval, subject to the terms of the generic clearance developed during prior OMB review. The OMB review periods for these specific information collections are typically brief.

Generic clearance may be appropriate when (1) the need for the data collection can be evaluated in advance, as part of the review of the proposed plan, but (2) the agency cannot determine the details of the specific individual collections until a later time. Most generic clearances cover collections that are voluntary, low-burden, and uncontroversial. For example, generic clearances have proven useful for focus group testing and for preliminary versions of surveys shared with the public for the purposes of judging their clarity and usability. Additionally, many agencies have sought and received generic clearances when they have expected to issue multiple customer satisfaction surveys in the future.

OIRA's Generic Clearances Memorandum provides further guidance to agencies with respect to the use of generic clearances.[4] Agencies are encouraged to consult with their OIRA desk officers when developing a generic clearance proposal.

Example of Use of Generic Clearance: Fast-Track Process for Customer Feedback

One specific use of generic clearances undertaken successfully by many agencies is to enable customer-service feedback. Once an agency has received OIRA approval for a generic clearance to solicit customer feedback, the agency can begin collecting such information within the bounds of the approval simply by completing a short form and submitting the collection to OIRA for fast-track review. If OIRA does not respond to the agency with questions, concerns, or issues within five business days, then OIRA will approve the information collection. The agency may then proceed with the collection under the OIRA-issued control number for the approved generic clearance.

[4] https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf

The fast-track process for customer feedback is designed to collect more frequent and real-time information that focuses on the awareness, understanding, attitudes, preferences, or experiences of customers or other stakeholders relating to existing or future services, products, or communication materials.

Many, but not all, eligible agencies are making effective use of the fast-track process. For example, the Department of Commerce currently has nearly 100 different specific collections cleared through the fast track process, including numerous usability testing, website feedback, and customer satisfaction type information collections.[5] OIRA's Fast-Track Service Delivery Feedback FAQ provides further answers to agencies on commonly asked questions on the fast-track process for customer feedback.[6]

That process is available to agencies that joined the initial government-wide *Federal Register* notice published in December 2010, and to agencies that later went through the PRA process on their own to get an approved generic clearance for customer feedback.[7] If an agency did not opt to join that initial *Federal Register* notice, and has not yet proceeded with its own generic clearance, OIRA encourages the agency's PRA official to contact the agency's OIRA desk officer to learn more about setting up a generic clearance for customer feedback that would permit use of the fast-track process.

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[5] Later in this document, we clarify that not all types of activities related to testing the usability of forms or website feedback would be covered by the PRA; however, for those types of activities that are covered, the fast track process provides a quick and efficient way to comply.

[6] http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/pra-faqs.pdf

[7] https://www.federalregister.gov/articles/2010/12/22/2010-32084/agency-information-collection-activities-proposed-collection-comment-request-generic-clearance-for. The agencies that joined the original *Federal Register* notice are: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Environmental Protection Agency, National Aeronautics and Space Administration, Social Security Administration, Administrative Conference of the United States, Consumer Product Safety Commission, Corporation for National and Community Service, Equal Employment Opportunity Commission, Export-Import Bank of the United States, Federal Communications Commission, Federal Deposit Insurance Corporation, Federal Energy Regulatory Commission, Federal Trade Commission, Institute of Museum and Library Services, Merit Systems Protection Board, National Credit Union Administration, National Endowment for the Arts, National Endowment for the Humanities, Office of the Comptroller of the Currency, Overseas Private Investment Corporation, Peace Corps, Pension Benefit Guaranty Corporation, Railroad Retirement Board, Securities and Exchange Commission, Surface Transportation Board, Tennessee Valley Authority, U.S. Election Assistance Commission, U.S. International Trade Commission, and U.S. Access Board.

Common Forms

Another way in which agencies can cooperate with each other to facilitate and streamline information collections is through "common forms." In 2012, OIRA created this option, as well as a specific module within our approval system to facilitate its use. A common form is an information collection that can be used by two or more agencies, or government-wide, for the same purpose. A "host" agency obtains OIRA approval of an information collection for use by one or more "using" agencies. After OIRA grants approval for the use of the form by the host agency, any prospective using agency that seeks to collect identical information for the same purpose can obtain approval to use the common form simply by providing its agency-specific information to OIRA (e.g., burden estimates and number of respondents). Additional public notice by those using agencies is not required.[8]

De Minimis Changes

In September 2015 OIRA issued its Behavioral Science Insights and Federal Forms guidance, which clarified that *de minimis* changes of a cosmetic nature to approved information collections do not require further approval under the PRA.[9]

De minimis changes to a collection are changes that affect the look and feel of a collection, but do not change the nature or type of information collected. In addition, *de minimis* changes do not increase the burden of a collection, though they might reduce its burden. One example of a *de minimis* change is a cosmetic change to the colors, visual layouts, or field sizes of a collection form. OIRA's clarification provided Federal agencies with wide latitude to, for example, make on-the-fly iterative changes to the visual style, design, and "look and feel" of their websites.

Non-Substantive Changes

Non-Substantive Changes Generally

As noted in the PRA Primer, the PRA allows agencies to make other types of changes to their information collections without notifying the public, and OIRA has built-in systems to facilitate those changes. These are called non-substantive changes to an information collection. Unlike the *de minimis* changes, agencies submit, and OMB reviews, documentation for the proposed revisions to an active collection before those revisions may be implemented. If the agency is considering significant or substantive revisions to the collection, it must provide the public with an opportunity to comment on the proposed revisions, as it would with a new collection. For insignificant or non-substantive changes, the agency is not required to seek public comment.[10]

For example, non-substantive changes to collections often result from pretesting activities that may not be complete when the collection is submitted for OMB review and approval. One circumstance that could arise is when cognitive testing indicates that changes to the wording of a

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[8] https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/frequently-asked-questions-related-to-common-forms.pdf

[9] https://www.whitehouse.gov/sites/default/files/omb/inforeg/memos/2015/behavioral-science-insights-and-federal-forms.pdf

[10] https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf

question in an already approved collection would result in more accurate and complete responses. These changes may be considered non-substantive, as long as they do not introduce new concepts or measures that have not received public comment. Non-substantive changes may also be used to facilitate and finalize larger changes to a particular collection, as long as the public is provided with some opportunity to comment on possible options or changes, as well as the circumstances that will trigger those options, as part of the original approval.

Example of Use of Non-Substantive Changes for Certain Web-based or Similar Applications

In addition, a recent, active area of agency activity for many information collections is the development of interactive, web-based or similar applications[11] to help facilitate responses. Such tools can improve responsiveness and accuracy, and lower the burden, of any particular information collection. For new collections for which agencies plan to develop these tools, the agency should summarize its plans, and make available for public comment draft interactive instructions as part of the normal information collection approval materials. Many existing, already approved forms may also greatly benefit from the development of such assistance materials. As long as the underlying, approved form is not altered and the interactive materials essentially collect the same information, then OIRA considers these applications a non-substantive change to an already approved collection, and would encourage their development.

Emergency Review

Under certain circumstances, an agency head or designee may request expedited OIRA review of an information collection request (ICR)—also known as "emergency" review. OIRA may grant expedited review if the collection is essential to the mission of the agency, clearance is needed sooner than the normal timeframe, and the agency cannot reasonably comply with the PRA's normal clearance procedures 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 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."[12] When OIRA expedites review, OIRA acts promptly to review the ICR through a suitably streamlined process, consistent with the purposes of the PRA. For example, OIRA may modify—or, if necessary, waive—the public comment requirements.[13] Emergency clearance may be granted for a maximum of six months.

As relevant situations arise, agencies should consult with their OIRA desk officers to select an approach that permits them to comply with the PRA while responding to the emergency circumstances.

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[11] These types of applications are also sometimes referred to as online "wizards".

[12] 44 U.S.C. § 3507(j), *available at* https://www.gpo.gov/fdsys/pkg/USCODE-2013-title44/html/USCODE-2013-title44-chap35-subchapI-sec3507.htm; 5 C.F.R. 1320.13(a)(2), *available at* http://www.ecfr.gov/cgi-bin/text-idx?SID=454df3e4dfcaaaf0af817c4e0c858cef&mc=true&node=se5.3.1320_113&rgn=div8.

[13] See 44 U.S.C. § 3507(a)(1)(D), *available at* https://www.gpo.gov/fdsys/pkg/USCODE-2013-title44/html/USCODE-2013-title44-chap35-subchapI-sec3507.htm.

Social Media and the PRA

In 2010, OIRA issued a Social Media Memorandum, explaining that many ways in which agencies use social media and web-based interactive technologies do not require PRA approval.[14] Among other topics, the Social Media Memorandum explains that the PRA does not apply to general solicitations of public views and feedback; interactive meeting tools, like discussion boards and forums, when those tools are equivalent to in-person public meetings; certain general requests that take the form of contests or offer prizes; and certain ratings and rankings of material by website users. Also, items collected to allow users to customize or influence the appearance of an agency website are generally not subject to the PRA (for example, a website might offer a user the option of selecting from a list of topics as a means of customizing the presentation of information), as long as such items do not include those that are collected beyond what is necessary to navigate or customize the website. The Social Media Memorandum addresses questions frequently asked both by the public and by agencies seeking to use social media to allow for better participation and collaboration. OIRA encourages agencies with questions about related issues to consult the Social Media Memorandum.

Data Search Tools & Calculators

In response to Executive Order 13642 and subsequent OMB guidance, many agencies have made government-held data more accessible to the public.[15] Such data sets might be used by third parties outside of the Federal Government to produce data search tools and calculators. OIRA's Web-based Interactive Technologies Memorandum clarified the PRA's applicability to web-based data search tools and calculators.[16] In general, web-based interactive technologies that are not sponsored or conducted by the Federal Government are not subject to the PRA.

Additionally, many web-based interactive technologies that *are* sponsored or conducted by the Federal Government are also not subject to the PRA.[17] More specifically, OMB has determined that when items collected by data search tools and calculators are used to customize agency data or obtain information from a table or formula, they are "like items" to categories of items generally not considered "information" subject to the PRA, and therefore are themselves not considered "information" under the PRA.

Challenges and Prizes FAQ

OIRA published a Challenges and Prizes FAQ document that provides answers to agencies on commonly asked questions related to conducting challenges, contests, and competitions under

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[14] https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf

[15] See Executive Order 13642, Making Open and Machine Readable the New Default for Government Information, May 9, 2013, *available at* https://www.gpo.gov/fdsys/pkg/CFR-2014-title3-vol1/pdf/CFR-2014-title3-vol1-eo13642.pdf; M-13-13, Open Data Policy—Managing Information as an Asset, *available at* https://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf. See also Open Data Round Up, December 9, 2013, *available at* http://www.whitehouse.gov/blog/2013/12/09/open-data-round.

[16] https://www.whitehouse.gov/sites/default/files/omb/inforeg/memos/2014/web-based-interactive-technologies-data-search-tools-calculators-paperwork-reduction-act.pdf

[17] *Id.*

the PRA.[18] In addition to consulting this document if an agency has questions regarding whether a challenge is subject to the PRA, OIRA recommends that the agency consult with its PRA office or, if necessary, its OIRA desk officer.

Applicability of PRA to Direct Observations of Users Interacting with Digital Services Tools and Products

In some cases when agencies obtain information on user interactions with digital services tools or products, including prototypes of those tools or products, they may not be subject to the PRA. In particular, under its regulations OMB does not generally consider facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency or through nonstandardized oral communications in connection with such direct observations to be information under the PRA. *See* 5 C.F.R. 1320.3(h)(3). Thus, when the sponsoring agency merely observes a user interacting with a digital services tool or product and at most engages in nonstandardized oral communications with the user, the facts or opinions the sponsoring agency obtains are not subject to the PRA. Any direct observation should respect the observed parties' privacy and require their voluntary consent. In practice, many agencies, such as statistical agencies developing large scale surveys, couple direct observation with recruitment, screening, debriefing, and other data collection activities; for example, those necessary to remunerate participants. Many of these types of activities are covered by the PRA, but can still be facilitated through the generic clearance process.

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In conclusion, there are many administrative flexibilities available to assist agencies in complying with their statutory obligations under the PRA, and we encourage agencies to avail themselves of these opportunities. OIRA stands ready to provide further detail on these tools and to work closely with agencies to continue to develop streamlined approaches that balance achieving Federal missions in an efficient manner with the public's interest in having an opportunity to engage with Federal agencies prior to agency action.

[18] https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/challenge-and-prizes-faqs.pdf