



March 27, 2012

John Cooney, Chair  
Committee on Rulemaking  
Administrative Conference of the United States  
1120 20th Street, NW  
Suite 706 South,  
Washington, DC 20036

Dear Mr. Cooney:

Thank you for the opportunity to express a small business perspective on the Administrative Conference of the United States (ACUS) project on the Paperwork Reduction Act (PRA). The Office of Advocacy appreciates ACUS's attention to the PRA and agrees that there is room for improvement in the Federal government's implementation of the PRA. We would like to offer three sets of thoughts on the Committee's work to date.

Advocacy was created by statute in 1976 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (SBA), so the views expressed in this letter do not necessarily represent the views of SBA or the Administration.

First, the PRA, as it is written, encourages sound Information Resources Management (IRM) as a means of simultaneously improving the quality of Federal information and minimizing the burden of information collection on the public. Advocacy believes that the Committee's recommendations could better reflect the purposes of the PRA by emphasizing the value of the PRA to the public in parallel with agency efficiency in collecting information. Therefore, Advocacy recommends the Committee expend additional effort towards a better understanding of agency IRM responsibilities and practices, and thus, of the possible effects of its recommendations on the public.

Second, Advocacy recommends that the Committee consider more broadly agency practices that would improve the quality of public interaction on information collections. Advocacy believes that public input is hindered by confusion about the PRA and the meaning of information agencies make available to the public. Advocacy suggests ACUS consider making recommendations on agency practices that could alleviate this confusion, including (1) better

education of both agencies and the public about the PRA, including the scope of the PRA and its procedural protections; (2) guidance to agencies and the public on burden estimates, including presentation of different burden estimates for different populations of respondents and cumulative burden of related information collections; (3) effective techniques to communicate with the public about the information collections in rules; and (4) clear and more informative Federal Register notices.

Finally, Advocacy welcomes the opportunity to provide comments on the March 20th draft Committee recommendations. These draft recommendations are improved from the previous iteration, but Advocacy believes that they would benefit from a greater understanding of existing PRA implementation and agency IRM practices. Specific comments on each recommendation are attached.

Thank you for the Committee's attention to the PRA. If you have questions or require additional information, you may contact me or Assistant Chief Counsel David Rostker, at (202) 205-6966 or david.rostker@sba.gov. I am looking forward to continuing the dialog on this important matter.

Sincerely,

/s/

Winslow Sargeant, Ph.D.  
Chief Counsel for Advocacy

/s/

David J. Rostker  
Assistant Chief Counsel

**Small Business Administration Office of Advocacy  
Comments on March 20, 2012 Draft Committee Recommendations**

*Recommendation 1:*

Advocacy has significant concerns about this recommendation. The Committee should consider whether the existing delegations, to the Federal Reserve Board and to the Federal Trade Commission, are fulfilling the purposes and requirements of the PRA before recommending more delegations. In addition, since delegation requires a similar level of CIO independence as is now required for all agencies, the Committee should postpone endorsing this recommendation until it has a better understanding of the role CIOs play in current PRA implementation.

*Recommendations 2 & 3:*

Advocacy welcomes public discussion of the statutory scope of the PRA, but believes that Inspector Generals should be subject to independent review as it relates to imposition of burden on small entities.

*Recommendation 4:*

Advocacy would recommend against a more lenient standard or fast track procedural based on a need to perform regulatory analysis. First, the purpose of regulatory analysis is not limited to a *post hoc* evaluation of impacts. Good regulatory design should incorporate the results of analysis. A lower standard for analysis would become a lower standard for the highly influential information used to design regulations. Small entities are best served when regulations are based on the best quality information, which can only come from the best quality information collections. Second, the PRA and OMB's regulations already include a fast track approval process for emergencies. It is unclear from the Committee's work so far that there is a need additional fast track authority. Third, OMB and industry representative have an inherent interest in the quality of data used to conduct regulatory analysis. Excluding or diminishing the voices of these interested parties would not serve the purposes of the PRA, since they bring a broader perspective to the table and can often suggest less burdensome alternatives, such as the development of an industry-sponsored data collection or alternate Federal data sources.

*Recommendation 5:*

Advocacy does not believe the Committee has sufficient information upon which to proceed with this recommendation. Congress adopted the three year approval period in both the 1980 and 1995 Acts, and the Committee should directly address the purpose of the three year review before recommending it be changed. Given the ease with which agencies can now design and implement information collections, thanks to advances in information technology, it is easier than it was in 1980 to review and revise information collection to improve IRM and reduce burden. The costs and benefits of periodic reviews have significantly changed since 1980, but they do not unequivocally point to a less frequent review.

*Recommendation 6:*

Advocacy welcomes the revised recommendations on the 60-day comment period. These measures are consistent with our recommendations above to improve the quality of public comment. However, Advocacy does not believe that public participation should automatically be streamlined for collections 'with no significant changes,' since other factors, including better

IT and changed market environments, may justify scrutiny of a collection the agency does not plan to change.

*Recommendation 7:*

Advocacy is hesitant to endorse this recommendation. Committee should consider whether the annual report plays an important role in a continuing policy-level dialog between OMB and the agencies about information collection burden.

*Recommendation 8:*

OIRA plays a crucial role in the Executive Branch, and not just with respect to the PRA. Regardless of whether other recommendations are adopted, Advocacy supports additional resources for OIRA to support its varied functions.

However, OIRA staff already provides compliance assistance and training to agencies on an *ad hoc* basis, generally as requested by agencies. Advocacy is not aware of circumstances in which OIRA has declined to provide such assistance due to a lack of resources. While a more structured approach may be desirable, most agency personnel are unaware of their need until confronted directly with PRA compliance. For this reason, Advocacy recommends that each CIO take a greater role in assistance and training for the agency's staff, in coordination with OIRA staff, to increase awareness of the PRA internally and better customize training to each agency's unique organization.