



December 23, 2009

The Honorable Cass Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Executive Office of the President
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20503
Facsimile: (202) 395-7245
Email: oir_submission@omb.eop.gov

Re: Request for Comments on Improving Implementation of the Paperwork Reduction Act

Dear Administrator Sunstein:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits this comment letter in response to the request for comments on *Improving the Implementation of the Paperwork Reduction Act* that was published in the Federal Register on October 27, 2009. The Office of Advocacy appreciates the opportunity to comment on this important topic.

The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is also responsible for monitoring agency compliance with the Regulatory Flexibility Act (RFA),¹ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),² which requires agencies to consider the economic impact of regulations on small entities during the rulemaking process. In August 2002, Advocacy's RFA mandate was enhanced by E.O. 13272, which strengthens the current requirements of the Regulatory Flexibility Act (RFA) and allows Advocacy to participate as early as possible in the

¹ 5 U.S.C. § 601 et seq.

² Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

rulemaking process when small business impact is at issue. Please note that Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or of the Administration.

The Paperwork Reduction Act

One of the main purposes of the Paperwork Reduction Act (PRA) is to minimize the paperwork burden for small businesses.³ It is an important tool for assessing the amount of paperwork that may be generated by regulation and reducing the amount of paperwork that is required for businesses. For a small business with limited resources, excessive paperwork is an expensive chore that takes away from the time that the business owner needs to tend to its business. Moreover, as noted in the request for comments, because of economies of scale, a collection of information may be more burdensome for a small business than a large one; some collection of information may require small entities to obtain professional services which can be quite costly.

Under the PRA, agencies are required to estimate the recordkeeping costs of their rules. An accurate calculation under the PRA enhances an agency's ability to provide the information that is required for assessing the projected reporting, record keeping, and other compliance requirements of a proposed rule as required under sections 603 and 604 of the Regulatory Flexibility Act (RFA).

Answers to Interrogatories

In the request for comment, OMB set forth six areas for comment. Advocacy addresses the questions below:

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

The regulations at 5 CFR 1320.9 provides that each agency certify to OMB that the information collection “reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act.”

In order to meet this requirement, the current instructions to the supporting statement to the Form 83-I requires that each agency describe potential small business alternatives.

This would be substantially improved if the agency were required to (a) list the small entities that were consulted (b) provide a copy of the small entity alternatives discussed with these entities and (c) reported on the small entity input and the agency response to

³ See 44 U.S.C. § 3501(1).

that input. In this manner, OMB can be assured that the regulation was implemented, and we expect that more constructive dialogue would actually occur.

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

No comment.

Should OMB encourage agencies to adopt "one-stop" information collection techniques, which consolidate multiple forms via a single electronic form to reduce the burden on the public? How should OMB encourage agencies to take advantage of online tools to simplify the completion of already-approved surveys or mobile technology to deliver a survey by alternative means?

One stop information collection techniques would ease the burden on small entities. However, it should not be limited to electronic forms only. Agencies should provide a paper copy of the one stop form to reach that particular market, until there is evidence that access to electronic means of submitting these forms is universally available.

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

Advocacy encourages the use of new technologies in furtherance of the goals of the PRA, and notes that small businesses are often at the forefront of innovation and technological development. However, care should be taken not to burden small businesses with requirements to obtain new technology simply for PRA/recordkeeping purposes. In order to keep small entities informed about changes to collection requests, OMB could require agencies to create email lists of commenters so that the commenters can be automatically notified of changes that are proposed to collection requests that may interest them.

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

Pursuant to 5 C.F.R. 1320.8(a)(1), agencies are required to evaluate the need for the collection of information, which includes and evaluating of the continued need for existing collections. This requirement should be expanded to require agencies to

periodically review all paperwork collection requests and justify the need for paperwork requirements that are outdated and/or obsolete. If the agency cannot provide that justification, the requirement should be rescinded. In addition, agencies should be required to submit their findings to the Office of Advocacy so that Advocacy can determine if an RFA section 610 review is warranted.

Examples of successful paperwork burden reduction practices implemented by an agency that could be implemented by other agencies. Please provide recommendations, and if possible, OMB control numbers.

No comment.

Conclusion

Advocacy appreciates the opportunity to comment on the PRA. Advocacy recognizes the magnitude of this important undertaking and is available to assist OIRA in any way that it can. Please feel free to contact me or Jennifer A. Smith at (202) 205-6943 or jennifer.smith@sba.gov if you have any questions or require additional information. We look forward to working with you.

Sincerely,

/s/

Susan M. Walthall
Acting Chief Counsel for Advocacy

/s/

Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation & Banking