



REGULATORY CHECKBOOK

30 March 2009

The Honorable Peter Orszag
Director
Office of Management and Budget
Washington, DC 20503

Dear Director Orszag:

On 16 March 2009 I submitted a lengthy reply to the Office of Management and Budget's request for comment on potential revisions to Executive Order 12,866.

I am writing today to commend OMB for its effort to improve transparency by posting the comments it receives as soon as practicable after receipt. This creates the opportunity for a virtual discussion in which it is feasible for the issues to be publicly debated in a relatively open forum. This can inform the President and his senior advisors compromising the President's legitimate needs for confidentiality or consuming significant staff resources. Each commenter has the opportunity to provide new evidence supporting or refuting the claims, arguments and conclusions of others. This is a revolutionary and welcome change in OMB practice.¹

OMB's Office of Information and Regulatory Affairs routinely posts notices of meetings conducted with outside parties pursuant to the provisions of Executive Order 12,866, and alongside these meeting records OMB also uploads for public inspection all written materials provide to OMB by these outside parties. However, OMB does *not* provide public notice that outside meetings have occurred or that written materials have been received. Gaining this knowledge requires active effort on the part of the public, such as by searching the relevant pages on the OMB web

¹ An alternative and potentially superior approach would have been to utilize the federal government's main web portal at regulations.gov instead of the captive website run by GSA at reginfo.gov. The latter system explicitly permits "comments on comments," but it has its own problematic design features. For example, the system permits keyword searching but it does not allow commenters to choose their own keywords. Keyword searching also is limited to the submission pages and does not reach PDF attachments, which usually contain all relevant content. Submitters can work around this design defect by using the "general comments" field for keywords, but this practice is very uncommon. Agency staff title submissions, and occasionally they enter erroneous titles, which severely inhibits the utility of the search utility.

site every day. When the private sector wants its customers to be informed, it uses automated notification tools like Really Simple Syndication (RSS). OMB does not use RSS for anything, and among government web sites OMB's is rather primitive.²

In contrast, OIRA operates a formal public participation and public comment process pursuant to the Paperwork Reduction Act. Public participation in this process is surprisingly limited given the number of *Federal Register* documents that mention it, but there are at least two very good process reasons why.

First, agencies' PRA notices are impenetrably arcane. Very few people have any clue what these notices are about, and consequently, very few people bother to submit comments. The PRA requires both 60-day notices (inviting public comment *prior to* submission to OIRA) and 30-day notices (inviting public comment *concurrent with* submission to OIRA). OMB's Information Collection Rule does not require these public notices to be comprehensible, so they aren't.³

Second, in the rare instance when OIRA receives public comments on an ICR, it does not make these comments accessible in real time. Rather, it discloses public comments only after it has taken action. Clearly, this prevents members of the public from reviewing and perhaps responding to comments made by others. I have been told that OIRA's web-based database was explicitly designed this. In short, it is not a "bug" in the program. It is a deliberately engineered constraint.

Independent of what the President does about regulatory review, I strongly encourage you to direct OIRA to immediately remove this constraint from its PRA public comment database. To be sure, the PRA process deserves a comprehensive review and overhaul, but until then there should be no debate on this fundamental point: Public comments to OIRA on agency ICRs should be made publicly available

² Reginfo.gov, the GSA portal OIRA uses, also lacks RSS and is in many respects even more primitive than the main OMB web site. Regulations.gov has a limited implementation of RSS, enabling the public to be notified of all additions to a specific docket. OMB makes public but does not "docket" meetings with outside parties.

³ The requirement for 60-day notices was added in the 1995 PRA amendments. This was supposed to improve upon the public's ability to meaningfully participate in the 1980-vintage PRA process. Agency 30-day notices had been impenetrably arcane and published too late to be useful. The new 60-day notice requirement solved the problem of timeliness but did nothing to improve comprehensibility or enhance transparency.

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as soon after submission as possible. There is no conceivable justification for denying public access during OIRA's statutorily mandated 60-day ICR review.

Sincerely,



Richard B. Belzer, Ph.D.
President



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