



## Appendix C

### Crowdsourcing Public Participation: Administrative Considerations

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#### Crowdsourcing Public Participation: Administrative Considerations

As more citizens go online, so has the government. Agencies maintain their own websites along with a presence on social media platforms. Typically these sites are used to publicize agency news and tell the agency's "story". Some have looked beyond this surface-level engagement and investigated the opportunity to glean volunteered mission-relevant data from users. While a chance to improve outcomes with rapid public input is exciting, agencies must respect federal administrative restrictions such as the Paperwork Reduction Act (PRA). This guide will provide a basic overview of the PRA and recent Office of Management and Budget (OMB) memoranda relevant to public engagement.

#### *The Paperwork Reduction Act*

The PRA sets limits on the information agencies can collect and mandates a process before new collections.<sup>1</sup> An agency must complete Form 83-1, Paperwork Reduction Act Submission, and submit it to the OMB.<sup>2</sup> The agency describes the information, why it is needed, and the burden on citizens who provide it.<sup>3</sup> The PRA has been updated, directing agencies to show proper consideration for privacy and confidentiality,<sup>4</sup>

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1 Paperwork Reduction Act, 44 USC § 3501, <http://archives.gov/federal-register/laws/paperwork-reduction/>.

2 Office of Management and Budget Form 83-1, <http://www.whitehouse.gov/sites/default/files/omb/infoereg/83i-fill.pdf>.

3 44 USC § 3507(a)(1)(D).

4 *Ibid.*, § 3501(8)(a).

security,<sup>5</sup> and transparency.<sup>6</sup> The process takes a minimum of 120 days. It requires publication in the Federal Register,<sup>7</sup> and an opportunity for public comment.<sup>8</sup>

This delay and administrative burden causes a cost-benefit analysis. Any new collection of information includes a lengthy application process and some expense. However, the OMB has issued a series of statements providing exemptions and guidance on how agencies can utilize crowd platforms.

### *Information Collection under the Paperwork Reduction Act*

Published on April 7, 2010, “Information Collection under the Paperwork Reduction Act” provides an overview of the PRA in hopes of encouraging “transparency and openness.”<sup>9</sup> An agency activity requires OMB approval via PRA procedures only if it qualifies as a collection of information. Information is defined as “any statement or estimate of fact or opinion, regardless of form or format, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media.”<sup>10</sup> This definition seems dauntingly broad, but the PRA considers many types of useful data to not be “information,”<sup>11</sup> and exempts some collections from OMB approval.<sup>12</sup> This provides a good start towards understanding the administrative obligations of the PRA.

### *Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act*

The next OMB document provides agencies more specific input on how the PRA can involve web-based interactions.<sup>13</sup> Rather than relying on the lengthy and contentious process of statutory updates, the OMB examines various activities and finds existing parallels in the PRA. For example, open questions posed by agencies with unstructured responses on social media sites, blogs, content-sharing sites, or message boards are considered equivalent to a “general solicitation.”<sup>14</sup> A general solicitation is a request for “facts or opin-

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5 Ibid., § 3501(8)(b).

6 Ibid., § 3501(8)(c).

7 Ibid., § 3507(a)(1)(D).

8 Ibid., § 3507(b).

9 Information Collection under the Paperwork Reduction Act, OMB Memorandum, [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf).

10 5 C.F.R. 1320.3(c).

11 5 C.F.R. 1320.3(h).

12 44 U.S.C. § 3518(c). 44 U.S.C. § 3502(3)(A).

13 Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act, OMB Memorandum, [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf).

14 Ibid.

ions...provided that no one person is required to supply specific information...other than necessary for self-identification."<sup>15</sup> Thus, the OMB exempts many activities from the PRA.

### *Paperwork Reduction Act – Generic Clearances*

The schedule of PRA approval can obstruct an agency's ability to quickly gain public input. However, an agency may lay groundwork allowing for a quicker process. This is explained in the OMB Memorandum, "Paperwork Reduction Act – Generic Clearances."<sup>16</sup> An agency to obey the standard notice and comment process,<sup>17</sup> but upon approval, this information collection clearance provides for expedited review by the OMB.<sup>18</sup> Generic clearances have two characteristics. First, "the need for and the overall practical utility of the data collection can be evaluated in advance." Second, "the agency cannot determine the details of the specific individual collections until a later time."<sup>19</sup> By completing this review, agencies can establish categories of information requests and create a fast lane for quick approval. The OMB includes examples of granted generic clearances in the memorandum's appendix.<sup>20</sup>

### *Frequently Asked Questions related to Challenges and Prizes*

A broad federal priority has been to encourage the use of challenges and prizes as a way to "increase their ability to promote and harness innovation."<sup>21</sup> Thus, the OMB provides a list of frequently asked questions on how these activities might invoke the PRA.<sup>22</sup> Generally, the need for PRA approval turns not on the platform the agency uses to issue a challenge, but instead the type of information the challenge requires from the public.<sup>23</sup> The OMB also allows agencies to undergo the previously mentioned generic clearance process to receive approval for a broad category of challenges.<sup>24</sup>

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15 5 C.F.R. 1320.3(h)(10).

16 Paperwork Reduction Act – Generic Clearances, OMB Memorandum, [http://www.whitehouse.gov/sites/default/files/omb/assets/infocore/PRA\\_Gen\\_ICRs\\_5-28-2010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/infocore/PRA_Gen_ICRs_5-28-2010.pdf).

17 44 U.S.C. § 3506(c)(2)(A); 44 U.S.C. § 3507(a)(1)(D).

18 Paperwork Reduction Act – Generic Clearances.

19 Ibid.

20 Ibid.

21 Guidance on the Use of Challenges and Prizes to Promote Open Government, OMB Memorandum, [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-11.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-11.pdf).

22 Frequently Asked questions related to Challenges and Prizes, OMB Memorandum, <http://www.whitehouse.gov/sites/default/files/omb/assets/infocore/challenge-and-prizes-faqs.pdf>.

23 Ibid.

24 Ibid.

### *Guidance for Online Use of Web Measurement and Customization Technologies*

A bedrock technical tool for interactive web browsing is the HTTP cookie: a tiny bit of data stored to a user's browser. On return visits, the website can "remember" the user's previous activity or preferred settings.<sup>25</sup> This memorandum rescinded the federal ban on government use of cookies for limited purposes. Agencies "may use web measurement and customization technologies for the purpose of improving Federal services online," but may not track individual user activity outside of the website or application, share data without user consent, or collect and use personally identifiable information.<sup>26</sup>

### *Guidance for Agency Use of Third-Party Websites and Applications*

Before utilizing a third-party website or application, this memorandum requires that agencies obey the Privacy Act<sup>27</sup> and undergo a Privacy Impact Assessment on how their activity might involve personally identifiable information.<sup>28</sup> The OMB also mandates that agencies assess whether the platform's Third-Party Privacy Policy is appropriate.<sup>29</sup> The federal government has also acknowledged that consumer-level Terms of Service agreements for many platforms are unacceptable for agencies. The GSA has negotiated modified agreements with service providers, allowing agency use.<sup>30</sup>

### *Managing Government Records Directive*

This recent memorandum promotes broad efforts for digitization and archival of historic items via the National Archives and Records Administration (NARA).<sup>31</sup> NARA has engaged an interested crowd of citizens to produce useful results via NARA's Citizen Archivist Dashboard.<sup>32</sup> There, anyone can join a wide range of archivist efforts. NARA has collaborated with other agencies; the National Oceanic and Atmospheric Administration harnessed the crowd to transcribe newly digitized historic ship logs.<sup>33</sup>

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25 "HTTP cookie," *Wikipedia*, [http://en.wikipedia.org/wiki/HTTP\\_cookie](http://en.wikipedia.org/wiki/HTTP_cookie).

26 Guidance for Online Use of Web Measurement and Customization Technologies, OMB Memorandum, [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-22.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-22.pdf).

27 5 U.S.C. § 552a.

28 Guidance for Agency use of Third-Party Websites and Applications, OMB Memorandum, [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-23.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-23.pdf).

29 Ibid.

30 Apps.gov, Social Media Apps, [https://www.apps.gov/cloud/cloud/category\\_home.do?c=SA](https://www.apps.gov/cloud/cloud/category_home.do?c=SA).

31 Managing Government Records Directive, OMB Memorandum, <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-18.pdf>.

32 Citizen Archivist Dashboard, <http://www.archives.gov/citizen-archivist/>.

33 Bob Berwyn, "Climate: Citizen scientist to help transcribe historic ship's logs," *Summit County Citizens Voice*, October 30, 2012, <http://summitcountyvoice.com/2012/10/30/climate-citizen-scientist-to-help-transcribe-historic-ships-logs/>.

This memorandum and accompanying initiatives could provide exciting opportunities for citizen involvement in important agency projects.

### *The Importance of Collaborating with Agency Counsel*

The preceding demonstrates OMB administrative policy has worked to enable agency engagement and activity on the platforms that citizens use every day. However, it is important to emphasize that any plan must include collaboration and cooperation with agency counsel. An agency lawyer has both the training and the responsibility to determine the legality of activities. Their understanding of an agency's unique role and responsibilities can facilitate efforts that are truly appropriate. The failure to responsibly plan and cooperate with counsel could mean that valuable data might go unused. Well-intentioned engagement could be wasted because of poor planning. All activities that involve innovative use of new technology should be conducted carefully.

There are additional avenues for addressing questions related to the PRA. Agency OMB/OIRA desk officers can be a great place to start with issues not covered or explicitly answered in the OMB publications. Additionally, the email addresses included in OMB memoranda are monitored by staff who are happy to help.

The OMB has recognized that modern technology gives agencies an opportunity to work with the public in new ways. Their output shows that incorporating new tools is not impossible. But there is no substitute for orderly deliberate decision making. No matter the platform or tool, any interface with citizens should be preceded by consideration of agency responsibilities.