

PAPERWORK REDUCTION ACT OF 1995

FEBRUARY 15, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 830]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 830) to amend chapter 35 of title 44, United States Code, to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the introduced bill) are as follows:

On page 12, line 14, strike “and” the second place it appears and insert in lieu thereof “;”.

On page 12, line 15, insert “, and payment” after “acquisition”.

In the proposed section 3505 (page 19, line 9), strike “five” and insert “10”.

In the proposed section 3514 (page 51, line 3), strike “5” and insert “10”.

In the proposed section 3518 strike subsection (f).

## BILL SUMMARY

In brief, H.R. 830, the Paperwork Reduction Act of 1995 is intended to:

(1) Reauthorize appropriations for the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) for an indefinite period of time, to carry out the provisions of the Paperwork Reduction Act of 1980, as amended;

(2) Strengthen OIRA and agency responsibilities for the reduction of paperwork burdens on the public, particularly through the inclusion of all Federally sponsored collections of information in a clearance process involving public notice and comment, public protection, and OIRA review;

(3) Establish policies to promote the dissemination of public information on a timely and equitable basis, and in useful forms and formats;

(4) Strengthen agency accountability for managing information resources in support of efficient and effective accomplishment of agency missions and programs; and

(5) Improve OIRA and other central management agency oversight of agency information resources management (IRM) policies and practices.

The legislation is premised on the Committee's continuing belief in the principles and requirements of the Paperwork Reduction Act of 1980. All of the legislation's amendments to the 1980 Act, as amended in 1986, are intended to further its original purposes—to strengthen OMB and agency paperwork reduction efforts, to improve OMB and agency information resources management, including in specific functional areas such as information dissemination, and to encourage and provide for more meaningful public participation in paperwork reduction and broader information resources management decisions.

The legislation is drafted in the form of a revision of the Act due to the number of amendments. These amendments include word changes made for reasons of clarity and consistency, the deletion of obsolete provisions (e.g., out-dated deadlines), the reorganization of sections, and substantive changes to update and strengthen the original purposes of the Act. To the extent the legislation is a restatement of the 1980 Act, as amended in 1986, the scope, underlying purposes, basic requirements, and legislative history of the law are unchanged. To the extent legislation modifies provisions in current law, the amendments are made strictly for the purposes described in this report, and in order to further the purposes of the original law.

With the regard to the reduction of information collection burdens, the legislation increases the Act's 1986 goal of an annual five percent reduction in public paperwork burdens to ten percent. OMB is required to include in its annual report to Congress recommendations to revise statutory paperwork burdens if this ten percent reduction goal is not reached. The legislation includes third-party disclosure requirements in the definition of collection of information to overturn the Supreme Courts decision, *Dole v. United Steelworkers of America* (494 U.S. 26 (1990)). This will ensure

that collection and disclosure requirements are covered by the OMB paperwork clearance process. The Act is also amended to require each agency to develop a paperwork clearance process to review and solicit public comment on proposed information collections before submitting them to OMB for review. Public accountability is also strengthened through requirements for public disclosure of communications with OMB regarding information collections (with protections for whistleblowers complaining of unauthorized collections), and for OMB to review the status of any collection upon public request. In combination with more general requirements, such as encouraging data sharing between the Federal Government and State, local, and tribal governments, the legislation strives to further the Act's goals of minimizing Government information collection burdens, while maximizing the utility of Government information.

The legislation also adds further detail to strengthen other functional areas, such as statical policy and information dissemination. The dissemination provisions, for example, delineate clear policies that were not articulated in the Act's previous references to dissemination. The provisions require OMB to develop government-wide policies and guidelines for information dissemination and to promote public access to information maintained by Federal agencies. In turn, the agencies are to: ensure that the public has timely and equitable access to public information; solicit public input on their information dissemination activities; and not establish restrictions on dissemination or redissemination. Emphasis is placed on efficient and effective use of new technology and a reliance on a diversity of public private sources of information to promote dissemination of Government information, particularly in electronic formats.

With regard to over-arching information resources management (IRM) policies, the legislation charges agency heads with the responsibility to carry out agency IRM activities to improve agency productivity, efficiency, and effectiveness. It makes program officials responsible and accountable for those information resources supporting their program. The IRM mandate is strengthened by focusing on managing information resources in order to improve program performance, including the delivery of services to the public and the reduction of information collection burdens on the public.

To improve accountability for agency IRM responsibilities, as well as responsibilities for paperwork reduction, the agency responsibilities provided in the Act are amended to complement and more directly parallel OMB's functional responsibilities. Further, to prompt agencies to reform their management practices, the bill requires each agency head to establish an IRM steering committee, develop an IRM strategic planning process, and develop IRM performance measures linked to program performance. In these various pursuits, the goal is to integrate the management of information resources with program management and assure the use of the resources to achieve agency missions. With the Federal Government spending approximately \$25 billion a year on information technology, the stakes are too high not to press for the most efficient and effective management of information resources. The reduction of information collection burdens on the public and maxi-

mizing the utility of Government information will not otherwise occur.

#### SCOPE OF COMMITTEE REVIEW

H.R. 830, the Paperwork Reduction Act of 1995, was introduced on February 6, 1995, by Government Reform and Oversight Committee Chairman William F. Clinger, Jr., for himself, Congressmen Norman Sisisky, David McIntosh, Chairman of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, and other Members of Congress.

After introduction, H.R. 830 was referred to the Committee on Government Reform and Oversight. On February 6, 1995, Chairman Clinger referred the bill to the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs for consideration. On February 7, 1995, the Subcommittee, under the direction of Chairman McIntosh, held a hearing to consider reauthorization of appropriations for the Paperwork Reduction Act, OIRA's implementation of the Act, and OIRA's conduct of regulatory review under presidential executive order. Testimony included comment and discussion of H.R. 830.

Witnesses at the February 8, 1995 hearing were: The Honorable Sally Katzen, Administrator, Office of Information and Regulatory Affairs; Mr. James McIntyre, former Director of the Office of Management and Budget and currently an attorney; Mr. James Miller, former Director of the Office of Management and Budget and current Chairman of the Citizens for a Sound Economy; Mr. Gene Dodaro, Assistant Comptroller General, General Accounting Office accompanied by Mr. Chris Hoenig, also of GAO; Mr. Robert Coakley, Executive Director, Council on Regulatory and Information Management; Jack Sheehan, Legislative Director, United Steelworkers of America; and Bob Stolmeier, President, KLC Corporation.

At the hearing, Clinton Administration witness Sally Katzen testified squarely in support of H.R. 830.

It is truly gratifying to be here today in what I hope is the last phase of improving and strengthening the Paperwork Reduction Act. For more than two years Congress has had legislative proposals to update and expand the Paperwork Reduction Act consistent with and building upon its original purposes. My commendations to the congressional staff who have worked professionally and constructively to develop a consensus, a bipartisan approach, which is contained in H.R. 830 and in the Senate, 244, which the Senate Governmental Affairs Committee reported out on February 1. *We are pleased to report that the administration supports those efforts.* (Emphasis added.)

After taking into consideration the testimony of the witnesses at the February 7 hearing, and after further consultation with the staff of the House Small Business Committee, the Senate Committee on Governmental Affairs, and with staff of the General Accounting Office and Office of Management and Budget, the Subcommittee held a mark-up of H.R. 830 on February 8, 1995. The full Committee held its markup on February 10, 1995 and voted,

40 in favor and 4 against, to report H.R. 830, as amended, favorably to the full House.

The Paperwork Reduction Act was also considered during a January 27, 1995 hearing of the Committee on Small Business. Their findings, transmitted in a letter to Committee Chairman Clinger, are found under "Chapter X, Oversight Findings."

## DISCUSSION

### A. OVERVIEW

For the American public, Government information often seems to serve either of two quite different purposes. It can be the means by which the dedicated public servant uncovers problems, reaches decisions, enforces laws, delivers services, and informs the public. But it also can be the means by which the faceless bureaucrat asks time-consuming or intrusive questions, forces seemingly arbitrary changes in business practices or personal behavior, and imposes significant costs on the economy.

These two views of Government information have led to far different perspectives on how the Government should manage its information activities. The Paperwork Reduction Act reflects both the tensions between these perspectives and the legislative effort to create a comprehensive management framework equal to the task of managing both sides of the seemingly divergent nature of Government information (which includes information collected, maintained, or disclosed by or for the Government).

The Paperwork Reduction Act arose from the recommendations of the 1977 Federal Paperwork Commission. In the Commission's October 3, 1977, "Final Summary Report to the President," Commission Chairman Frank Horton stated,

Many people feel, and the Commission agrees, that a multibillion dollar wall of paperwork has been erected between the Government and the people. Countless reporting and recordkeeping requirements and other heavy-handed investigation and monitoring schemes have been instituted based on what we view as a faulty premise that people will not obey the laws and rules unless they are checked, monitored, and rechecked.

This situation and this assumption must be reversed if we are to restore efficiency within Government and confidence in Government by the people and if we are to realize the potential for cooperative attainment of our goals as a Nation.

The Committee on Government Reform and Oversight, nearly 20 years later, agrees and believes that more must be done to restore the American people's faith in their Government. The Paperwork Reduction Act of 1980, being the first step towards that goal, combined a revitalized paperwork clearance process (that had originated in the Federal Reports Act of 1942) with government-wide requirements for "information resources management" (IRM). Key to the success of the Act were its mandates for OMB leadership, agency management, and meaningful public participation in the development and implementation of IRM policy.

Fifteen years after the original Act's enactment, the Committee not only continues to believe very strongly in the Act's purposes and requirements, but also believes that additional steps can be taken both to further paperwork reduction and to strengthen IRM. Again, the key to success involves creating a constant level of OMB leadership, strengthening agency management, and encouraging more effective public participation.

Despite widespread support for the Act, the Committee recognizes that it has not been totally successful. Federal information collection burdens continue to mount. According to the January, 1995 edition of *Government Executive* magazine, the number of pages of rules printed in the Federal Register climbed from an annual average of 50,618 during President Reagan's eight years in office to an average of 53,596 during the Bush Administration. In 1993 and 1994, the annual page count has averaged over 61,000. The increase of Federal Register pages during the Clinton Administration is 15 percent from the Bush Administration and 22 percent from the Reagan Administration. Although the number of pages in the Register is a crude means to measure regulatory and paperwork burdens, increases this substantial cannot be ignored. Not only OMB, but agencies too, must do more to reduce these regulatory and paperwork burdens.

A major purpose of the 1995 legislation, therefore, is to strengthen the Act's paperwork control requirements by:

- (1) Clarifying the scope of OMB review;
- (2) Expanding public notice and comment, and public protection provisions;
- (3) Specifying agency paperwork reduction responsibilities; and
- (4) Looking for innovations in information technology to reduce paperwork burdens.

Additional steps can be taken, but fall outside the scope of this specific Act. The Committee and Congress, for example, will consider various other reforms to the regulatory process. These include the imposition of a cost/benefit analysis to all regulations, a regulatory moratorium to allow Congress to review proposed regulations, and established criteria for risk assessment. With these much needed changes, the Committee believes greater progress can be made in reducing Government paperwork burdens on the public.

The reduction of public paperwork burdens will also be served by the legislation's other management focus. The still widening gap between possibilities for improved Governmental operations through the use of information technology, and the Government's apparent inability to take advantage of this technology, demonstrates that the Act's IRM mandates have not been sufficiently realized. Today's information systems offer the Government unprecedented opportunities to provide services of a higher quality tailored to the public's changing needs, delivered more effectively, faster, at lower cost, and with reduced burdens on the public. Unfortunately, Federal agencies have not kept pace with evolving management practices and skills necessary to: (1) precisely define critical information needs; and (2) select, apply, and manage changing information technologies. The result, in many cases, has been wasted resources, a frustrated public unable to get quality service,

and a Government ill-prepared to measure and manage its affairs in a acceptable, businesslike manner. Despite spending more than \$200 billion on information management and systems in the past 12 years, the Government has too little evidence of meaningful returns. The consequences—poor service quality, high costs, low productivity, unnecessary risks and burdens, and unexploited opportunities for improvement—cannot be tolerated.

Thus, another important purpose of the 1995 legislation is to revise the Act's IRM requirements to refocus the attention of Federal managers on the pressing need to make information technology support programs efficient and effective. The Federal Government's annual expenditure of approximately \$25 billion on information technology is seriously compromised by inadequate and irresponsible systems planning, design, acquisition, and management. These amendments are intended to fight waste, reduce burdens, and strengthen accountability through greater and more clearly delineated OMB and Federal agency IRM responsibilities.

A third important issue that requires legislation is the matter of information dissemination. The advent of the electronic information age presents new opportunities and obligations for the Federal Government as it strives to fulfill its continuing responsibility to make Government information accessible to the American public. The legislation meets this need by providing for improved dissemination of Government information to the public, particularly in electronic formats. The bill establishes basic dissemination policies and principles, mandates the development of an effective information locator system and integrates access and dissemination planning into the management of Government information.

#### B. THE PAPERWORK REDUCTION ACT OF 1980

Enactment of the Paperwork Reduction Act of 1980 originated from an effort to modernize the Federal Reports Act of 1942. The Reports Act authorized the Bureau of the Budget (OMB's predecessor) "to coordinate Federal reporting services, to eliminate duplication and reduce the cost of such services, and to minimize the burdens of furnishing information to Federal agencies." The core of the current law's concern for reducing information collection burdens and improving the management of Federal information resources is found in this 52-year-old statutory mandate.

In the mid-1970s, growing public complaints about Government "red tape" led Congress to create the Commission on Federal Paperwork. The Commission reported in 1977 that the annual cost of Federal paperwork was \$100 billion and that there were serious "structural and procedural flaws" in the Reports Act clearance process that "preclude it from ever being fully successful in controlling the total paperwork burden on the American public."

The Commission did not, however, simply recommend improvements in the paperwork clearance process. It saw that the red tape problem was part of a much larger problem—fragmented, inefficient, and ineffective management of information in the emerging electronic age. As the Commission noted in its September 9, 1977 report titled, "Information Resources Management: A Report of the Committee on Federal Paperwork":

A simple bureaucratic reorganization of traditional records and paperwork management disciplines to meet the challenges of the information revolution would simply be overwhelmed in attempting to control the mass of complexity presented by modern computer/telecommunications technologies.

The Commission concluded that a new, broader information management framework was needed to control the Federal information appetite and help agencies more efficiently and effectively perform their information functions:

It is time to view the problems of paperwork and red tape, not as documents to be managed, but rather as information content to be treated as a valuable resource. By applying the principles of management to this valuable national resource we not only get at the root cause of paperwork and red tape, but cause a rippling effect in the application throughout Government: the design of programs is improved; Government becomes more sensitive to the burdens it imposes on the public, becomes more understandable, and develops clearer goals and objectives. In the end, Government improves the delivery of services to people as well as fulfills its other functions of regulation, defense, enforcement and revenue collection more effectively.

Information resources management is not the only solution to insensitive, complex and unresponsive Government. It can, however, make a significant impact in reducing the economic burdens of paperwork on the public by reducing duplication, clearly justifying information needs, improving reporting forms and collection processes, and effectively and efficiently utilizing modern information handling techniques and technologies.

The result of this effort was the Paperwork Reduction Act (P.L. 96-511), which was signed into law in December 1980 by the outgoing President, Jimmy Carter, and endorsed by the incoming President, Ronald Reagan.

The Act's broad purposes were to:

- Minimize the public burden of Federal paperwork;
- Minimize the Federal cost of collecting, maintaining, using, and disseminating information;
- Maximize the usefulness of information collected by the Federal Government;
- Coordinate Federal information policies and practices;
- Ensure that information technology is acquired and used to improve service delivery and program management and reduce the information processing burden for the Federal Government and those who provide information to it; and
- Ensure that the collection, maintenance, use, and dissemination of information is consistent with applicable laws relating to privacy, security, and confidentiality. These purposes remain valid to this day.

The Act strengthened the Federal Reports Act paperwork clearance process by: (1) consolidating paperwork control in OMB; (2) eliminating exemptions from review for several agencies (e.g., the



Internal Revenue Service) and collections (e.g., recordkeeping requirements); (3) requiring agencies to eliminate duplication, minimize burden, and develop plans for using the information before they request OMB approval of proposed information collections; and (4) creating a “public protection provision” providing that no penalty may be imposed on a person who fails to respond to an unapproved paperwork requirement.

The Act’s other major initiative was, as recommended by the Federal Paperwork Commission, to integrate this revitalized paperwork control process within a broader IRM context to link all of the Act’s purposes under a consolidated management “umbrella.” Thus, the Act created a single management framework to govern Federal agency information activities, and consolidated governmental policy and oversight functions in a new OMB Office of Information and Regulatory Affairs (OIRA).

The scope of this consolidation is seen in the array of laws enacted over the preceding 50 years that were coordinated under the Paperwork Reduction Act (PRA):

The Federal Reports Act (1942) created the BoB/OMB paperwork clearance process—the PRA revised that process;

The Federal Property and Administrative Services Act (1949) created the General Services Administration (GSA) and the Federal Records Act (1950) gave GSA records management and archiving functions—The PRA gave OMB oversight of those GSA functions;

The Budget and Accounting Procedures Act (1950) gave BoB/OMB statistical policy oversight—The PRA reestablished and expanded those responsibilities;

The Act of October 23, 1962 (P.L. 87–847, amending the Federal Property and Administrative Services Act) established the Federal Telecommunications Fund to finance procurement of Federal telecommunications equipment and facilities—the PRA gave OMB oversight of the Fund and related information technology functions;

The Brooks Act (P.L. 89–306, amending the Federal Property and Administrative Services Act, 1965) established GSA supervision of automatic data processing equipment (ADPE) procurement and Department of Commerce responsibility for Federal information processing/ADP standards—the PRA gave OMB oversight of these functions with more detailed policy requirements; and

The Privacy Act (1974) established OMB oversight of the management of Government records containing personal information—the PRA linked this responsibility with security and other related functions.

This range of policies and requirements consolidated under the umbrella of the Paperwork Reduction Act of 1980 demonstrates Congress’ resolve to establish a comprehensive approach equal to the task of managing Government information in the emerging electronic information age. In its scope, the Act represented an historic effort to focus the attention of the entire Federal management apparatus on the twin tasks of reducing public information collection burdens and maximizing the utility of Government informa-

tion to more efficiently and effectively perform Government functions.

#### C. IMPLEMENTATION OF THE PAPERWORK REDUCTION ACT OF 1980

Despite the consensus evident in its origins, the implementation of the Paperwork Reduction Act of 1980 has received criticism from some quarters. When the Act went into effect on April 1, 1981, the newly created Office of Information and Regulatory Affairs (OIRA) operated not only under the statute, but also under President Reagan's regulatory review order (Executive Order No. 12291, issued February 17, 1981). This order created a process for OMB cost/benefit review of agency regulations, which OMB integrated with its statutory paperwork clearance process. These efforts were designed to slow the enormous growth in unjustified regulatory and paperwork burdens created during the 1970s.

With OMB taking a "unified" approach to paperwork reduction and regulatory review, implementation of the Act became a major issue in the political debate about the Administration's regulatory policy—not just involving abstract questions of administrative accountability and separation of powers, but centering on concrete Government decisions affecting public health and safety and the environment. This ultimately decade-long controversy polarized congressional oversight of OMB; diverted attention from other significant problems in OMB's implementation of the Act; and frustrated attempts to reauthorize appropriations for the Act between 1983 and 1986, and again between 1989 and 1994. Unfortunately, no constructive hearings were conducted in the late 1980s and early 1990s by the predecessor of this Committee, the Government Operations Committee, on the progress being made to reduce paperwork burdens.

The 1980 Act assigned OMB a wide range of IRM tasks, including thirteen tasks with deadlines, for its implementation of the Act's paperwork control and other IRM functions. GAO, in reviewing OMB's implementation of the Act, identified 39 discrete tasks covering the full range of OMB's responsibilities. While some were one-time actions, many were continual activities that OMB would administer as long as the Act was in place.

Responding to the paperwork burden goals included in the Act, OMB reported success in the battle against red tape—a 32 percent reduction by January 1984, which exceeded the Act's goal of a 25 percent reduction. In tracking OMB's implementation, GAO reported on several occasions that OMB was not meeting the full range of its statutory obligations. OMB did not issue policy guidance to agencies on information technology, statistical policy, records management, privacy, and information dissemination until December 1985 (OMB Circular N. A-130, December 12, 1985, 50 Federal Register 52730, December 24, 1985). The major reason, according to GAO, was OMB's concentration on paperwork clearance and the regulatory review process established by Executive Order No. 12291. GAO also found that the limited guidance was causing agencies problems in carrying out their IRM responsibilities, resulting in a serious lack of attention to a variety of information management problems. See, Hearing before the Subcomm. on Legislation and National Security, House Comm. on Government Oper-

ations, October 21, 1981; Hearing before the Subcomm. on Federal Expenditures, Research, and Rules, Senate Comm. on Governmental Affairs, April 14, 1982; "Implementing the Paperwork Reduction Act: Some Progress, But Many Problems Remain," GAO/GGD-83-35, April 20, 1983; Hearing before the Subcomm. on Legislation and National Security, House Comm. on Government Operations, April 27, 1983; Hearing before the Subcomm. on Information Management and Regulatory Affairs, Senate Comm. on Governmental Affairs, May 6, 1983; Hearing before the Subcomm. on Information Management and Regulatory Affairs, Senate Comm. on Governmental Affairs, April 4, 1984; and "The Office of Management and Budget's Actions Show Progress in Implementing the Paperwork Reduction Act of 1980," GAO/IMTEC-84-24, September 7, 1984.

The 1986 reauthorization legislation (P.L. 99-591 (44 U.S.C. 3520(c)), 1986) contained provisions to address the paperwork versus regulatory review issue. The bill amended the 1980 Act to require disclosure of written communications between OIRA and agencies or the public regarding paperwork proposals, and OIRA explanation of paperwork clearance decisions.

Even while addressing these contentious issues, the Committee maintained its strong support for the Act's paperwork reduction provisions. The 1986 legislation established an annual five percent paperwork burden reduction goal, required agencies to provide the public with more information about paperwork proposals, required OIRA to identify initiatives to reduce paperwork burdens associated with Federal grant programs, and revised the definition of "information collection request" to include "collection of information requirement." This definitional change ensured that regulatory paperwork would be governed by all aspects of the Act's paperwork clearance process.

Finally, with regard to IRM and other information functions, the 1986 amendments required Senate confirmation of the OIRA Administrator; defined the term "information resources management"; provided new requirements and deadlines for IRM plans and policies; required the appointment of a professional statistician to carry out a broadened array of OMB's statistical policy functions; revised the scope of the Act's information technology provisions; strengthened OMB responsibilities for information security and dissemination; and mandated steps to make Government information more accessible to the public.

Notwithstanding the improvements made by the 1986 legislation and the successful efforts of the Reagan Administration to reduce the growth rate of paperwork and regulatory burdens, criticisms continued about the use of paperwork clearance as an adjunct to regulatory review, about OMB's still-lagging progress in implementing the IRM provisions of the Act, and about OMB's failure to stem the still-growing tide of paperwork. Expiration of the Act's second authorization for appropriations in 1989, and the Committee's consideration of reauthorization legislation provided the forum once again for this debate.

## D. THIRD PARTY DISCLOSURE

In 1990, the paperwork/regulatory issues, particularly, took on more urgency when the Supreme Court ruled in *Dole v. United Steelworkers of America*, 49 U.S. 26 (1990), on the scope of the paperwork clearance process.

*Dole* involed an OIRA paperwork clearance disapproval of several provisions in the OSHA Hazard Communication Standard, which requires employers to inform employees of hazardous chemicals in the workplace. After lengthy litigation over the OSHA rule and OIRA's role in its promulgation, the Supreme Court ruled that OIRA's authority to review agency information collection activities was limited to information collected by an agency, and did not extend to third-party information disclosure requirements. The Court's discussion of limits on OMB's ability to affect an agency's "substantive regulatory choice" was seized on by OMB critics as vindication of their decade-long argument that OMB was overstepping its legal mandates. On the other side of the argument were those who claimed that agencies were now using *Dole* to justify sending fewer proposals to OIRA for clearance.

The Committee believes that the Court misreads Congress' intent in enacting the 1980 Act. H.R. 830 overturns the *Dole* decision and includes third party disclosure requirements within its provisions.

The basic reasons to ensure that third party disclosure requirements are clearly within the scope of the Act are threefold. The character of Federal information collection has changed since 1980. Increasingly, Federal agencies are using third party disclosure requirements to meet program needs, instead of directly collecting, processing, and disseminating information itself. Third party disclosures include Federal requirements for labeling, self-certification, public recordkeeping, conveying information between third parties (such as pension data a Federal agency requires employers give their employees); and directly conveying information to State or local governments.

Third party disclosure is increasing partly because agencies, with their own limited resources to collect and analyze information, have discovered that their program objectives may be met by requiring private parties to provide information directly to the intended beneficiary (e.g., an employee of the employer) or enforcer (e.g., the State or local government charged with regulatory enforcement), eliminating the Federal middle-man. In order to decrease the direct cost of Government services, agencies may also adopt third party disclosure in the form of self-certification and recordkeeping by private entities to replace extensive information collections.

In addition, the Federal Government has increased the use of third party disclosure by having private institutions and individuals report to State or local governments. States, for example, are often charged with the responsibility for implementing and enforcing Federal program requirements with extensive information collection. In such situations, a Federal agency may not actually receive the information as collected, but require the States to retain the reports from the public for possible Federal inspection or hav-

ing States send the Federal agency only a summary of information reported to them.

#### E. PRESIDENT BUSH'S COUNCIL ON COMPETITIVENESS

The lack of Congressional support for reauthorizing the Paperwork Reduction Act during the late 1980s and early 1990s resulted in a debilitated OIRA. The Agency suffered from a reducing budget and a lack of political level leadership. The vacuum that was created was largely filled during the administration of President George Bush by the creation of the Council on Competitiveness. The Council was a Cabinet-level body, chaired by Vice President Dan Quayle, and designed to reduce the burdens of excessive regulation and to encourage America's competitiveness.

In a September, 1992 report entitled, "The Legacy of Regulatory Reform: Restoring America's Competitiveness," the council detailed its success in making the regulatory process more efficient and effective.

Some of the report's highlights include:

The Bush/Quayle Administration's reforms to the drug approval process save lives and reduce suffering for millions of U.S. citizens. Experts estimate that more than 33,000 lives will be saved annually in the U.S. The Council's reforms will cut, nearly in half, the time necessary to approve important new drugs to treat cancer, heart disease, Alzheimer's depression, cystic fibrosis, AIDS and other life-threatening diseases. The 76,000 AIDS/HIV patients in the United States can be helped by our rapid approval process.

Health care has benefited from U.S. world leadership in biotechnology that has created more than 750 new drugs, vaccines and devices to address diseases, such as cancer and AIDS. The Council's efforts have supported the development of the U.S. biotechnology industry. This rapid growth section employ approximately 80,000 Americans nationwide.

The Bush Administration's regulatory reform efforts have generated and saved jobs for workers in the U.S. Economists estimate that a regulatory reduction of this magnitude will save or create over 200,000 jobs nationwide. By cutting regulatory red tape, the Bush/Quayle Administration has freed up resources for productive, job-creating uses. These efforts have and will continue to touch the lives of the citizens of the United States.

The Bush/Quayle Administration opposed efforts to expand harmful fuel efficiency (CAFE) regulations that create incentives for American companies to relocate automobile and auto parts manufacturing overseas. Raising the CAFE standard merely 2 mpg would cost over 200,000 jobs nationwide. A much higher CAFE standard, such as the proposed 40 mpg level, would cripple the U.S. automobile industry and threaten some 2.1 million auto-related jobs in America.

The Council on Competitiveness' Report on National Biotechnology Policy sets forth a common sense approach to biotechnological innovations in agriculture. Biotechnology offers the prospect of higher crop yields, reduced pesticide use, improved nutritional characteristics, and healthier crops for

America's 2 million farms. By employing risk-based regulation, this industry will safely grow to \$50 billion nationwide by the year 2000, with substantial benefits to American workers and consumers.

Many of the Bush Administration's legal reforms incorporated market-style incentives to reduce litigation and encourage earlier dispute resolution. The Council on Competitiveness has worked to implement reforms, which would promote fairness and predictability in our nation's court system. With 18 million new civil cases filed in the United States last year, the time has come for someone to stand up to the litigation explosion. The Council on Competitiveness is the voice in Government leading the charge.

Lack of clarity over Superfund liability drove many of America's 35,000 lending institutions to become very reluctant in lending to American businesses. The Council on Competitiveness has worked with EPA to clarify lender liability obligations under superfund, and thereby improve the lending climate for American businesses.

The Administration has put in place environmental programs that are affordable and effective, and preserve jobs. The Bush/Quayle Administration coordinated implementation of the new Clean Air Act that improves the quality of the environment in the United States:

- Reduces sulphur dioxide emissions in the year 2000 by 10 million tons less than they would have been otherwise.

- Reduces cancer-causing hazardous air pollutants by 27 million pounds approximately four years ahead of schedule.

- Reformulates gasoline to make it less polluting by reducing the emissions of ozone depleting and cancer-causing chemicals.

Small businesses generate most of the new jobs in America. Excessive regulation litigation costs are often serving as the greatest barriers to new small businesses. The Council on Competitiveness has worked with the Securities and Exchange Commission to make it easier for America's small businesses to access capital markets directly. For the first time, thousands of small businesses will be able to use streamlined securities registration forms. It is estimated that eligible businesses will save up to \$180 million in legal and accounting fees.

Despite these successes, not everybody was pleased. According to the November 11, 1991 edition of Insight magazine:

The council's power to drag out and review the regulatory process at every step along the way has infuriated members of Congress and other advocates of regulations it has helped to quash. Public interest and environmental groups denounce it as a deregulatory star chamber.

In a September report, "All the Vice President's Men: How the Quayle Council Secretly Undermines Health, Safety and Environmental Regulations," two pro-regulatory groups, OMB Watch and Public Citizen's Congress Watch, decried the "stranglehold on the agency rule-

making process” enjoyed by the little-known but “formidable” President’s Council on Competitiveness.

The Council was eliminated in early 1993 following the inauguration of President William J. Clinton.

#### F. 1995 REAUTHORIZATION

Reauthorization efforts in the current 104th Congress began in the final days of the 103rd Congress. During that Congress, Congressmen Norman Sisisky (D-VA) and then Government Operations Committee ranking minority member William F. Clinger, Jr., (R-VA), introduced H.R. 2995, a bill to reauthorize the Paperwork Reduction Act. This bill gained almost immediately over 120 cosponsors with an almost equal number of Republicans as Democrats. A Senate companion bill, S. 560 was introduced by Senators Sam Nunn (D-GA), Dale Bumpers (D-AK) and William Roth (R-DE). A similar bill, S. 681, was introduced by Senators John Glenn (D-OH), and Carl Levin (D-MI). Discussions among the primary sponsors of the two Senate bills, and with officials of the Clinton Administration, suggested that a renewed cooperative effort could produce a single compromise bill.

A compromise bill was drafted in the Senate, and later supported in the House by Congressmen Clinger and Sisisky. It was approved by the Senate Committee on Governmental Affairs on August 2, 1994, and later passed the full Senate with unanimous support. In a joint letter on August 3, 1994, Congressmen Clinger and Sisisky wrote Government Operations Committee Chairman John Conyers (D-MI) seeking Committee consideration of the Senate bill. In their letter, they stated,

S. 560, as amended by a substitute offered by Sen. John Glenn, is a logical extension of legislation first championed by the Government Operations Committee a decade and a half ago. This new bill builds on the Paperwork Reduction Act of 1980 by significantly improving the management of information technology and information resources in the federal government.

We are writing to ask that you join us in support of this effort. We also understand the Clinton Administration’s Office of Management and Budget, the General Accounting Office, and the small business community have all expressed their support for S.560, as amended.

Unfortunately, the Committee took no action and the Senate’s compromise proposal failed to clear the Congress during the 103rd Congress. The amended S. 560 became the base vehicle for consideration in both the House and the Senate during the 104th Congress, however, and is represented in many of the pages of the bill approved by the Committee on Government Reform and Oversight.

Following review of the Act’s implementation, reports from OMB, GAO and others, and consideration of the varied public views, the Committee is convinced that the basic purposes of the Act and the management framework it set in place in 1980 are still appropriate and should be continued. However, too little progress has been made in implementing key provisions of the Act. Amendments are required to strengthen each functional IRM area: IRM policy; pa-

perwork control; dissemination; statistics; records management; security and privacy; and information technology management.

First, with regard to the reduction of paperwork burdens, more needs to be done. Specific annual paperwork reduction goals will help focus agency attention on this important task. If these goals are not reached, OMB should recommend to Congress statutory changes to programs designed to meet the full 10 percent burden reduction goals. More precise agency requirements, including public comment, will lead to early agency review of information collection activities before submission to OMB. Finally, the disparate treatment of information disclosure and collection requirements, introduced by *Dole*, should be ended.

The Act's IRM provisions are also in need of revision for a variety of reasons, not the least of which is the use of new information technology. Over the past 13 years, OIRA failed to carry out its IRM responsibilities as well as it could. Similarly, Federal agencies made limited progress in implementing efficient and effective programs of information resources management. As a result, many of the problems the Act sought to remedy not only persist, but have grown more serious. Additionally, a revised Act should also help agencies prepare for the variety of new information management challenges that are on the horizon.

Overall, the Committee believes, as did the Federal Paperwork Commission, that more needs to be done to improve the management of Federal information resources. Information policymakers must equip themselves with the knowledge necessary to achieve the highest quality, best use, and least burden from Government information. Similarly, agency managers, called upon to do more with less, must familiarize themselves with the capabilities of information technology as a resource for efficiently and effectively administering programs—again, maximizing utility and minimizing burden. Without this effort, Government information activities will be too wasteful and too burdensome, and the American public will have their worst views of Government information confirmed.

To achieve this goal, the Committee believes that Government information, as a valuable and useful resource to Government and society, must be managed in a coordinated and systematic manner based on established principles of information resources management. OIRA, in conjunction with other central management offices, should exercise leadership in developing coherent information policy which gives balanced and needed emphasis to all information functions. Federal agencies should establish information resources management programs that implement OIRA's policy guidance. Without such programs, agencies will fail in their operational responsibilities—OIRA may develop the policies but the practices take place in the agencies.

The Committee is pleased to see a variety of initiatives to change the culture of Federal information resources management by focusing on "best practices" and the improvement of mission performance. See, GAO's report, "Improving Mission Performance Through Strategic Information Management and Technology" (GAO/AIMD-94-115, May 1994); the revised OMB Circular A-130, 59 Fed. Reg. 37906 (July 25, 1994); and "Reengineering through Information Technology," Accompanying Report of the National Performance



Review (September 1993). These efforts hold great promise for improving the efficiency and effectiveness of Government information activities.

The major functional areas addressed by the legislation are as follows:

*Information resources management*

The Paperwork Reduction Act of 1980 established the concept of information resources management (IRM) for the Federal Government. The Act calls for the efficient and effective management of information and related resources, like other Government resources. The management structure required by the Act—a central office in OMB and designated IRM officials in the agencies—was intended to insure that agency IRM activities be given more visibility and attention from top management.

Managers in most agencies continue to overlook the importance of their information management activities. In many Government agencies, information issues are viewed as an administrative function, rather than an integral part of agency management and operations. As a result, these issues and functions often are delegated to technical staff. Consequently, during the 14-year period the law has been in effect, most agencies have made little progress in improving the management of their information resources, particularly with regard to their supporting the fulfillment of agency programs and missions.

Furthermore, within the past decade, the public has grown accustomed to the benefits of using information technology to improve the cost, quality, and timeliness in the delivery of services and products. Americans now expect to solve a problem with one telephone call, obtain customer service 24 hours a day, withdraw cash from automated teller machines around the country, and get products delivered almost anywhere overnight. Consequently, at a time when almost anyone can get eyeglasses in about an hour, veterans cannot fathom why they must wait six weeks to obtain them from the Government. Similarly, the general public cannot understand why it takes weeks, instead of days, to process an income tax refund or months to determine eligibility for Social Security disability benefits.

Federal agencies are estimated to have spent at least \$25 billion on information systems in fiscal year 1994, and about a quarter of a trillion dollars since the Paperwork Reduction Act was enacted 14 years ago. Despite this huge expenditure, it is unclear what the public has received for its money. Critical information assets are frequently inaccurate, inaccessible, or nonexistent. Efforts across the Government to improve mission performance and reduce costs are still too often limited by the lack of information or the poor use of information technology.

The General Accounting Office's reports on information management and technology issues of 1988 and 1992 underscored how federal agencies often lack the critical information needed to analyze programmatic issues, control costs, and measure results. (See "Information Management and Technology Issues," GAO/OCG-93-5TR, December 1992; "Information Technology Issues," GAO/OCG-89-6TR, November 1988).

Further, GAO has documented examples of Federal agency information systems failures over the past 10 years that include:

Over \$1 billion of mistaken Medicare payments;

The outlay of millions of dollars of unauthorized student loans because of poor information tracking;

Inadequate financial data on agencies' basic operations that frustrates financial management and auditing; and

The release of highly sensitive data on law enforcement informants through mismanagement of security.

For most Federal agencies, GAO has reported that pervasive gaps in available skills and confused roles and responsibilities severely inhibit significant increases in performance. Common problems include:

(1) A failure to define the roles of program managers in relation to IRM professionals;

(2) The lack of an effective IRM official to raise and help resolve information management issues with top management; and

(3) Outdated or poorly defined skill requirements.

These problems weaken an agency's ability to define how new information systems support its missions, meet customer needs, or respond more quickly to change

Without action by Federal executives, the gap between expectations held by the public and agency performance will continue to expand. Program failures will continue and opportunities for improvement will be lost. Many low-value, high-risk information systems projects will continue to be pursued unimpeded and undermanaged as leaders blindly respond to crises by purchasing more and more technology and throwing it at their problems. Most Federal managers will continue to operate without the financial information and other management information they need to truly improve mission performance. Moreover, many Federal employees will struggle unsuccessfully, under increasing workloads, to do their jobs better as they are hampered with using information systems that simply add on another automated layer of bureaucracy.

Given these risks and the vast potential for improvement, business as usual is simply no longer a tenable option for Federal executives and Government agencies. Recommendations of the President's National Performance Review (NPR) suggest the scale of improvements possible from "reinventing" the management of information technology. One such initiative, the Wage Reporting Simplification Project, identified life cycle savings of \$1.7 billion to participating Government agencies and \$13.5 billion in reduced burden to private sector employers (See "Engineering through Information Technology," Accompanying Report of the National Performance Review, September 1993).

The specific performance planning and reporting requirements of the Government Performance and Results Act (P.L. 103-62) point to a time when agency managers, in the very near future, will have to account for the programmatic outcomes of their information activities.

Given this need for action, the overarching management strategy of the Paperwork Reduction Act of 1980 is all the more important. As stated in the legislative history of the Act in 1980, the purpose

of aggregating these information resources management functions within OMB's Office of Information and Regulatory Affairs (OIRA) was to establish a government wide policy framework for "information resources management." Application of the policy framework was expected to result in considerable financial savings to the Government and a substantial reduction in paperwork burden imposed by Federal agencies on the public.

Through the Paperwork Reduction Act, the Congress attempted to articulate the management concept that could drive real world management improvements. Nearly a decade and a half later, the Committee finds that, while IRM is a recognized concept in Government and the private sector, there is not enough commitment to making IRM work in practice. The Committee is convinced, however, that the management concept is not flawed. Rather the need is to develop an improved strategy by which to apply IRM.

Information, as a resource, is not simply a matter of questions answered or systems acquired. Information must be reliable, accurate, complete, accessible, and timely if it is to be used by agency managers to make decisions and take actions in fulfilling agency missions. Accordingly, investments in information resources must be managed as a part of a coordinated, performance-oriented approach to "recognize and address the interconnectivity among the stages of the information life cycle." (See "Information Life Cycle: Its Place in the Management of U.S. Government Information Resources," Government Information Quarterly, Peter Herson, Vol. 11, No. 2, pp. 156-7, 1994).

Part of a revised IRM strategy is to implement more fully the Act's original IRM management structure. The 1980 Act required agency heads to designate a senior IRM official, reporting directly to the agency head, who would be responsible and accountable for the agency's IRM activities. The goal was to consolidate responsibility for the functional IRM activities (collection of information, statistics, privacy and security, records management, and information technology) already established through various laws.

The Act's IRM structure at OMB and in each agency was to establish an identifiable line of accountability for IRM activities between the OMB Director and individual agencies and within the agencies. Not only would this structure enable agencies to better manage their information resources, but it would also enable the Congress to pinpoint responsibility for those activities.

In most agencies, the IRM official designated by the agency head under the Paperwork Reduction Act was (and is) the Assistant Secretary for Administration (or similar official). In addition to the IRM functions, this official also had/has a variety of other functions, such as procurement, payroll, human resources management, and space management. The common result was that these functions took precedence over the (newly coordinated) IRM responsibilities. This meant that, instead of getting greater attention and visibility for the IRM functions, subordinate officials continued to manage IRM activities, as before.

Investments in information technology also continued to be managed as before—as isolated projects not evaluated or coordinated to assure compatibility among systems. Further, they were not compared against each other and ranked in terms of priority given

their expected support for the accomplishment of agency programs and missions.

Moreover, as a subordinate staff function, IRM was not considered important enough to integrate with other management activities, such as strategic planning, budgeting, financial management, and personnel management. Diminished in importance organizationally, IRM also suffered from the failure to develop clear job descriptions and training programs for IRM personnel. This reduced opportunities for professional advancement and IRM skill development and further reduced agency IRM capacity.

Given the weakness of agency IRM efforts, the failure of OMB to provide effective IRM guidance was all the more significant. Given this history, the Committee amends the Act in order to clarify the meaning and requirements for IRM both within OIRA and the agencies. First, IRM is redefined in H.R. 830 to link management directly with program outcomes:

The term “information resources management” means the process of managing information resources to accomplish agency missions and to improve agency performance, including the reduction of information collection burdens on the public.

Focusing IRM on supporting mission accomplishment shifts the term from the generic concept of efficiency and effectiveness to one of direct support for the accomplishment of agency missions. This is consistent with the Committee’s development of the Government Performance and Results Act, which requires agencies to develop strategic plans, and performance plans and reports, to focus program and management activities on directly serving programmatic outcomes.

H.R. 830 maintains OMB’s central IRM role. The OIRA Administrator should still prescribe governmentwide IRM policies and guidance (with support from other central management agencies), oversee agency implementation, and evaluate agency IRM activities. However, the current legislation revises many of these mandates to refocus them on integrating information management with program management and concentrating on program outcomes as the standard for oversight of the efficiency and effectiveness of IRM.

Likewise, H.R. 830 also revises agency IRM responsibilities. It spells out the Act’s functional IRM areas (paperwork control, dissemination, etc.) as agency operational responsibilities (in section 3506) to match OMB’s policy and oversight responsibilities (in section 3504). Accountability for carrying out these responsibilities also is more clearly spelled out. Under the leadership and direct responsibility of the agency head, H.R. 830 first assigns program officials the responsibility and accountability for information resources assigned to and supporting their programs, and, second, assigns IRM oversight within the agency to the IRM office.

The connection and collaboration among program, information, and agency managers is then institutionalized by the requirement that each agency establish a process for maximizing the value and assessing and managing the risks of major information systems initiatives. Further, the process is to be used to select, control, and evaluate the results of these initiatives and assure that decisions

regarding these initiatives are integrated with budget, financial, and program management decisions.

Neither the functional responsibilities nor the management accountability are new creations under this legislation. The 1980 Act, as well as other related information management laws, vest these duties in the agencies. The amendments proposed in the current legislation are intended to more clearly focus agency managers on the breadth of their IRM responsibilities.

As a guide to the implementation of these requirements, the Committee believes that OMB and the agencies should draw on the developing body of GAO work on IRM "best practices". (See "Executive Guide: Improving Mission Performance Through Strategic Information Management and Technology," GAO/AIMD-94-115, May 1994.) GAO's best practices, which were identified at leading public and private organizations, center on three key efforts to build a modern information resources management infrastructure: (1) deciding to change information resources management practices and getting management commitment, (2) directing resources toward high-value uses and mission goals, and (3) supporting improvement with resources, organizational support, and trained and committed managers and professional staff. A description of these practices and recommendations for senior executives are contained in the appendix to this report.

Based on the findings of the report and other work by GAO, Gene Dodaro, Assistant Comptroller General for Accounting and Information Management, GAO, testified before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, on February 7, 1995. In his testimony, Mr. Dodaro made the following key points:

The Paperwork Reduction Act is a vital component of an overall legislative framework—including the Chief Financial Officer Act, the Government Performance and Results Act, and the Federal Acquisition Streamlining Act—designed to resolve basic management problems that undermine effective implementation of many Government programs.

The public environment has changed dramatically in the 14 years since initial passage of the Act. Rapid changes in information technology and management techniques have greatly increased the act's potential to help streamline operations and produce higher quality services delivered more effectively, faster, and at lower cost. These developments make it essential to update the act and place it within the context of the information age of the 1990s and beyond.

Despite the urgency to change, little meaningful progress towards improving Government productivity, mission performance results, and service delivery can be achieved unless federal agencies adopt sound strategic information management approaches. The improvements to the Act can help construct a useful framework to bring modern technology management approaches to the Federal Government.

#### *Collection of information/control of paperwork*

The Paperwork Reduction Act of 1980 authorized OMB to judge whether agency information collection activities are "necessary for

the proper performance of the functions of the agency.” In 1994, the Committee looks back over the record of the Act’s implementation and finds that the Act’s paperwork clearance process has served as an effective mechanism to control Federal agency information collection activities.

The effectiveness of the process as a control mechanism, however, has neither provided a reduction of the total paperwork burden, nor has it been used consistently by OMB as the Committee intended. Therefore, the Committee believes that a strengthened process, with clarified agency responsibilities and improved opportunities for public participation, will result in more significant reductions in paperwork burdens and more faithful implementation of the Act.

First, despite the Act’s mandate, Government paperwork burdens on the public continue to be a real and serious problem. At Congressional hearings, representatives of the business community have testified about rising paperwork burdens. In 1989, Mark Richardson of the Business Council on the Reduction of Paperwork stated that the cost of the paperwork burden to the business sector had reached a level more than three times what it was in 1978, “about \$330 billion annually.” Senate Hrg. 101–166, p. 81. During the February 7, 1995, Committee hearing, Robert Coakley of the Council on Regulatory and Information Management suggested that the amount of time and effort for the public to meet the Federal Government’s information needs has reached an amount equivalent to nine percent of the Gross Domestic Product.

My organization C–RIM, estimates that an amount of time and effort equal to 9 percent of the Gross Domestic Product is dedicated to meeting the Federal Government’s information needs. That is a ballpark figure of what the off-budget cost of Federal paperwork requirements—the “hidden taxes” of Government programs—amounts to.

Here is how we reach that number. The Government’s own estimate of the hours it takes the public to collect information, report, keep the records, fill out the forms, and answer all the questions that accompany the delivery of federally sponsored services is compiled for the annual Information Collection Budget. The fiscal 1991 estimate (the last annual estimate reflected in an Annual Report by the Office of Information and Regulatory Affairs) is 6.5 billion hours. Eighty-three percent of that is associated with the Treasury Department.

Treasury’s large share is due to an adjustment made by the IRS in the late 1980’s when an IRS commissioned 5-year study by Arthur D. Little indicated that the IRS previously had under-estimated the burden of its reporting and recordkeeping requirements by a factor of 7. It adjusted its burden figures accordingly. The rest of the Government did not.

Take the remaining 17 percent, adjust it conservatively by a factor of 4 instead of 7, and the total burden hour number comes to 10.2 billion hours.

Time is money. At 50 dollars an hour—a reasonable estimate of the average cost of an hour spent for meeting Fed-

eral reporting or recordkeeping requirements—the cost of the federal paperwork burden comes to 510 billion dollars, which approximates 9 percent of the 1992 Gross Domestic Product.

In the first years of the Act's implementation, OMB's annual reduction figures had suggested great progress in reducing these paperwork burdens (e.g., 12.8 percent in 1982 and 10 percent in 1983). Within several years, however, the paperwork problem proved to be more intractable. OMB's governmentwide burden estimate increased each year, despite the reductions associated with specific year-to-year disapprovals. According to GAO, there was "a 27-percent increase in reported burden hours (to 1.9 billion) between 1980 and 1987." "Paperwork Reduction: Little Real Burden Change in Recent Years," GAO/PEMD-89-19FS, June 1989.

New information collections necessitated by new laws and regulations accounted for some of this increase. Other increases were due to agency reevaluation of existing burdens. Thus, GAO pointed out in 1993 that while the paperwork burden OMB reported rose from over 1.8 billion hours in 1987 to nearly 6.6 billion hours in 1992, most of the increase was due to a recalculation of burden hours by the Department of the Treasury, not because of new burdens imposed on the public. "Paperwork Reduction: Reported Burden Hour Increases Reflect New Estimates, Not Actual Change," GAO/PEMD-94-3, December 1993. On the basis of such factors, as well as other methodological problems, GAO has cautioned against singular reliance on such estimates. While the Committee acknowledges these limitations, the Committee believes that burden estimates serve an invaluable role as markers along the road to paperwork reduction.

Particularly for small businesses, paperwork burdens can force the redirection of resources away from business activities that might otherwise lead to new and better products and services, and to more and better jobs. Accordingly, the Federal Government owes the public an ongoing commitment to scrutinize its information requirements to ensure the imposition of only those necessary for the proper performance of an agency's functions. Burden estimates and reduction goals can help OMB and agencies target particularly burdensome paperwork and focus agency efforts on achieving meaningful burden reductions. The Committee thus increases the Act's five percent annual burden reduction goal to ten percent and stresses the need for OMB to oversee improved burden estimation efforts. The Committee's only caution is that OMB and agencies not rely solely on burden estimates apart from a qualitative assessment of the necessity of any information collection for the proper performance of an agency's functions.

It is because of the Committee's commitment to the goals of the 1980 Act, however, that the current legislation overturns *Dole v. United Steelworkers of America*, the Supreme Court's 1990 decision that the Paperwork Reduction Act's paperwork clearance process for agency information "collections" does not cover agency information "disclosure" requirements. The need for a comprehensive and conclusive process for the review of agency information activities that burden the public requires the Committee to amend the Act to clearly overturn the Supreme Court decision. The IRM mandate

of the Act does focus on internal government operations, but to the extent Government information activities affect the public, associated burdens must be evaluated, justified, and reduced as provided under the Act. In this way, overturning the court decision is also consistent with the original intent of the 1980 Act to eliminate exemptions from paperwork clearance.

Moreover, it became clear shortly after the Court's decision that agencies would use the decision to avoid OMB review. In a report prepared for Congress, GAO found that neither OMB nor the agencies it reviewed had issued any formal guidance implementing the decision. Further, agencies differed in their interpretation of the decision. Two agencies studied by GAO had not changed their practices (i.e., EPA and HHS). Two other agencies, however, were sending fewer proposals to OMB for clearance (i.e., OSHA and the FTC). "Paperwork Reduction: Agency Responses to Recent Court Decisions," GAO/PEMD-93-5, February 3, 1993. The solution now is to end the disparate treatment of collections of information made by Federal agencies and third-party paperwork burdens imposed on one party by another party at the direction of a Federal agency.

The current legislation also strengthens OMB accountability, as well as its paperwork reduction mandate. Committed to a comprehensive process, but mindful of past controversies, the Committee believes that a more thorough and open agency paperwork clearance process can improve the quality of paperwork reviews and public confidence in Government decision-making. Analogous to the way in which an agency's rulemaking record stands as the basis for and evidence of the need for a regulation, so should a more highly developed and examined record of an agency's formulation of an information collection proposal stand as the basis for the collection and as a public record of its need.

The delineation of a more detailed agency paperwork clearance process obviously places a heavier burden on agencies to justify the programmatic need for information. But this, too, should help counteract some of the negative connotations associated with information collections. Information requirements will less often come unannounced and unexplained if the agency has already had to justify the requirement, and the burden it imposes, to the public and consider public comments. This early review in turn should help agencies make their case for the value of Federal information and prompt them to improve the quality and availability of such information. The review certainly will assist individuals and organizations representing those who are burdened to engage agencies in meaningful dialogue about the need for information. Out of this more thorough review of information collection proposals should come more effective ways to minimize burdens and maximize the utility of information collected or generated by or for the Federal Government. As agencies move to more electronic information systems, this type of clearance process provides greater assurances that both information collection and technology investments are made wisely.

H.R. 830, as amended, seeks to improve the law to more clearly address the benefits as well as the burdens of Federal information. Accurate, timely, relevant, statistically sound information is essential to rational and effective legislation, regulation, resource alloca-



tion, and enforcement—indeed, for virtually all public policy decisions. Thus, the bill, seeking to “ensure the greatest possible public benefit” from Government information, states that it is a basic obligation of the agencies and OMB to “improve information resources management in ways that increase productivity, efficiency, and effectiveness of Federal programs, including service to the public.” Better IRM will create better information, used better, and with fewer burdens on the American public. For example, the bill maximizes utility by placing an emphasis on interoperability of agency systems and improvements in data sharing. These steps are meant to capitalize on the advantages that information technologies offer for streamlining agency operations, enhancing public access to Government information, and reducing burdens on the public.

To accomplish these various objectives, H.R. 830, as amended, makes extensive changes to the existing law regarding the controls over information collections. At the OMB level, the legislation requires the Director, in consultation with the agency heads, to set an annual governmentwide goal for the reduction of information collection burdens by at least ten percent and to set annual agency goals for burden reduction, as well—importantly, not merely as a stand-alone goal, but as a part of a broader IRM plan, including efforts to reduce burden, eliminate duplication, meet shared data needs, and improve efficient and effective use of information technology. In addition, the bill calls on OIRA to coordinate its review of procurement and acquisition-related collections of information—one of the most frequently mentioned areas of burden—with OMB’s Office of Federal Procurement Policy (OFPP) to improve the efficiency and effectiveness of the procurement process as well as to reduce burdens on the public.

At the agency level, the bill describes in some detail the requirements for agencies to establish processes for reviewing their information collections before submitting them to OMB for clearance. The agency’s designated IRM official should, independently of the proposing program office, evaluate the need for the information, the burden estimate, the agency’s plans for management and use of the information to be collected, and whether the proposed collection meets the other requirements of the Act. H.R. 830, as amended, also prescribes that agencies must consult with the public on their proposed collections and certify to OMB that the clearance steps have been taken. These include assuring the need for the information, that the collection is not unnecessarily duplicative of information otherwise reasonably accessible to the agency, and that the burden to be imposed has been minimized.

Under the legislation, OMB must then allow at least 30 days for further public comments. Also, OMB is to provide a decision to the requesting agency within 60 days (the 30-day extension period under current law is eliminated). If OMB does not notify the agency of its decision on the proposed collection within this time, approval is inferred and the agency may collect the information for two years. Any such OMB decision to disapprove a collection of information or instruct an agency to make substantive or material change to its is to be publicly available and include an explanation of the OMB decision. Further, communications between the OIRA Administrator, or OIRA staff and an agency or person not em-

ployed by the Federal Government regarding proposed collections of information are to be made part of the public record. Public comments pertinent to OIRA's decision to approve, modify, or disapprove an agency's collection of information are to be part of the public record.

Finally, an additional new purpose of the bill is to strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing information collection burdens and maximizing utility of information collected by Federal agencies. This will require additional attention be paid to establishing common standards for data exchange and for interoperability among systems.

In these various ways, and as more precisely described in the section-by-section analysis, the Committee intends to strengthen the Act's paperwork reduction requirements to improve the efficiency and effectiveness of Government operations, including the reduction of paperwork burdens on the public.

#### *Information dissemination*

Information dissemination is an integral part of the information life cycle. While only mentioned once in the 1980 Act, the 1986 amendments properly inserted references to dissemination in provisions on IRM, IRM planning, and OMB's functional authority. In the years since the last reauthorization, dissemination has emerged as a particularly important functional information area due to new opportunities for improved dissemination of and public access to Government information made possible by emerging information technologies, not the least of which are growing public networks.

To realize the full potential for the flow of information, particularly electronically, requires new efforts by the Federal Government to coordinate and improve dissemination management policies and practices. For these reasons, and as described below, the Committee believes it is very important to provide a more detailed set of dissemination policies in statute.

The delineation of detailed dissemination policies and principles is also recommended because of the record of OMB's role in agency dissemination activities over the past 13 years. In the early 1980s, OMB used longstanding management powers to mandate the elimination and consolidation of thousands of agency publications as part of the Reagan Administration's "war on waste." While savings were undoubtedly realized, the elimination of many public service publications and the restrictions on agency dissemination planning were criticized. In addition, subsequent OMB policy guidance further limited agency dissemination activities by subordinating Government dissemination decisions to that of the private sector. OMB Circular No. A-130 (December 12, 1985, 50 Fed. Reg. 52730, December 24, 1985), and OMB's "Advance Notice of Further Policy Development on dissemination of Information," 54 Fed. Reg. 214 (January 4, 1989). While OMB proposed a more positive policy ("Second Advance Notice of Further Policy Development on Dissemination of Information," 54 Fed. Reg. 25554, June 15, 1989), and ultimately finalized a policy substantially in accord with the provisions of this legislation (revised OMB Circular No. A-130, Transmittal No. 1, June 25, 1993, 58 Fed. Reg. 36068, July 2, 1993,

and Transmittal No. 2, June 15, 1994, 59 Fed. Reg. 37906, July 25, 1994), the record of OMB's changing dissemination policies, and the criticisms and questions that accompanied them, recommend the delineation of a consistent policy set in statute.

The legislation, therefore, provides a detailed framework to guide Federal Government dissemination of public information. Policy guidance and oversight responsibilities are vested in OMB and operational responsibilities rest with the agencies. The legislation's mandate is clear. OMB has an obligation to promote public access to Government information through the development and oversight of governmentwide information dissemination policies. Likewise, agencies have an obligation to conduct their dissemination activities to ensure that the public has timely and equitable access to public information.

The Committee intends these provisions to assist agency managers in accomplishing their missions by disseminating information necessary for the proper performance of the agency's functions. Working in consultation with the public, OMB, and other central management offices, agencies should adopt uniform technical standards and capabilities, and integrate dissemination decision-making with the management of other IRM functions to promote and provide more efficient and effective public access to a broader range of Government information.

Accordingly, the legislation's policies and required practices apply to the dissemination of all Government information regardless of form or format (i.e., paper publications, compact disc, on-line data, etc.), that public information be made available on a timely, equal and equitable basis to all persons, that a diversity of government and non-government sources be used to facilitate access to Government information, and that there be no exclusive or restrictive distribution arrangements to limit or regulate the use or reuse of public information.

These requirements are designed to facilitate information dissemination as part of the efficient and effective performance of Government functions. This imperative does not, however, provide a single method or rule for dissemination. Federal agencies must develop approaches and make specific dissemination decisions that balance among competing forces and interests. Agencies must avoid privatization of essential government public services. Yet agencies need to affirm the important role played by information providers in the private sector. Agencies also must develop effective dissemination capabilities, while avoiding proprietary-like information operations.

Thus, as agencies are governed by the public purposes of their statutory missions, they should avoid copyright-like controls (e.g., restrictions on reuse of information) or pricing arrangements that restrict the flow of public information. They should also take advantage of (and not unnecessarily duplicate) private sector initiatives that may more efficiently or effectively serve the same ends.

One critical component in establishing broad-based public access to Government information is the development of a Government Information Locator Service (GILS). Such a locator system (or system of systems) should facilitate public and agency access to Government information by providing pointers to information holdings of

Federal agencies. Ultimately, this system should become a path to the holdings themselves. However, the Committee recognizes the diversity of current agency information systems and technologies. It is important, therefore, at this time to promote access through available channels.

In the context of the current legislation and the immediate future, OMB has moved in the right direction in issuing its recent directive on GILS, and NIST likewise is making a valuable contribution to the creation of GILS standards. It is important, however, to insure consistent implementation across agencies and to create procedures and mechanisms that can be used to build a viable locator system. This includes ensuring the security and integrity of GILS. GILS also needs to be able to evolve over time to accommodate the changing mix of electronic formats for Government information and rapid advances in information technology so that it does not become obsolete. The Committee expects that the inter-agency committee created in the legislation will provide the advice needed to ensure security and integrity of data, compatibility, sharing among agencies, and uniform access by the public. The term "uniform" should be understood to mean establishing a consistent standard for access and does not mean that all agency systems must employ the same software and hardware.

#### *Statistical policy*

Between 1939 and 1977, Federal statistical policy was the responsibility of OMB/BoB (Reorganization Plan No. 1 of 1939, see also section 103 of the Budget and Accounting Procedures Act of 1950, 31 U.S.C. 1104(d)). In October 1977, it was assigned to the Department of Commerce by Executive Order No. 12013. The Paperwork Reduction Act of 1980 transferred statistical policy and coordination back to OMB, integrated it with related information functions, and attempted to strengthen OMB's oversight and coordination responsibilities. To further strengthen the administration of the statistical functions, the 1986 amendments required OMB to appoint a professional statistician to the position of Chief Statistician to carry out OIRA's statistical policy responsibilities.

H.R. 830, as amended, continues and strengthens the requirements for OMB leadership of the Federal statistical system and adds a number of new provisions. These provisions reflect the Committee's view of the importance of improving central leadership and coordination of Federal statistical programs. While there is continuing concern about the adequacy of OMB's attention to its statistical policy functions, the Committee believes that these functions would still be best served by being in OMB, as the central office with management and budget, as well as IRM, authority.

The Committee is convinced that much more needs to be done to address growing problems in the Federal statistical system. It has found that the Federal statistical system has not kept up with the changing nature of the U.S. and global economies, nor with advances in information technology. Statistical priorities and programs need to be reexamined and updated in light of rapidly changing economic, technological, and social conditions. Statistical information is used for a wide variety of decision-making, both in the public and private sectors. Having reliable, pertinent informa-

tion therefore becomes a necessity if such decisions are to be based on valid information.

To address these concerns, H.R. 830, as amended, amplifies OMB's existing statistical policy responsibilities and includes other provisions designed to improve the Federal statistical system and information infrastructure. The Committee intends that OMB give balanced emphasis to all of its major information policy functions, including statistics. The Committee expects OMB to devote an appropriate amount of its staff resources to statistical policy development and leadership.

H.R. 830, as amended, strengthens the statistical policy mandate by explicitly requiring OMB to coordinate and provide leadership for the development of the decentralized Federal statistical system. Such coordination is needed to ensure the efficiency and effectiveness of the system as well as the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes. A study by the National Research Council ("Private Lives and Public Policies: Confidentiality and Accessibility of Government Statistics," 1994) noted increased concerns among many Americans about the confidentiality of information collected by Government surveys. The report recommended new standards and procedures be implemented by Federal agencies to preserve confidentiality. These concerns are reflected in the legislation's amendments to the Act to provide more specific mandates for OMB and agencies to protect personal privacy in the collection of information for statistical purposes.

Developing interoperability among statistical systems in the different agencies also is important for improving access to valid and current data. To facilitate this coordination, the bill requires OMB to establish an interagency council, headed by the Chief Statistician and consisting of the heads of the major statistical agencies and representatives of other statistical agencies under rotating membership. In addition, OMB is to review the budget proposals for agency statistical programs to ensure that they are consistent with governmentwide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding.

These provisions require that OMB adopt a proactive approach to statistical leadership. The Committee expects that OMB, and in particular the Chief Statistician, will provide leadership in identifying statistical priorities and in identifying and recommending corresponding budget priorities for Federal statistical programs. Additionally, OMB should take an active role in developing statistical standards and guidelines to assist Federal agencies in the development and implementation of statistical programs. Statistical policy must address issues related to information collection, use, and dissemination. Appropriate protection for statistical confidentiality and security for statistical systems must be an integral part of the development of these programs. OMB is also to coordinate the participation of the United States in international statistical activities, including the development of comparable statistics. In addition, OMB is to provide opportunities for training in statistical policy and coordination functions to Federal Government employees.

*Records management*

In order to provide greater visibility to the area of records management, the Paperwork Reduction Act assigned OIRA an oversight role to support the efforts of GSA in getting agencies to implement effective records management practices. This was the only entirely new function assigned to OMB by the 1980 Act. The need was described in a July 1980 letter from the Comptroller General:

With regard to records management, the bill recognizes the need to provide a cohesive Federal information policy and to coordinate the various components of Federal information practices. Records management, concerned with information use and disposition, is a vital element of information policy. In the past, this function has not received the level of management attention it deserves. For example, although the General Services Administration (GSA) is authorized to do so, it does not always report to OMB or to the Congress serious weaknesses in agencies' records management programs along with the potential for savings if corrective actions are taken. We pointed this problem out as early as 1973, but in a recent study we found that GSA's actions to date have been inadequate.

We believe the assignment of oversight responsibility to OMB and the periodic evaluations required by the bill would remedy the situation. In doing so, the benefits which improved records management practices can bring to the performance of Federal programs can be realized.

Records management is essential to efficient and effective management of information throughout the information life cycle. As such, its oversight continues to be properly assigned to OMB under the Act. In the new era of electronic records, it is even more important to ensure effective records management at all stages of the information life cycle. Agencies increasingly rely on electronic mail for communication, on online systems for dissemination, and on CD-ROMs for storing large volumes of data. Unless information created in these formats is properly managed to insure its integrity and archival preservation, much of the Government's record will be lost.

The current policy debate about records management in this emerging environment of networks, electronic mail, and the National Information Infrastructure demand the development of new agency policies and practices. OMB, NARA, and each operating agency must take affirmative steps to manage records, regardless of their form or format, consistent with legal requirements and the practical demands of the electronic information age. Agencies must determine how they will insure future access to Government records originating in electronic formats and need to work closely with NARA in establishing consistent standards for archiving electronic materials.

H.R. 830, as amended, reiterates the Act's mandate for OMB to provide advice and assistance to the GSA Administrator and to the Archivist and to review agency compliance with the records management requirements. Further, it charges OMB with the responsibility to oversee the application of records management policies

and guidelines, including requirements for archiving information in electronic format, when agencies are planning and designing their information systems. Finally, as with other functional areas, the Act now explicitly spells out the role of agency records management responsibilities in the IRM framework.

The Committee also wishes to emphasize the importance of consistent records retention policies for records management functions. Clear records retention policies for all recordkeeping requirements are needed if expensive and wasteful burdens on the public, State and local governments, and Federal agencies are to be avoided.

#### *Privacy and security*

Maintaining privacy and security is a key element in managing information. OMB had responsibilities for privacy and security of Government information prior to enactment of the 1980 Paperwork Reduction Act, under the 1974 Privacy Act and within other statistical policy, forms clearance, and computer security functions.

H.R. 830, as amended, continues OMB's role under the Paperwork Reduction Act for developing and overseeing agency implementation of policies, standards, and guidelines for the privacy, confidentiality, security, disclosure, and sharing of information. The Act promotes sharing and disclosure of information for purposes of maximizing the utility of information to users, both governmental and non-governmental. Sharing of information among Government agencies also serves the goal of minimizing the burden imposed on the public by Government collection of information. Such sharing and disclosure must be done, however, consistent with the provisions of the Paperwork Reduction Act and other laws that govern access, confidentiality, sharing, or disclosure, such as the Privacy Act, the Computer Matching and Privacy Protection Act, the Freedom of Information Act, and agency specific laws such as those governing the Internal Revenue Service and the Census Bureau.

As a practical matter, the growth of networks offer new opportunities for broadly sharing information among agencies and with the public. At the same time, they create new vulnerabilities that can lead to breaches in security and threats to the loss of privacy. An assessment by the National Research Council ("Computers at Risk: Safe Computers in the Information Age," (1991)) predicted that without more responsible use and management of computer systems, disruptions with adverse consequences would increase. The Committee is concerned about these increasing incidents of security breaches that range from hackers breaking into DOD computers ("Computer Security: Hackers Penetrate DOD Computer Systems," GAO/T-IMTEC-92-5, November 20, 1991), to IRS employees browsing through personal income records ("IRS Automation: Controlling Electronic Filing Fraud and Improper Access to Taxpayer Data," GAO/T-AIMD/GGD-94-183, July 19, 1994, and "IRS Information Systems: Weaknesses Increase Risk of Fraud and Impair Reliability of Management Information," GAO/AIMD-93-34, September 22, 1993). Agencies must take the necessary steps to maintain the appropriate balance between openness and security, and give new attention to the risks of maintaining information in electronic formats.

The bill also recognizes the enactment of the Computer Security Act in 1987, establishing that OMB require Federal agencies to identify the sensitivity of their information and to afford appropriate security protections for it. Not only must systems be secured to maintain confidentiality of sensitive data, but procedures must ensure that integrity of information and availability of systems and data are not compromised. A crucial component of establishing sound computer security management involves agency-wide training and awareness. If systems and information are to be safeguarded, training at all levels must be implemented. Again, as computer systems increasingly are linked to national and international networks, effective implementation of computer security is essential.

#### *Information technology*

One of the purposes of the Paperwork Reduction Act when it was originally enacted was: "to ensure that automatic data processing and telecommunications technologies are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, reduces waste and fraud, and, wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information to the Federal Government;" (P.L. 96-511, sec. 2(a) (44 U.S.C. 3501(5))).

As such, information technology has been recognized from the beginning as instrumental in improving Government operations and fulfilling agency missions, including reducing the burdens imposed on persons who provide information to the Government.

Yet, the management and application of information technology to support Government operations has been a historical problem. The Comptroller General described in July 1980 that the management of automatic data processing equipment was characterized by:

- (1) Overly complex and costly software that too often fails to meet user needs, is inefficient, or simply does not work; and
- (2) A costly, prolonged, and ineffective acquisition process which too often emphasizes hardware characteristics over sound financial investment.

Noting that the functions assigned OMB, GSA, and the Department of Commerce under the Brooks Act were not changed by the Paperwork Reduction Act, the Comptroller General stated that, by reemphasizing the Brooks Act, the 1980 legislation attempted to strengthen the leadership and central direction provided by these agencies. Further, the consolidation within OMB of policymaking and oversight responsibilities for the other information management functions covered by the bill should enhance the capability for applying advanced information technology to the problems of controlling paperwork burdens and improving the quality of data for program management and evaluation.

To support his 1980 message, the Comptroller General listed 70 GAO reports describing deficiencies in agency information management activities, with 31 dealing specifically with information technology problems.

Agencies have continued to spend more on information technology—now in the range of \$25 billion a year, and totalling about



a quarter of a trillion dollars in the 14 years since the passage of the Act. GAO, too, has continued to report on deficiencies related to agency information technology activities and systems development efforts. In a February 1992 report summarizing 132 reports it issued between October 1988 and May 1991, GAO described ten categories of problems:

- Inadequate management of information systems development life cycle;
- Ineffective oversight and control of IRM;
- Cost overruns in information systems development efforts;
- Schedule delays in information systems development efforts;
- Inaccurate, unreliable, or incomplete data;
- Inability to ensure the security, integrity, or reliability of information systems;
- Inability of systems to work together;
- Inadequate resources to accomplish IRM goals;
- Systems that make access to data time-consuming or cumbersome; and
- Systems that were not performing as intended.

(See "Information Resources: Summary of Federal Agencies' Information Resources Management Problems," GAO/IMTEC-92-13FS, February 13, 1992.)

Described previously in the Information Resources Management section of this report (and summarized in the appendix) is a report by GAO describing ways that agencies can employ practices used by leading organizations in the private and public sectors to manage their information technology. This report, "Executive Guide: Improving Mission Performance Through Strategic Information Management and Technology," (GAO/AIMD-94-115, May 1994), describes 11 practices with related attributes and suggestions to agencies on how to get started in implementing the specific practice for better managing information and information technology.

Gene Dodaro, Assistant Comptroller General for Accounting and Information Management, GAO, testified before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, that GAO finds huge, complex information system modernizations at great risk from two basic management problems: (1) the failure to adequately select, plan, prioritize, and control system and software projects and (2) the failure to use technology to simplify, direct, and reengineer functional processes in ways that reduce costs, increase productivity, and improve service. These problems permeate critical Government operations in key agencies, such as the Federal Aviation Administration, Internal Revenue Service, Social Security Administration, and the Departments of Defense, Agriculture, and Veterans Affairs.

Mr. Dodaro singled out the following changes included in H.R. 830 that are patterned after GAO's "best practices" and will help deal with these problems:

- Current provisions in the Act place the responsibility for effective information management and technology on the designated IRM senior officials and their respective organizational units. Section 3506 of the bill modifies this by strengthening the accountability of the agency head and of program managers for information resources supporting their programs.

Working with the designated senior IRM official and the Chief Financial Officer, these managers are to define program information needs and develop strategies, systems, and capabilities to meet those needs. Increasing program managers' accountability and involvement focuses information management decision-making and systems development activities on measurable mission outcomes of strategic importance to the agency.

The current law also does not emphasize mechanisms for selecting, controlling, or evaluating information systems projects in ways that maximize the value of the investment or effectively identify and manage risks. Provisions in H.R. 830 call for strengthening processes that agencies use to decide their information technology expenditures and to set goals for measuring progress in using information technology to increase productivity and accomplish outcome-oriented results. Most importantly, Section 3506 requires agencies to assess and manage their information technology initiatives with defined processes for selecting, controlling, and evaluating the initiatives based on comparing anticipated benefits to actual results. Additionally, Sections 3504 and 3505 help better manage risks by requiring the OMB Director to take steps to infuse more discipline and accountability into the Government's technology expenditures.

The current law does not emphasize the necessary technical skills or the clear delineation of management roles and responsibilities, both of which are needed to manage information technology as part of an overall business strategy. Sections 3504 and 3506 of H.R. 830 require that training be developed to educate program officials and other agency managers about information technology. Section 3506 also defines the roles and relationships between program and IRM officials in the development of information systems and capabilities to meet program needs.

#### G. CONCLUSION

Based on the record compiled by the Committee, during both this Congress and preceding attempts to reauthorize appropriations for the Paperwork Reduction Act since 1989 when the current authorization expired, there is ample evidence of the need to reauthorize appropriations and strengthen the Act. Improvements are needed to clarify OMB and agency responsibilities for all functional areas covered by the Act. Improvements are also needed in efforts to reduce the burden of meeting the Federal Government's information needs, increase the efficiency and effectiveness of Federal information resources management, and strengthen public participation in paperwork reduction and other IRM decisions. H.R. 830, as amended, accomplishes these purposes and the Committee strongly endorses its enactment.

#### SECTION-BY-SECTION ANALYSIS

##### SECTION 5001. SHORT TITLE

This legislation is entitled the "Paperwork Reduction Act of 1995."

## SECTION 5002. COORDINATION OF FEDERAL INFORMATION POLICY

This legislation recodifies chapter 35, title 44, of the United States Code. The bill is drafted as a revision of the chapter due to the number of proposed changes to current law. These changes range from substance to style. They include the deletion of obsolete terms and provisions, the reorganization of sections for purposes of clarity and consistency, the consolidation and refinement of definitions and common terms, and the addition of new requirements to update and strengthen the original purposes of the Act. To the extent the revision is a restatement of the Paperwork Reduction Act of 1980, as amended in 1986, the legislation is a reaffirmation of the law's scope, underlying purposes, requirements, and legislative history, which remains an important explanation of the congressional intent underpinning the Act's provisions. To the extent the revision modifies provisions in current law, it is done for the purposes described below, and again, in order to further the purposes of the original law.

## SEC. 3501. PURPOSES

Section 3501 maintains the Act's primary focus on minimizing paperwork burdens on the public. The bill adds several additional purposes and revises and realigns other purposes to emphasize the need to improve information resources management (IRM) as a means to minimize government costs and to improve the productivity, efficiency, and effectiveness of government programs, including the reduction of paperwork burdens and improved service delivery to the public. It promotes the theme of improving the quality and use of information to strengthen agency decisionmaking and accountability and to maximize the benefit and utility of information created, collected, maintained, used, shared, disseminated, and retained by or for the Federal Government. It emphasizes that information technology should be employed by Federal agencies to improve mission performance and reduce paperwork burdens, and that the Federal Government and State, local, and tribal governments should increase their common efforts to improve the utility and decrease the burdens of collection of information activities.

## SEC. 3502. DEFINITIONS

1. The term "agency" is unchanged from current law.
2. The term "burden" is expanded with a more detailed list of descriptive examples of actions that constitute burden imposed by collections of information (e.g., the resources expended for reviewing instructions; acquiring, installing, and utilizing technology to gather, obtain, compile, or report the information; adjusting the existing ways to comply with any previously applicable instructions and requirements; searching data sources; completing and reviewing the collection of information; and transmitting the information to the requesting agency or otherwise disclosing the information as instructed by an agency). No substantive limitation is intended by the use of these examples. The Committee wants to cover all burdens associated with information collection.

The phrase "or for" an agency is added, as it is elsewhere in the legislation, to clarify that the burdens associated with providing,

maintaining, or disclosing information to or for a Federal agency, or to a third party or the public on the instruction or behalf of a Federal agency, are all equally included in the meaning of the term “burden.”

3. The term “collection of information” is amended to accomplish several purposes.

First, several phrases are added (i.e., “causing to be obtained,” “requiring the disclosure to third parties or the public,” and “or for” an agency) to clarify that all Federally sponsored collections of information, not just those directly provided to a Federal agency, are contemplated within the meaning of the term. Information maintained, or information provided by persons to third parties, for example, is therefore covered by the Act, most particularly, the paperwork clearance requirements of sections 3506 and 3507, and the public protection provided by section 3512.

Whether a “collection of information” is conducted for or sponsored by the Federal government, rather than whether the government is the primary or immediate user of the information collected by a respondent, is the primary factor which determines whether a collection of information is covered by the meaning of the term. This clarification is intended to overturn the Supreme Court’s interpretation of this term in *Dole v. United Steelworkers of America*, 494 U.S. 26 (1990). Agency third-party disclosure requirements are within the scope of the Act.

Second, the phrase “regardless of form or format” replaces the phrase “through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, and other similar methods” contained in current law. This clarifies that regardless of the instrument, media, or method of agency action, a collection of information is any agency action that calls for facts or opinions resulting from answers to identical questions, identical reporting or recordkeeping requirements, or third party information disclosure requirements. This includes any collection of information, whether the agency action is described as an information collection request, collection of information requirement, or other term. It also includes all the collection methods that are specifically listed in current law. It also includes information collection activities regardless of whether the collection is formulated or communicated in written, oral, electronic or other form, and regardless of whether the compliance is mandatory, voluntary, or needed to obtain a benefit or contract with the Federal government.

Third, the term “collection of information” replaces the terms “information collection request” and “collection of information requirement” in current law. The present definition of “information collection request” in section 3502(11), and all its uses in current law are deleted. The use of the term “collection of information requirement” in the current law’s section 3504(h) is also deleted.

The use of the phrase, “collection of information,” is made only for purposes of clarity and consistency. In the past, the use of separate terms created confusion about possible differences among the terms. The most significant instance involved the distinction between “information collection request” and “collection of information requirement,” which was added to the Act by a floor amend-

ment to the original 1980 legislation. In 1986, Congress amended the Act to include “collection of information requirement” in the definition of “information collection request.” This action, however, left references to the two terms in the text of the Act. The current legislation conclusively ends any possible misunderstanding by creating a comprehensive definition for “collection of information” as the single term used in the Act.

4. The term “Director” is unchanged from current law.

5. The term “independent regulatory agency” is unchanged from current law.

6. A new definition is created for “information resources,” which means information and related resources, such as personnel, equipment, funds, and information technology. The new definition is intended to complement the revised definition of “information resources management.” Both the new definition and the amended definition serve to clarify and improve the existing law’s definition of “information resources management.” They make it clear that the resources to be managed are more than just information or information technology. They are those associated programmatic and managerial resources needed to perform information functions.

7. The term “information resources management” (IRM) is redefined to mean “the process of managing information resources to accomplish agency missions and to improve agency performance, including the reduction of information collection burdens on the public.” This new definition is meant to further the original Act’s intent to have Federal agencies better coordinate the management of information activities and associated resources. The legislation strengthens this mandate by focusing IRM on the basic reason for using information resources; i.e., to serve agency performance and efficiently and effectively accomplish agency missions, including the Act’s objective of reducing public information collection burdens.

8. The definition of “information system,” is updated to mean an organized and distinct or discrete set of information resources and processes, automated or manual, for any elements of the collection, processing, maintenance, use, sharing, dissemination, and disposition of information. It includes systems that provide information to top agency managers as well as systems supporting agency program operations. The previous definition of “information system” appeared to make the phrase synonymous with a “management information system.” Information systems are now understood to serve a much broader range of purposes than just providing management information.

9. The term “information technology” replaces the current term “automatic data processing equipment” (ADPE) but does not change the underlying definition from the “Brooks Act” (40 U.S.C. 759). The reason for this change is that the term “information technology” has replaced “ADPE” in common usage and management practice. Moreover, as broadly defined by the Brooks Act, the term covers computer and telecommunications equipment and services. Throughout the Act, therefore, the legislation substitutes “information technology” for various references to “automatic data processing,” “automatic data processing equipment,” and “telecommunications.”

10. The term “person” is unchanged from current law.

11. The term “practical utility” is broadened and clarified by dropping the phrase “it collects” from current law. This change clarifies that federally conducted or sponsored collections of information which mandate that persons provide or maintain information to or for third parties may have practical utility if the actual use of the information is necessary for the proper performance of the functions of the agency. This change is part of the Committee’s intent to clarify the term in light of overturning the interpretation of “collection” by the Supreme Court in *Dole v. United Steelworkers of America*.

12. The term “public information” is added. It means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public. Its application in the Act, as amended by this legislation, is primarily in the context of “dissemination” of information by an agency.

13. The term “recordkeeping requirement” is clarified by the addition of the phrase “or for” an agency. As with the definition of “burden” and “collection of information,” this amendment is meant to cover instances in which information is provided, maintained, or dislocated to or for an agency. To overturn the interpretation of “recordkeeping requirement” in *Dole v. United Steelworkers of America*, the definition is clarified by adding at the end, the specific inclusion of “retention, reporting, notifying, or disclosure to third parties or the public of such records.”

In addition to its treatment of these definitions, the legislation eliminates the following definitions as unnecessary:

“automatic data processing”—this term is replaced by the term “information technology,” as described above;

“data element,” “data element dictionary,” “data profile,” “directory of information resources,” and “information referral service”—these terms are unnecessary given the legislation’s revision of section 3511, regarding the Government Information Locator Service; and

“information collection request”—this term is subsumed within the definition of “collection of information,” as described above.

#### SEC. 3503. OFFICE OF INFORMATION AND REGULATORY AFFAIRS

Section 3503, which establishes OMB’s Office of Information and Regulatory Affairs (OIRA), is amended to conform with the 1990 Chief Financial Officers Act’s creation of the position of OMB Deputy Director for Management (DDM). While the OIRA Administrator is and should continue to “serve as principal adviser to the Director on Federal information resources management policy,” the Committee recognizes the status of the DDM as the OMB official designated by statute to coordinate and supervise the general management functions of OMB.

#### SEC. 3504. AUTHORITY AND FUNCTIONS OF DIRECTOR

Section 3504 sets out OMB’s IRM authority and functions under the Act. The legislation’s amendments to the section do not change the structure of OMB’s functional responsibilities, but rather revise and refine the specific details under each function, and, for the first time, delineate specific “dissemination” responsibilities.

As revised, the section eliminates references to OMB as the implementing agency. This reflects the recognition that OIRA can and should provide policy and practice leadership and oversight, but cannot and should not attempt to take over operational responsibilities for agency IRM functions. For this reason, the legislation also describes detailed agency responsibilities in section 3506 to mirror the OMB functions spelled out in section 3504. This reflects a major purpose of the legislation, that is, to improve implementation of the Act by more clearly delineating agency responsibilities.

The bill also streamlines language and makes more consistent use of terms such as collection of information (e.g., instead of “information collection request” or “collection of information requirement”), information resources management, and information technology. Along these same lines of clarifying terms, section 3504(h) in current law (dealing with OMB review and approval of collections of information contained in proposed rules—an element of the so-called Kennedy Amendment to the original 1980 legislation) is moved, but without substantive change, to section 3507(d), which is the primary location of OMB paperwork review and approval provisions.

*Subsec. (a)*

As with the definition of IRM, this subsection identifies the Director’s functional IRM responsibilities and focuses them on: (1) developing and coordinating governmentwide policies and guidelines, and (2) providing direction and overseeing the review and approval of the collection of information, the reduction of burden on the public, and overseeing agency use of information resources.

*Subsec. (b)*

Subsection (b), the general IRM policy functions, is amended to refer to “information resources management policy” instead of “information today.” The specific requirements are then updated and streamlined—again, with a major purpose being the management of information resources.

New specific functions assigned the Director are to foster greater sharing, dissemination, and access to public information; oversee the development and implementation of “best practices” in IRM by Federal agencies; and oversee agency integration of program and management functions with their IRM functions (in many cases agencies have conducted them as separate activities as if there was no relationship between them). An agency’s strategic plan (sometimes referred to as an agency business plan) should establish the mission for agency programs with performance measures to measure program performance (in accordance with the requirements of the Government Performance and Results Act) and the IRM plan should describe how information resources will be acquired and managed in support of the agency programs.

*Subsec. (c)*

The collection of information and paperwork control subsection is amended so as to fit with other sections, e.g., paperwork burden reduction goals in section 3505, agency responsibilities in section 3506, and the review and approval of proposed agency collections

of information in section 3507. One new specific requirement is added to highlight the need to reduce the burdens associated with government procurement-related paperwork. This requires coordination between OIRA and the Office of Federal Procurement Policy (OFPP) in the review of proposed agency collections of procurement-related information. The focus on minimizing burden remains (in paragraph (3)). It is complemented (in paragraph (4)) by the mandate to maximize the utility and benefit of information once it is collected or created by or for the Federal Government. OIRA is to oversee agency development of burden estimates (in paragraph (5)); i.e., to ensure consistency among agencies in burden estimation.

*Subsec. (d)*

New provisions are established to provide specific guidance for the management of information dissemination functions. These were, heretofore, only generally referred to in current law (e.g., sec. 3504(a)). While the Act's life cycle approach previously conveyed an expectation of OMB oversight of agency information dissemination functions, the developing capabilities of agencies and of information technologies for this purpose necessitates the articulation of specific OMB information dissemination policy setting and oversight responsibility. As with other OMB IRM functions detailed in section 3504, the counterpart agency information dissemination responsibilities are spelled out in section 3506.

This new subsection requires OMB to develop governmentwide policies and guidelines to guide agency dissemination of public information, and promote public access to public information. As elsewhere in the legislation, the mandate applies to the dissemination of information, regardless of form or format. This is meant to emphasize the need to develop policies and practices to promote dissemination of information in electronic format, as well as traditional paper forms.

*Subsec. (e)*

OMB's statistical policy and coordination duties are spelled out in greater detail to assist in improving the coordination of the decentralized Federal statistical system. Specific duties codified by this legislation include: coordinating system activities to ensure the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes; ensuring that budgetary proposals are consistent with governmentwide priorities for improving statistics; developing policies for the timely and orderly release of statistical data; promoting the sharing of statistical information; and coordinating participation of the United States in international statistical activities. To facilitate interagency coordination and improve Federal statistical policy, the subsection calls for the creation of an Interagency Council on Statistical Policy. It also calls for OMB to provide opportunities to Federal Government employees for training in statistical policy.

*Subsec. (f)*

OMB's records management duties are reaffirmed and are strengthened to include oversight of agency implementation of



records management policies established by the Archivist of the United States and the Administrator of General Services. Given emerging issues regarding electronic records management, specific reference is made to emphasize the need to develop policies and practices to ensure that ultimate need to archive information in electronic format be considered in the initial planning and design of automated information systems.

*Subsec. (g)*

OMB's privacy and security functions are amended to streamline language and integrate policies related to privacy, confidentiality, security, disclosure, and sharing of information. The current references to security are strengthened by citing the Computer Security Act of 1987. And consistent with the Act, the subsection is amended to focus OIRA oversight on the pressing need of agency computer security planning to address "risk" of possible harms and to afford security protections commensurate with the risk involved.

*Subsec. (h)*

OMB's information technology (heretofore, ADP) duties are revised to reflect the need to integrate information technology management functions (like other elements of IRM) with program functions to serve and improve program performance. The Committee is convinced that OMB must improve its ability to affect agency mission accomplishment through the effective management of information technology, especially through the application of GAO's "Best Practices" recommendations and OMB policy guidance and oversight, as provided under the Act.

Specific OMB responsibilities added to those in this subsection of current law are for OMB to: (1) coordinate information technology procurement policies with the Office of Federal Procurement Policy (OFPP) in OMB; and (2) ensure agency integration of IRM plans, program plans, and budgets to assist in the planning, use and management of information technology. Consistent with other changes made by the legislation to focus OMB's activities on policy guidance and oversight as opposed to operational responsibility, the legislation also highlights in this subsection the importance and responsibility of GSA and NIST to work in partnership with OMB to improve agency information technology functions. Finally, the legislation also amends this subsection to make word changes for the sake of consistency and clarity.

SEC. 3505. ASSIGNMENT OF TASKS AND DEADLINES

Section 3505 is amended to remove now-outdated tasks and deadlines assigned to the Director in current law from the 1980 Act and the 1986 amendments and to provide a new set of OMB and agency objectives.

1. OMB is to set, in consultation with agency heads, an annual governmentwide goal for the reduction of information collection burdens by at least ten percent, as well as agency-specific goals for paperwork reduction that "represent the maximum practicable opportunity in each agency" and for improving IRM activities' support of agency programs. The Committee anticipates that the burden re-

duction goals will be measured against existing levels of burden estimated for the time the goals are set.

2. OMB is to conduct pilot projects to test alternative policies and procedures to fulfill the purposes of the Act (with the authority to waive the application of designated agency regulations or administrative directives involving the collection of information after giving timely notice to the public and Congress regarding the need for such waiver), particularly with regard to minimizing the Federal information collection burden.

3. In consultation with GSA, the National Institute of Standards and Technology (NIST), National Archives and Records Administration (NARA), and Office of Personnel Management (OPM), OMB is to develop and maintain a governmentwide strategic IRM plan that describes: (1) the objectives and means by which federal agencies will apply information resources to improve agency and program performance; (2) plans for reducing information collection burdens, enhancing public access to information, and meeting Federal information technology needs; and (3) progress in using IRM to improve agency performance and the accomplishment of missions.

#### SEC. 3506. FEDERAL AGENCY RESPONSIBILITIES

Because a major purpose of this reauthorization of the Act is to more clearly delineate agency responsibilities and accountability for each information function, the legislation substantially revises section 3506 to describe key agency functional IRM responsibilities that mirror the OMB responsibilities set out in section 3504. The Committee intends this section to stand as a clear mandate to agencies that responsibility for agency IRM rests squarely with the agency, and that each agency is expected to take this responsibility very seriously. Agencies should also be cognizant of other IRM responsibilities spelled out in more detail in related IRM laws.

##### *Subsec. (a)*

This subsection establishes the management structure which the agencies are to establish in carrying out their IRM responsibilities.

1. Each agency's IRM responsibility is clearly vested in the agency head to carry out and integrate IRM activities in a manner that improves agency productivity, efficiency, and effectiveness and that complies with the requirements of the Act and the related policies established by OMB.

2. The current law is unchanged with regard to the establishment of an agency designated senior IRM official. The senior IRM official is primarily responsible for assisting top agency program and management officials in managing information resources in support of agency programs and activities and for the effective and efficient design, development, and delivery of information activities to support program responsibilities and comply with the requirements of this Act.

3. The senior IRM official is required to head an office responsible for ensuring agency compliance with prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this Act, including the reduction of information collection burdens on the

public. Subsection (c) provides that it is this office that is to review and certify proposed collections of information for OMB review and approval. Also, the senior IRM official and staff are to have professional qualifications necessary to administer the agency's IRM functions.

4. Consistent with the goal of integrating IRM in program management, the legislation specifies that agency program officials are responsible and accountable for information resources assigned to and supporting their programs. The provision also describes the relationship between the senior IRM official and program and management officials, including the Chief Financial Officer (or comparable official). In consultation with the agency Chief Financial Officer and the senior IRM official, program officials are to define program information needs and cooperatively develop strategies, information systems, and capabilities to meet those needs.

*Subsec. (b)*

With respect to general information resources management, each agency is to undertake several specified actions:

1. Manage information resources to reduce information collection burdens, increase program efficiency and effectiveness, and improve the integrity, quality, and utility of information to users both within and outside the agency;

2. Develop and maintain a current strategic IRM plan describing how the agency will employ information resources to accomplish agency missions;

3. Maintain an ongoing process to improve IRM and integrate it with organizational planning, budget, financial management, human resources management, and program decisions; to develop an accurate accounting of information technology expenditures and related expenses; and to establish goals for improving IRM's contribution to agency programs;

4. Maintain an inventory of information resources, including directories necessary to fulfill the Government Information Locator Service (GILS) requirements of section 3511; and

5. Conduct IRM training programs to educate program and management officials about the importance of IRM.

*Subsec. (c)*

With regard to the collection of information and the control and reduction of paperwork burdens, the legislation specifies detailed agency paperwork clearance requirements. The Committee believes significant improvements can be made to the information collection clearance process by focusing increased agency attention to (and public participation in) the initial formulation of and periodic review of information collections. One improvement provided by a more complete airing of issues during the course of the agency's development of an information collection proposal should be to reduce the amount of contention that in the past arose relatively late in the process during OIRA review.

1. Section 3506(c) mandates a detailed information collection evaluation procedure requiring each agency to establish a process within the office designated under subsection (a), independent of

program responsibility, to evaluate proposed collections. This office must:

Review a collection of information before it is submitted to OMB for review, that includes making an independent evaluation of its need; preparing a description of it, a collection plan, and a burden estimate; pilot testing the collection, if appropriate; and developing a plan for the management and use of the information to be collected;

Ensure that information collections are inventoried, display a control number and, when appropriate, an expiration date; indicate the collection is in accordance with the Act; and contain a statement informing the person being asked why the information is being collected, its use, its burden, and whether responses are voluntary, required to obtain a benefit, or mandatory. This requirement is transposed from current law (section 3504(c)(3)) to make it more clearly an agency responsibility, rather than a duty of OMB. Note that this requirement must also be certified to by each agency (see section 3506(c)(3)(F)); and

Assess the information collection burden of proposed legislation affecting the agency.

2. Each agency is to provide a 60-day public comment period which occurs before the proposed collection is submitted to OMB for review. While such comment to OMB has been useful in the past, and should continue to be so, public comment on agency development of information collections should help:

Determine whether the information collection is necessary for the proper performance of the functions of the agency;

Assess the accuracy of, and improve, the agency's burden estimate;

Enhance the quality and utility of the information to be collected; and

Minimize the information collection burden, including through the consideration and use of alternate information technologies.

This agency public comment period is not required for proposed information collections contained in proposed rules, which must be reviewed by OIRA under section 3507(d) (under this legislation, section 3504(h) under current law). The reason for this exemption is that such proposals solicit public comment through the agency notice of proposed rulemaking (NPRM) under the Administrative procedure Act. To require an additional (and earlier) agency public comment period would result, as a practical matter, in agency publication of advance notices of proposed rulemaking (ANPRM) for every proposed rule that contains a collection of information. This would create a significant amount of internal government paperwork and expense for an insignificant improvement in opportunities for public notice and comment.

This agency public comment period is also not required if the agency can demonstrate good cause for not doing so to OMB. Given the nature of certain kinds of information collections, advance notice may tempt at least some potential respondents either to destroy the information sought or to take other action to frustrate the

legitimate goal of the agency, for example, the seizure of illegally gained financial assets.

3. Each agency is to certify (with a supporting record, including comments received, and an agency response to any significant issues raised by the public) that each proposed collection of information submitted to OMB for review under section 3507:

Is necessary for the proper performance of the functions of the agency, including that it has practical utility;

Is not unnecessarily duplicative of available information;

Reduces, to the extent practicable and appropriate, the burden on respondents, which may include establishing alternative compliance or reporting requirements for small entities in accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6);

Is written using plain, understandable language;

Is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the respondents' existing reporting and recordkeeping practices;

Informs the respondent why the information is being collected; now it is to be used; a burden estimate; and whether responses are voluntary, for a benefit, or mandatory;

Has been developed by an office that has allocated resources for the management and use of the information;

Uses appropriate statistical survey methodology; and

Considers and uses alternative information technologies, to the extent practicable, to reduce information collection burden, and improve data quality, agency efficiency, and responsiveness to the public.

*Subsec. (d)*

As a complement to the delineation of OMB responsibilities at section 3504(d) to develop and oversee information dissemination policies, the legislation in this subsection establishes specific agency operational responsibilities to ensure that the public has timely and equitable access to public information. These provisions are largely consistent with the information dissemination principles of OMB Circular No. A-130 (58 Fed. Reg. 36068, July 2, 1993, and 59 Fed. Reg. 37906, July 25, 1994), particularly as they relate to maintaining a diversity of public and private information dissemination channels, and avoiding improperly restrictive practices.

Most generally, these statutory provisions are intended to guide agency dissemination activities and promote public access to government information in the increasingly multiple forms and formats made possible by new information technologies. Accordingly, these agency dissemination responsibilities apply to Federal public information "regardless of the form or format in which it is disseminated."

1. The key purpose contained in 3506(d)(1) is to provide for the dissemination to the public of public information products and services on a timely, equal, and equitable terms. The goal of non-discrimination requires agencies not only to refrain from enhancing the position of some members of the public over that of others, but to refrain from enhancing the Federal Government's position over that of others as well.

Each agency must ensure that the public has timely and equitable access to the agency's public information, including by encouraging a diversity of public and private sources, and by agency dissemination of public information in an efficient, effective, and economical manner, including, for public information maintained in electronic format, timely, equal, and equitable access to the underlying data. The goal in this paragraph is to enunciate clearly the obligation of Federal agencies to ensure effective access to public information held by the government information. The two secondary objectives are for agencies to: (1) encourage a diversity of providers in the private and public sectors, while avoiding unnecessary duplication of effort; and (2) disseminate information, whose dissemination is determined by the agency to be necessary for the proper performance of its functions, efficiently, effectively, and economically.

This obligation also requires agencies to disseminate and make public information available on a non-discriminatory and non-exclusive basis to any public or private entity for any lawful purpose, including for redissemination of the information, or for its incorporation in another information product or service. In addition, ensuring effective access can require agencies (consistent with budget constraints) to eliminate, reduce, or otherwise compensate for barriers that may frustrate intended users, e.g., excessive charges, licensing requirements, or technical barriers.

The term "equal" modifying "timely and equitable" information dissemination is intended to ensure against agencies discriminating against or otherwise disadvantaging classes of users, particularly commercial users. Agencies must balance it, however, against other policies, specifically, the proper performance of agency functions and the need to ensure that information dissemination products reach the public for whom they are intended. If an agency mission includes disseminating information to certain specific groups or members of the public and the agency determines that user charges will constitute a significant barrier to carrying out its responsibility, the agency may have grounds for reducing or eliminating its user charges for the information dissemination product, or for exempting some recipients from the charge.

2. Subsection 2506(d)(2) requires that each agency regularly solicit and consider public input on the agency's information dissemination activities. This includes outreach to the public to ascertain information user needs so that information can be disseminated in useful forms and formats. This also includes gathering information on information provided by other public or private sources, in order to avoid needless duplication of effort.

3. Subsection 3506(d)(3) sets out public notice requirements. Before taking any action to initiate, substantially modify, or terminate a public information product or service, an agency must take steps to inform interested members of the public of its plans. The purpose of the notice is to maximize the ability of the public to influence agency information plans at an early stage. This subsection provides that each agency should provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products.

4. Subsection 3506(d)(4) lists four categories of conduct that agencies should avoid unless specifically authorized by statute. These four categories of conduct are: (1) exclusive, restricted, or other distribution arrangements that adversely affect the timely and equitable availability of public information; (2) restrictions on or regulation of the use, reuse, or redissemination of information; (3) fees or royalties for reuse, resale, or redissemination of information; and (4) the establishment of user fees for information that exceed the cost of dissemination, unless the head of the agency, with public notice, requests the establishment of higher user fees; the Director, with public notice, so agrees; and this waiver would not materially impair the timely and equitable availability of public information to the public.

Subparagraph (A) provides that agencies should avoid establishing an exclusive, restricted, or other distribution arrangement that interferes with timely, equal, or equitable availability of public information to the public. The purpose of this provision is to prohibit agencies from establishing discriminatory monopoly distribution arrangements for public information.

Subparagraph (B) provides that agencies should avoid restricting or regulating the use, resale, or redissemination of public information products or services by the public. Except where a statute specifically authorizes such a restriction, public information may continue to be used, republished, resold, extracted, and redisseminated in any way by any person.

Subparagraph (C) provides that agencies should avoid charging fees or royalties for resale or redissemination of public information. Public information may be used, sold, or redisseminated whether or not the person paid any fees to the government to obtain the information.

Subparagraph (D) provides that agencies should avoid establishing user fees for public information products that exceed the cost of dissemination. This is consistent with current OMB policies. While current user fee policies for other goods and services may support other types of price structures, information products can only be priced at cost of dissemination. The government should not treat its information dissemination activities as general revenue sources. It is the policy of H.R. 830 that the government should not make a profit by selling public information collected and compiled at taxpayer expense to the American public.

It is intended that the granting of waivers will be rare and that the authorized terms and conditions will narrowly circumscribe any waivers. It also is intended that any waivers will be of limited duration. OMB may not help an agency evade the cost of dissemination pricing requirement by repeatedly granting it waivers.

*Subsec. (e)*

With regard to agency statistical activities, the legislation requires agencies to:

Ensure the relevance, accuracy, timeliness, integrity, and objectivity of its statistical information;

Fully inform respondents regarding the sponsors, purposes, and uses of statistical surveys and studies;

Protect respondent privacy and ensure that disclosures fully honor pledges of confidentiality;

Observe Federal standards and rules on data collection, analysis, documentation, sharing, and dissemination of statistical information;

Ensure timely publication of survey and study results, including about their quality and limitations; and

Make data available, consistent with privacy and confidentiality measures, to statistical agencies and readily accessible to the public.

*Subsec. (f)*

With respect to records management, the legislation describes specific agency responsibilities to implement and enforce applicable policies and procedures (established by the Archivist of the United States and the Administrator of General Services), including requirements for archiving information maintained in an electronic format, particularly in the planning, design and operation of information systems. This emphasis on electronic records parallels the emphasis added to OMB's records management responsibilities in section 3504(f).

*Subsec. (g)*

The legislation describes agency responsibilities for privacy and security. Each agency must:

Enforce applicable policies and procedures on privacy, confidentiality, security, disclosure and sharing of information maintained by an agency or by another entity on behalf of the agency;

Be responsible and accountable for compliance with the Freedom of Information Act, the Privacy Act, the Computer Security Act, and other related information management laws; and

Develop capabilities and provide protections, in carrying out the Computer Security Act, as needed to address cost-effectively the risk of harm from loss, misuse, or unauthorized access to or modification of information maintained by or on behalf of an agency.

*Subsec. (h)*

Finally, the legislation specifies actions agencies are to take with respect to information technology. Each agency must:

Implement and enforce applicable information technology management policies, procedures, and standards;

The agency designated IRM official must be responsible and accountable for information technology investments;

Use information technology to improve the productivity, efficiency, and effectiveness of agency programs, including dissemination of public information; and

Propose changes in legislation, regulations, and procedures to improve information technology practices, including changes to better use technology to reduce information collection burden.



## SEC. 3507. PUBLIC INFORMATION COLLECTION ACTIVITIES; SUBMISSION TO DIRECTOR; APPROVAL AND DELEGATION

Section 3507 provides the details of the OMB paperwork clearance process and the actions agencies must take to get their proposals reviewed and approved by OMB. With the establishment of specific agency information collection clearance requirements and the creation of a way for the public to participate earlier in the information collection development process, several modifications and cross-references are made to ensure that the agency clearance actions are performed consistent with and to facilitate the efficient functioning of the overall clearance process. In this regard, for example, the OMB process is streamlined in terms of the comment period and review time limit (with a maximum of 60 days instead of 60 days plus a discretionary 30-day extension).

*Subsec. (a)*

The current law's basic paperwork clearance requirements remain the same, that is, that an agency is not to conduct or sponsor the collection of information unless, in advance of the adoption or revision of the collection, the Act's information collection clearance requirements are met at both the agency and OMB levels.

1. The agency must conduct its information collection review established under section 3506(c)(1); evaluate the public comments received under section 3506(c)(2); submit to OMB the certification required by section 3506(c)(3), together with the proposed collection of information and supporting material; and publish a notice in the Federal Register describing the submission, its title, a summary, the need for the information, its proposed use, respondents and frequency of response, an estimate of the burden, and notice that comments may be submitted to the agency and OMB.

2. The agency may not collect the information without OMB approval, unless approval has been inferred (i.e., after passage of the time limit for OMB review, see subsection (c), below).

3. The agency must obtain an OMB-assigned control number to be displayed on or by the collection of information.

*Subsec. (b)*

OMB is to provide at least 30 days for public comment on the proposed collection of information before making a decision, except in emergencies, as provided under subsection (j), and except for good cause. OMB is also authorized to approve a collection of information more rapidly than in 30 days if there is good cause to do so. For example, given the nature of certain kinds of information collections, delay in OMB approval may tempt at least some potential respondents either to destroy the information sought or to take other action to frustrate the legitimate goal of the agency, for example, the seizure of illegally gained financial assets.

*Subsec. (c)*

To clarify the existing law, sections 3507(c) and (d) now clearly delineate the different procedures for OMB clearance of information collections not contained in proposed regulations and information collections contained in proposed regulations (subject to notice

and comment), respectively. As described below, subsection (d) is substantively the same as the current law's language in section 3504(h).

Subsection (c) states that, for any proposed collection of information not contained in a proposed rule, OMB has 60 days for its review. If OMB does not notify the agency of a denial or approval within the 60 days, the approval may be inferred, a control number is assigned, and the agency may collect the information for not more than one year.

*Subsec. (d)*

The requirements of current law at section 3504(h) with regard to OMB clearance of information collections contained in a proposed rule, are moved to this subsection so as to place the major provisions of the paperwork clearance requirements in one section. While word changes are made for purposes of consistency and clarity in light of existing legislative history, no substantive changes are proposed. For example, under current law the substantive standard for review of collections of information contained in proposed rules, which are subject to notice and comment, is identical to that applicable to all other collections of information (See, Cong. Rec. December 15, 1980, S 16700 Kennedy statement). As under current law:

1. An agency must, no later than the publication of the notice of proposed rulemaking (NPRM), send to OMB any proposed rule containing a collection of information and supporting material. Within 60 days after the NPRM, OMB may file public comments on the proposed regulatory collection of information pursuant to the standards set forth in section 3508.

2. When the final rule is published, the agency must explain how any collection of information contained in the final rule responds to the comments, if any, filed by OMB or the public, or explain the reasons such comments were rejected.

3. OMB cannot disapprove any collection of information contained in an agency rule, if OMB received notice and did not comment within 60 days after the NPRM.

4. OMB can disapprove:

Any collection of information which was not specifically required by an agency rule (i.e., and thus should be reviewed under subsection (c));

Any collection of information contained in an agency rule, if the agency failed to comply with the Act's submission and clearance requirements;

Any collection of information contained in a final rule, if OMB finds within 60 days after the publication of the final rule that the agency's response to OMB's comments on the collection proposed in the NPRM cannot be approved under the standards set forth in section 3508; or

Any collection of information contained in a final rule, if OMB finds that the agency substantially modified the collection in the final rule from that in the NPRM and did not comply with OMB's submission and clearance requirements.

5. The procedures in this subsection apply only when an agency publishes a NPRM and requests public comments.

6. The decision by OMB to approve or not act upon a collection of information in an agency rule is not subject to judicial review. No substantive change from existing section 3504(h)(9) is intended.

*Subsec. (e)*

This new subsection consolidates several provisions in current law regarding public disclosure of OMB information collection clearance activities (i.e., current law—sections 3504(h)(6) and 3507(h)). It also presents the disclosure requirement in a more comprehensive fashion—any decision by OMB to disapprove a collection of information, or to instruct an agency to make substantive or material change to a collection of information, is to be publicly available, along with an explanation of the reasons for such decision. Public disclosure is also required for written communications to and from OIRA regarding a proposed collection of information (current law—section 3507(h)).

These requirements do not, however, require the disclosure of any national security information (current law—sec. 3507(h)) or “any communication relating to a collection of information, the disclosure of which could lead to retaliation or discrimination against the communicator.” This new language is added to protect “whistle-blowers” who otherwise might fear possible retaliation from agencies for complaining about agency collections of information.

*Subsec. (f)*

The current law’s authorization of independent regulatory agency overrides of OMB information collection disapproval is unchanged, but for word changes for purposes of consistency and clarity.

*Subsec. (g)*

The current law’s limit of three years for information collection approvals is unchanged, but for word changes for purposes of consistency and clarity.

*Subsec. (h)*

As originally enacted, the Act described only procedures for gaining approval of new information collections. With the 3-year limit on OMB’s approvals, it was largely assumed that agencies would be required to resubmit the collections for reapproval upon their expiration, and procedures for this purpose were subsequently adopted by OMB and are codified at 5 C.F.R. 1320.14. Repeated questions, however, about how agencies, OMB, and the public should approach continuing collections recommend establishing a statutory requirement to prescribe the conditions for re-review. The new procedure provided by the legislation has three major elements.

1. If an agency decides to seek an extension of OMB’s approval granted for a currently-approved collection of information, the agency is to conduct the review required under section 3506(c), including the seeking of public comment on the continued need for the information and the burden imposed. After seeking comment, but no later than 60 days before the expiration of OMB’s approval (and control number), the agency is to submit the collection to

OMB, with an explanation of how the agency has used the information under the current approval.

2. If OMB disapproves an information collection in an existing rule, or recommends or instructs the agency to make a substantive or material change to such a collection, OMB must publish an explanation and shall instruct the agency to enter rulemaking to consider changes to the collection of information in the rule and thereafter to submit the collection for review under subsection (d) (as an information collection contained in a proposed rule).

3. An agency is not allowed to make a substantive or material change to a collection of information after it is approved by the Director unless the modification itself is submitted for approval and is approved.

*Subsec. (i)*

The current law's provisions on OMB delegation of information collection clearance authority to agencies is unchanged, except for word changes for purposes of consistency and clarity.

*Subsec. (j)*

The provisions in current law on expedited OMB paperwork clearance in emergency and time-limited situations are modified with word changes for consistency and clarity, and to provide that the standard for agency determination of the need for an expedited clearance is the reasonable likelihood (as opposed to a certainty) of public harm, failure to respond to an emergency, or violation of a legal deadline. The Committee does not intend agency heads or OMB to use this modification to alter their clearance practices from that under current law.

SEC. 3508. DETERMINATION OF NECESSITY FOR INFORMATION;  
HEARING

Section 3508 provides the standard for review for OMB paperwork clearance decisions—"whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility." Except for word changes for purposes of clarity, consistency, and style, the substance of OMB's authority to approve or disapprove agency collections of information remains unaltered from current law and the full scope of the standards, policies, and purposes set forth in the Act. Thus, OMB's attention to reducing burden, eliminating duplication, coordinating interagency collections, and overseeing the efficient and effective use of information collected by and for Federal agencies arises from and is authorized by this "necessary for the proper performance" standard.

SEC. 3509. DESIGNATION OF CENTRAL COLLECTION AGENCY

This section's provisions on OMB's designation of one agency to obtain information for two or more agencies are unchanged from current, except for word changes for purposes of consistency and clarity.

SEC. 3510. COOPERATION OF AGENCIES IN MAKING INFORMATION  
AVAILABLE

The current law's provisions are unchanged, except for word changes for purposes of consistency and clarity. This section encourages agencies to cooperate in data sharing to facilitate more efficient and effective, and less burdensome information collection and use.

SEC. 3511. ESTABLISHMENT AND OPERATION OF GOVERNMENT  
INFORMATION LOCATOR SERVICE

Section 3511 required OMB to develop and operate a Federal Information Locator System (FILS). The section is amended to update the FILS requirement and transform it into an attainable goal.

The section now provides that OMB, to assist and promote agency and public access to government information:

1. Cause to be established a distributed agency-based electronic Government Information Locator Service (GILS) to identify major agency information systems, information holdings, and dissemination products;
2. Require each agency to have an agency information locator service as a component of a governmentwide GILS;
3. Establish an interagency committee, with the National Archives and Records Administration (NARA), GSA, the Government Printing Office (GPO), and the Library of Congress, to advise the Secretary of Commerce on the development of technical standards to ensure compatibility, promote information sharing among the agencies, and promote access to government information by the public;
4. Consider public access and other user needs in the establishment and operation of GILS;
5. Ensure the security and integrity of GILS, including so that only information intended to be disclosed to the public or shared with other agencies is disclosed or shared; and
6. Periodically review GILS and recommend improvements (e.g., ways to improve public access to government information and interagency sharing of information to improve agency performance).

In carrying out its responsibility under Section 3511 to consider user needs in establishing and operating the GILS, OMB shall take appropriate steps to facilitate the inclusion in the Service of non-government information products and services based upon federal public information. One critical user need, as recognized in this legislation, is public access to a diversity of sources for public information. GILS can help satisfy that need by electronically accommodating non-federal sources of this information, as well as to databases maintained by federal agencies.

SEC. 3512. PUBLIC PROTECTION

The intended scope, purposes, and requirements of section 3512's current provisions on public enforcement of the Act's information collection clearance requirements are unchanged. The section is amended, however, for purposes of consistency and clarity, and to

unequivocally cover all collections of information, i.e., maintaining, providing, or disclosing information to or for an agency or person, or to a third party or the public on the instructions or behalf of a Federal agency.

Court decisions have affirmed that the section's intended protection can be asserted effectively in empowering members of the public to defend themselves against unapproved collections of information which are subject to the Act. The Committee supports this provision and the purposes for which it was originally enacted, and continues, to serve.

SEC. 3513. DIRECTOR REVIEW OF AGENCY ACTIVITIES; REPORTING;  
AGENCY RESPONSE

Section 3513 is updated and streamlined to provide for periodic executive branch review of agency implementation of the Act and related IRM laws. Many of the reviews of agency IRM activities conducted over the years have been compliance oriented. The section now focuses OMB review of agency IRM activities on determining their efficiency and effectiveness in helping to improve agency performance and achieve program missions and goals.

Each agency that has an IRM activity reviewed under this section is to respond, within 60 days of receiving the report on the review, with a written plan to the Director. The plan is to describe the steps, including milestones, that will be taken by the agency to address the IRM problems identified in the report and to improve agency performance and the accomplishment of its missions.

SEC. 3514. RESPONSIVENESS TO CONGRESS

Section 3514 provides that OMB is to inform the Congress on the major activities under the Act, including through an annual report. However, consistent with current legislative efforts to streamline congressional reporting requirements so as to mandate only that degree of reporting that is actually used, several detailed specifications for tabulations and lists are deleted from current law.

The focus of the report is changed—to be on the results achieved rather than mostly information of projects undertaken. The Director is to report on the extent that agencies have (1) reduced information collection burdens on the public, (2) improved the quality and utility of statistical information, (3) improved public access to Government information, and (4) improved program performance and the accomplishment of agency missions through their IRM activities. For agencies that do not reduce information collection burdens by at least ten percent in the preceding year (a goal set forth in section 3505(1)), the agencies are to identify for OMB the program and legislative responsibilities which preclude such burden reduction, and suggest recommendations to help the agency meet that burden reduction goal. OMB is to provide in the annual report a list of these program and legislative responsibilities, and the recommendations with which it agrees that Congress should take into consideration in seeking to reduce paperwork burdens imposed by legislation.

## SEC. 3515. ADMINISTRATIVE POWERS

The current law's provisions are unchanged.

## SEC. 3516. RULES AND REGULATIONS

The current law's provisions are unchanged.

## SEC. 3517. CONSULTATION WITH OTHER AGENCIES AND THE PUBLIC

This section is amended to permit a person to request OMB to review any collection of information to determine if the person must comply with the collection—whether the collection is covered by the Act and has been properly cleared. Unless the request is frivolous (or extra time is needed), the Director is to respond to the person within 60 days and take any appropriate remedial action. The Director is also to coordinate the response with the agency responsible for the collection of information. The section is also amended to make word changes for purposes of consistency and clarity.

## SEC. 3518. EFFECT ON EXISTING LAWS AND REGULATIONS

Except for the provision discussed in the next paragraph, the current law's provisions are unchanged, except for word changes for purposes of consistency and clarity.

## SEC. 3519. ACCESS TO INFORMATION

The current law's provisions are unchanged, except for word changes for purposes of consistency and clarity.

## SEC. 3520. AUTHORIZATION OF APPROPRIATIONS

This section is changed to make the Office of Information and Regulatory Affairs a fully integrated component of the Office of Management and Budget. OMB's appropriation is first determined by the Committees on Appropriations. To avoid cross purposes, the same should be true for all the components of OMB.

## SECTION 3. EFFECTIVE DATE.

The provisions of this legislation, amending the Paperwork Reduction Act, shall take effect on October 1, 1995. This effective date is intended to allow OMB time to revise its paperwork clearance regulations, and to allow agencies time to submit any current information disclosure requirements for OMB clearance. Without this grace period, disclosure requirements currently deemed not subject to the Act due to the 1990 Supreme Court decision in *Dole v. Steelworkers of America* would immediately become unenforceable under the public protection language of section 3512. This could confuse the public and disrupt agency activities dependent upon such disclosure of third-party collections of information.

## ROLL CALL VOTES

In compliance with clause 2(l)(2)(B) of rule XI of the House of Representatives, the Committee sets forth the record of the following roll call votes taken with respect to H.R. 830:

AMENDMENT NUMBER: #1 OF H.R. 830

Description: Section 3505, page 19, line 8 strike "five" and insert "10".

Offered by: Mr. Fox.  
Voice vote: Ayes.

AMENDMENT NUMBER: #2 OF H.R. 830

Description: Section 3501, page 2, line 10, insert microenterprises, after the words small businesses.

Offered by: Mr. Sanders.  
Withdrawn.

AMENDMENT NUMBER: #3 OF H.R. 830

Description: Section 3504, page 12, line 14 strike "and" and insert in lieu thereof.

Offered by: Mr. Sanders.  
Voice vote: Ayes.

AMENDMENT NUMBER: #4 OF H.R. 830

Description: Page 55, strike line 11 through page 56, line 2, and insert the following:

Offered By: Mr. Davis.  
Voice vote: Ayes.  
Passed as amended by the Kanjorski Amendment.

AMENDMENT NUMBER: #5 OF H.R. 830

Description: Strike Section 3518(f).  
Offered by: Mr. Kanjorski.  
Voice vote: Ayes.

AMENDMENT NUMBER: #6 OF H.R. 830

Description: En Bloc, Section 3504, 3505(a)(3), 3511(3).  
Offered by: Mr. Owens.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Clinger .....	.....	X	.....	Mrs. Collins—IL .....	X	.....	.....
Mr. Gilman .....	.....	X	.....	Mr. Waxman .....	X	.....	.....
Mr. Burton .....	.....	X	.....	Mr. Lantos .....	.....	.....	.....
Mrs. Morella .....	.....	X	.....	Mr. Wise .....	X	.....	.....
Mr. Shays .....	.....	X	.....	Mr. Owens .....	X	.....	.....
Mr. Schiff .....	.....	X	.....	Mr. Towns .....	X	.....	.....
Mrs. Ros-Lehtinen .....	.....	X	.....	Mr. Spratt .....	X	.....	.....
Mr. Zeff .....	.....	X	.....	Mrs. Slaughter .....	X	.....	.....
Mr. McHugh .....	.....	X	.....	Mr. Kanjorski .....	X	.....	.....
Mr. Horn .....	.....	X	.....	Mr. Condit .....	X	.....	.....
Mr. Mica .....	.....	X	.....	Mr. Peterson .....	.....	X	.....
Mr. Blute .....	.....	X	.....	Mr. Sanders .....	.....	.....	.....
Mr. Davis .....	.....	X	.....	Mrs. Thurman .....	X	.....	.....
Mr. McIntosh .....	.....	X	.....	Mrs. Maloney .....	.....	.....	.....
Mr. Fox .....	.....	X	.....	Mr. Barrett .....	.....	X	.....
Mr. Tate .....	.....	X	.....	Mr. Taylor .....	X	.....	.....
Mr. Chrysler .....	.....	X	.....	Mrs. Collins—MI .....	.....	.....	.....
Mr. Gutknecht .....	.....	X	.....	Mrs. Norton .....	.....	.....	.....
Mr. Souder .....	.....	X	.....	Mr. Moran .....	.....	.....	.....
Mr. Martini .....	.....	X	.....	Mr. Green .....	X	.....	.....
Mr. Scarborough .....	.....	X	.....	Mrs. Meek .....	.....	.....	.....
Mr. Shadegg .....	.....	X	.....	Mr. Mascara .....	X	.....	.....



Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Flanagan .....	.....	.....	.....	Mr. Fattah .....	X	.....	.....
Mr. Bass .....	.....	X	.....	.....	.....	.....	.....
Mr. LaTourette .....	.....	.....	.....	.....	.....	.....	.....
Mr. Sanford .....	.....	X	.....	.....	.....	.....	.....
Mr. Ehrlich .....	.....	X	.....	.....	.....	.....	.....
Totals—14 ayes; 27 nays.							

AMENDMENT NUMBER: #7 OF H.R. 830

**Description:** Section 3506(1) in subsection (b)(4) after Administrator of General Services.  
**Offered by:** Mr. Owens.  
**Withdrawn.**

AMENDMENT NUMBER: #8 OF H.R. 830

**Description:** En Bloc, Page 6, beginning at line 15, strike soliciting, or requiring the disclosure to third parties or the public and insert or soliciting. **Offered by:** Mrs. Collins—IL.  
**Failed by rollcall.**

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Clinger .....	.....	X	.....	Mrs. Collins—IL .....	X	.....	.....
Mr. Gilman .....	.....	X	.....	Mr. Waxman .....	.....	.....	.....
Mr. Burton .....	.....	X	.....	Mr. Lantos .....	.....	.....	.....
Mrs. Morella .....	.....	X	.....	Mr. Wise .....	X	.....	.....
Mr. Shays .....	.....	X	.....	Mr. Owens .....	X	.....	.....
Mr. Schiff .....	.....	X	.....	Mr. Towns .....	X	.....	.....
Mrs. Ros-Lehtinen .....	.....	X	.....	Mr. Spratt .....	X	.....	.....
Mr. Zeff .....	.....	X	.....	Mrs. Slaughter .....	X	.....	.....
Mr. McHugh .....	.....	X	.....	Mr. Kanjorski .....	X	.....	.....
Mr. Horn .....	.....	X	.....	Mr. Condit .....	X	.....	.....
Mr. Mica .....	.....	X	.....	Mr. Peterson .....	X	.....	.....
Mr. Blute .....	.....	X	.....	Mr. Sanders .....	X	.....	.....
Mr. Davis .....	.....	X	.....	Mrs. Thurman .....	X	.....	.....
Mr. McIntosh .....	.....	X	.....	Mrs. Maloney .....	X	.....	.....
Mr. Fox .....	.....	X	.....	Mr. Barrett .....	X	.....	.....
Mr. Tate .....	.....	X	.....	Mr. Taylor .....	X	.....	.....
Mr. Chrysler .....	.....	X	.....	Mrs. Collins—MI .....	.....	.....	.....
Mr. Gutknecht .....	.....	X	.....	Mrs. Norton .....	.....	.....	.....
Mr. Souder .....	.....	X	.....	Mr. Moran .....	.....	.....	.....
Mr. Martini .....	.....	X	.....	Mr. Green .....	X	.....	.....
Mr. Scarborough .....	.....	X	.....	Mrs. Meek .....	X	.....	.....
Mr. Shadegg .....	.....	X	.....	Mr. Mascara .....	X	.....	.....
Mr. Flanagan .....	.....	X	.....	Mr. Fattah .....	X	.....	.....
Mr. Bass .....	.....	.....	.....	.....	.....	.....	.....
Mr. LaTourette .....	.....	X	.....	.....	.....	.....	.....
Mr. Sanford .....	.....	X	.....	.....	.....	.....	.....
Mr. Ehrlich .....	.....	X	.....	.....	.....	.....	.....
Totals—18 ayes; 26 nays.							

AMENDMENT NUMBER: #9 OF H.R. 830

**Description:** Page 56, line 17, before the first period insert the following: “for each fiscal years 1996, 1997, 1998, 1999, 2000.”  
**Offered by:** Mrs. Maloney.  
**Failed by roll call.**

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Clinger .....	.....	X	.....	Mrs. Collins—IL .....	X	.....	.....
Mr. Gilman .....	.....	X	.....	Mr. Waxman .....	.....	.....	.....

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Burton	.....	X	.....	Mr. Lantos	.....	.....	.....
Mrs. Morella	.....	X	.....	Mr. Wise	.....	X	.....
Mr. Shays	.....	X	.....	Mr. Owens	.....	X	.....
Mr. Schiff	.....	X	.....	Mr. Towns	.....	X	.....
Mrs. Ros-Lehtinen	.....	X	.....	Mr. Spratt	.....	X	.....
Mr. Zeff	.....	X	.....	Mrs. Slaughter	.....	X	.....
Mr. McHugh	.....	X	.....	Mr. Kanjorski	.....	X	.....
Mr. Horn	.....	X	.....	Mr. Condit	.....	X	.....
Mr. Mica	.....	.....	.....	Mr. Peterson	.....	X	.....
Mr. Blute	.....	X	.....	Mr. Sanders	.....	X	.....
Mr. Davis	.....	X	.....	Mrs. Thurman	.....	X	.....
Mr. McIntosh	.....	X	.....	Mrs. Maloney	.....	X	.....
Mr. Fox	.....	X	.....	Mr. Barrett	.....	X	.....
Mr. Tate	.....	X	.....	Mr. Taylor	.....	X	.....
Mr. Chrysler	.....	X	.....	Mr. Collins—MI	.....	.....	.....
Mr. Gutknecht	.....	X	.....	Mrs. Norton	.....	.....	.....
Mr. Souder	.....	X	.....	Mr. Moran	.....	.....	.....
Mr. Martini	.....	X	.....	Mr. Green	.....	X	.....
Mr. Scarborough	.....	X	.....	Mrs. Meek	.....	X	.....
Mr. Shadegg	.....	X	.....	Mr. Mascara	.....	X	.....
Mr. Flanagan	.....	X	.....	Mr. Fattah	.....	X	.....
Mr. Bass	.....	X	.....	.....	.....	.....	.....
Mr. LaTourette	.....	X	.....	.....	.....	.....	.....
Mr. Sanford	.....	X	.....	.....	.....	.....	.....
Mr. Ehrlich	.....	X	.....	.....	.....	.....	.....
Totals—21 ayes; 23 nays.							

FINAL PASSAGE OF H.R. 830

Offered by: Mr. Burton.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Clinger	.....	X	.....	Mrs. Collins—IL	.....	X	.....
Mr. Gilman	.....	X	.....	Mr. Waxman	.....	X	.....
Mr. Burton	.....	X	.....	Mr. Lantos	.....	.....	.....
Mrs. Morella	.....	X	.....	Mr. Wise	.....	X	.....
Mr. Shays	.....	X	.....	Mr. Owens	.....	X	.....
Mr. Schiff	.....	X	.....	Mr. Towns	.....	X	.....
Mrs. Ros-Lehtinen	.....	X	.....	Mr. Spratt	.....	X	.....
Mr. Zeff	.....	X	.....	Mrs. Slaughter	.....	X	.....
Mr. McHugh	.....	X	.....	Mr. Kanjorski	.....	X	.....
Mr. Horn	.....	X	.....	Mr. Condit	.....	X	.....
Mr. Mica	.....	X	.....	Mr. Peterson	.....	X	.....
Mr. Blute	.....	X	.....	Mr. Sanders	.....	X	.....
Mr. Davis	.....	X	.....	Mrs. Thurman	.....	X	.....
Mr. McIntosh	.....	X	.....	Mrs. Maloney	.....	X	.....
Mr. Fox	.....	X	.....	Mr. Barrett	.....	X	.....
Mr. Tate	.....	X	.....	Mr. Taylor	.....	X	.....
Mr. Chrysler	.....	X	.....	Mrs. Collins—MI	.....	.....	.....
Mr. Gutknecht	.....	X	.....	Mrs. Norton	.....	.....	.....
Mr. Souder	.....	X	.....	Mr. Moran	.....	.....	.....
Mr. Martini	.....	X	.....	Mr. Green	.....	X	.....
Mr. Scarborough	.....	X	.....	Mrs. Meek	.....	.....	.....
Mr. Shadegg	.....	X	.....	Mr. Mascara	.....	X	.....
Mr. Flanagan	.....	X	.....	Mr. Fattah	.....	.....	.....
Mr. Bass	.....	X	.....	.....	.....	.....	.....
Mr. LaTourette	.....	X	.....	.....	.....	.....	.....
Mr. Sanford	.....	X	.....	.....	.....	.....	.....
Mr. Ehrlich	.....	X	.....	.....	.....	.....	.....
Totals—40 ayes; 4 nays.							

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(b) of Rule XI of the House of Representatives, the Committee sets forth, with respect to H.R. 830, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, February 14, 1995.

Hon. WILLIAM F. CLINGER, Jr.,  
 Chairman, Committee on Government Reform and Oversight,  
 U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 830, the Paperwork Reduction Act of 1995.

Enactment of H.R. 830 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM  
 (For Robert D. Reischauer).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 830.
2. Bill title: Paperwork Reduction Act of 1995.
3. Bill status: As ordered reported by the House Committee on Government Reform and Oversight on February 10, 1995.
4. Bill purpose: H.R. 830 would redefine and clarify many of the responsibilities of the Office of Information and Regulatory Affairs (OIRA) and would expand federal agencies' roles in efforts to improve the management of information. H.R. 830 also would authorize the appropriation of such sums as are necessary for OIRA in the Office of Management and Budget (OMB).
5. Estimated cost to the Federal Government: Because H.R. 830 does not provide a specific authorization, the following table shows two alternative sets of authorization levels—the 1995 appropriation for OIRA without an adjustment for anticipated inflation and the 1995 appropriation with an adjustment for inflation.

CBO estimates that because OIRA is already performing many of the functions required in this bill, enacting H.R. 830 would result in no significant additional costs. Provisions clarifying the role of federal agencies in information management are also not expected to result in significant additional costs.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
Without adjustment for inflation:					
Estimated authorization level .....	6	6	6	6	6
Estimated outlays .....	5	6	6	6	6

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
With adjustment for inflation:					
Estimated authorization level .....	6	7	7	7	7
Estimated outlays .....	5	7	7	7	7

The costs of this bill fall within budget function 800.

Outlay estimates are based on historical spending rates for this program and assume that appropriations will be provided before the start of each fiscal year.

6. Comparison with spending under current law: OIRA's 1995 appropriation is about \$6 million. If appropriations were to remain at the 1995 level, projected spending would not exceed the amount under current law. If appropriations were to increase each year to reflect anticipated inflation, budget authority and outlays would exceed levels under current law by amounts growing to \$1 million in 2000.

7. Pay-as-you-go considerations: None.

8. Estimated cost to State and local governments: None.

9. Estimate Comparison: None.

10. Previous CBO estimate: On February 3, 1995, CBO transmitted a cost estimate for S. 244, the Paperwork Reduction Act of 1995, as ordered reported by the Senate Committee on Governmental Affairs on February 1, 1995. H.R. 830 is similar to S. 244.

11. Estimate prepared by: Susanne S. Mehlman.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the House of Representatives, the Committee estimates that H.R. 830 will have no significant inflationary impact on prices and costs in the national economy.

#### OVERSIGHT FINDINGS

Findings and recommendations by the Committee on Government Reform and Oversight pursuant to clause 2(l)(3)(D) of Rule XI of the House of Representatives are incorporated into the descriptive portions of this report.

The Small Business Committee also held a hearing on the Paperwork Reduction Act. Their findings are summarized in the attached letter to Chairman Clinger.

U.S. CONGRESS,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC, February 13, 1995.*

Hon. WILLIAM CLINGER, Jr.,  
*Chairman, Committee on Government Reform and Oversight,  
U.S. House of Representatives, Washington, DC.*

DEAR CHAIRMAN CLINGER: On January 27, the Small Business Committee held a hearing on Title V, of H.R. 9, the "Job Creation and Wage Enhancement Act of 1995." Title V is entitled the "Paperwork Reduction Act of 1995."

The legislative provisions contained in this vital piece of the "Contract with America" have their origins in legislation you, Congressman Sisisky, Congressman LaFalce, myself and some 111 other members from both sides of the aisle actively cosponsored in the 103d Congress. (H.R. 2995) While we did not succeed in passing this legislation last Congress, I am very excited about the potential of working with you and the new leadership in both the House and Senate to enact similar legislation this Congress. I am one who strongly believes the Paperwork Reduction Act and the Regulatory Flexibility Act, Title VI of H.R. 9, are precisely the kind of common sense regulatory reforms that this Congress can enact, after the unsuccessful efforts of the past several years, for the benefit of small businesses and all the American people.

The Small Business Committee shares a jurisdictional interest with the Government Reform and Oversight Committee on legislation regarding paperwork reduction. Our hearing focused on the impact this and similar legislation in the Senate, S. 244, will have on the small business community. What follows is a summary of the hearing and a highlighting of several recommendations made by our witnesses which could improve the legislation. For the benefit of our colleagues who are not members of either of our Committees, I request that this letter be included in your Committee's report on H.R. 830, legislation responsive to Title V of H.R. 9 and reported favorably by your Committee on February 10th.

#### WITNESSES

Ms. Sally Katzen, Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President, presented the Clinton Administration's position on and aspirations for paperwork reduction legislation.

Mr. William Koebnitz, President and Chief Executive Officer of Med Center, Inc., of Valley View Ohio, testified on behalf of the U.S. Chamber of Commerce Federation of 215,000 businesses. He was accompanied by Nancy Fulco, Manager of Regulatory Policy for the Chamber, and David Voight, Director of the Chamber's Small Business Center. Mr. Koebnitz is a member of the U.S. Chamber's Board of Directors and the Chairman of the Chamber's Regulatory Affairs Committee.

Mr. David Massanari, M.D., a practicing family physician from Sanford, Maine testified on behalf of the American Academy of Family Physicians. Dr. Massanari serves as a member of the Board of Directors of the American Academy of Family Physicians, and chairs their Commission on Legislation and Government Affairs.

Mr. Victor Tucci, M.D., President of Three Rivers Health and Safety, in Pittsburgh, Pennsylvania testified on behalf of the National Small Business United.

Mr. Guy W. Courtney, President and Chief Executive Officer of The Machaira Group, Inc., a securities brokerage firm located in Palatine, Illinois testified as an interested small businessman. He is a delegate to the 1995 White House Conference on Small Business where he serves on the Capital Formation and Paperwork and Regulatory committees.

Mr. James P. Carty, Vice President, Small Manufacturers, testified on behalf of the National Association of Manufacturers.

Witnesses from the U.S. Chamber, National Small Business United, and the National Association of Manufacturers acknowledged their participation in the Paperwork Reduction Act Coalition, a broad-based coalition which is dedicated to supporting the Paperwork Reduction Act of 1995.

#### SUMMARY OF TESTIMONY

All the witnesses were supportive of Title V's provisions to positively amend the Paperwork Reduction Act of 1980. All the witnesses supported correcting the problems created by the 1990 Supreme Court decision, *Dole vs. Steelworkers of America*. All but one specifically endorsed language overturning *Dole*, and which clarifies that the PRA cover all paperwork requirements, including those where the federal government mandates a private party provide or maintain information for a third party, as opposed to the federal government directly. All supported the establishment of national burden reduction goals.

Administrator Katzen noted the particular importance of paperwork reduction to small business and cited a 1987 survey conducted by Price Waterhouse which concluded that "costs involved in completing government forms—and perhaps more importantly, the time invested by senior management—are disproportionately heavy for small companies." She further cited a GAO study (GAO/PEMD-93-5) which detailed problems agencies are having implementing the Act created by the *Dole* decision. She urged the Committee focus upon the provisions of S. 244, the Senate companion to the "Paperwork Reduction Act of 1995", which she believes reflects improvements resulting from two years of "active, collaborative, bipartisan effort". She declared S. 244 has the full support of the Clinton Administration and pledged to work cooperatively with the Congress to help enact meaningful and helpful improvements to the Paperwork Reduction Act.

Mr. Koeblitz established the importance of paperwork reduction to the Chamber's membership. Each Congressional cycle, the Chamber surveys its members to determine the issues of greatest importance for the coming Congress. Out of 64 issues identified for the 104th Congress, paperwork reduction ranked third behind unfunded mandates on state and local governments and the private sector, and welfare reform. Considering the unfunded mandates issue also involves regulatory burdens, the message was clear, the American business community wants to get back to the business of running their companies rather than devoting inordinate amounts of time responding to federal government edicts. He stressed the importance of overturning *Dole* and noted that actual paperwork and regulatory burdens imposed on the public are underestimated drastically.

Dr. Tucci displayed and explained the burden of what the material safety data sheets (MSDS) are for his company. He questioned whether the requirements for MSDS's were achieving their purpose of telling workers about chemical hazards. By implication, he noted OSHA's MSDS requirements were not covered by the PRA as a result of the *Dole* decision. He expressed the view that "bootleg" paperwork requests were proliferating as a result of the decision. He commented that NSBU's annual survey of members to identify the

“most significant challenges” to their business’ growth and survival reveal that “regulatory burdens” is consistently one of the top three challenges.

Dr. Massanari stated that a family physician’s practice is generally a “small business”. Over a third (35.5 percent) of family physicians are in solo practice, an additional 12% are in two-person partnerships, and another third practice in small to medium sized groups. They are all overwhelmed by paperwork. The in-service and administrative structure taken for granted to exist in larger organizations, such as hospitals, simply does not exist in these small practices.

Dr. Massanari pointed to several paperwork intensive areas that could benefit from less burdensome rules if the PRA were applied properly to them. He noted the problem the *Dole* decision creates in this regard. Medicare rules and reimbursement procedures, routine and frequent Health Care and Financing Administration (HCFA) policy changes, post-payment audits, the Clinical Laboratory Improvements Act (CLIA), the training records of the OSHA blood-borne pathogen standard, home health, and nursing home regulations were cited as examples. He stressed that the Academy regards HCFA’s new Medicare Carrier Manual instructions as a good test of the scope and strength of the Paperwork Reduction Act. They will be watching to see whether OIRA and OMB assert the instructions are covered by the Act and believe strengthening amendments to the law would help resolve the issue.

Mr. Courtney commented on the paperwork problems of “start-up” companies and noted the disproportionate burdens placed upon small businesses. He recommended that the goals of the Act be made an absolute requirement. He emphasized the importance of federal officials affirmatively collecting the views of small businesses before paperwork requirements were promulgated. Small business involvement should come at the beginning, not the end. Mr. Courtney described the “soft” costs associated with paperwork burdens as opposed to the “hard” costs and recommended both kinds of costs be addressed in evaluating the need for paperwork requirements.

Mr. Carty welcomed the prospect of enacting the PRA amendments after six years of effort. The NAM is a steering committee member of the Paperwork Reduction Act Coalition. He noted the historic role the Small Business Committee had played in the Federal Reports Act of 1942, the Federal Paperwork Commission of 1974 and the PRA of 1980. He emphasized the need for OIRA to be a strong regulatory “traffic cop” for the President. He described the important role the law plays to link information technology and the information age to reducing the government’s off-budget burden on small businesses. He further explained how the Act’s protections against bureaucratic excesses had been seriously eroded in recent times. “The problem today is the law’s effectiveness has been eroded by three major factors, the Supreme Court decision, *Dole v. Steelworkers of America*; agencies who increasingly ignore the spirit and letter of the law; and six years of Congress and the Executive branch not being able to agree on what amendments are needed. Mr. Carty concluded by summarizing recommendations for the Committee’s consideration.

## RECOMMENDATIONS

Witnesses before the Committee specifically recommended that the Paperwork Reduction Act proposals before Congress be improved by:

Raising the goal of reducing existing paperwork burdens annually from the present proposals of 5 percent to 10 percent.

Consider making the burden reduction goals mandatory. This would require agencies to find ways to reduce burdens when they establish new ones.

Providing citizens a private right of action when the Administrator of OIRA fails to respond in writing to a properly presented inquiry on whether a collection of information is covered under the Act.

Amending the PRA to explicitly require that all record-keeping requirements contain a specific record retention requirement. Recordkeeping requirements should not be approved unless they display how long they must be kept.

Statutorily empowering the Small Business Administration's Chief Counsel for Advocacy to address and help enforce the PRA's impact on small businesses.

Thank you for your attention to this matter.

Sincerely,

JAN MEYERS,  
*Chair.*

## XI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 44, UNITED STATES CODE**

\* \* \* \* \*

**[CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY**

[Sec.

[3501. Purpose.

[3502. Definitions.

[3503. Office of Information and Regulatory Affairs.

[3504. Authority and functions of Director.

[3505. Assignment of tasks and deadlines.

[3506. Federal agency responsibilities.

[3507. Public information collection activities—submission to Director; approval and delegation.

[3508. Determination of necessity for information; hearing.

[3509. Designation of central collection agency.

[3510. Cooperation of agencies in making information available.

[3511. Establishment and operation of Federal Information Locator System.

[3512. Public protection.

[3513. Director review of agency activities; reporting; agency response.

[3514. Responsiveness to Congress.

[3515. Administrative powers.

[3516. Rules and regulations.

[3517. Consultation with other agencies and the public.



§3518. Effect on existing laws and regulations.

§3519. Access to information.

§3520. Authorization of appropriations.

### §3501. Purpose

The purpose of this chapter is—

(1) to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons;

(2) to minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information;

(3) to maximize the usefulness of information collected, maintained, and disseminated by the Federal Government;

(4) to coordinate, integrate and, to the extent practicable and appropriate, make uniform Federal information policies and practices;

(5) to ensure that automatic data processing, telecommunications, and other information technologies are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, improves the quality of decisionmaking, reduces waste and fraud, and wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information to and for the Federal Government; and

(6) to ensure that the collection, maintenance, use and dissemination of information by the Federal Government is consistent with applicable laws relating to confidentiality, including section 552a of title 5, United States Code, known as the Privacy Act.

### §3502. Definitions

As used in this chapter—

(1) the term “agency” means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include the

General Accounting Office, Federal Election Commission, the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, or Government-owned contractor-operated facilities including laboratories engaged in national defense research and production activities;

(2) the terms “automatic data processing,” “automatic data processing equipment,” and “telecommunications” do not include any data processing or telecommunications system or equipment, the function, operation or use of which—

(A) involves intelligence activities;

(B) involves cryptologic activities related to national security;

(C) involves the direct command and control of military forces;

[(D) involves equipment which is an integral part of a weapon or weapons system; or

[(E) is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include automatic data processing or telecommunications equipment used for routine administrative and business applications such as payroll, finance, logistics, and personnel management;

[(3) the term “burden” means the time, effort, or financial resources expended by persons to provide information to a Federal agency;

[(4) the term “collection of information” means the obtaining or soliciting of facts or opinions by an agency through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods calling for either—

[(A) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

[(B) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes;

[(5) the term “data element” means a distinct piece of information such as a name, term, number, abbreviation, or symbol;

[(6) the term “data element dictionary” means a system containing standard and uniform definitions and cross references for commonly used data elements;

[(7) the term “data profile” means a synopsis of the questions contained in an information collection request and the official name of the request, the location of information obtained or to be obtained through the request, a description of any compilations, analyses, or reports derived or to be derived from such information, any record retention requirements associated with the request, the agency responsible for the request, the statute authorizing the request, and any other information necessary to identify, obtain, or use the data contained in such information;

[(8) the term “Director” means the Director of the Office of Management and Budget;

[(9) the term “directory of information resources” means a catalog of information collection requests, containing a data profile for each request;

[(10) the term “independent regulatory agency” means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the

Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

[(11) the term “information collection request” means a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, collection of information requirement, or other similar method calling for the collection of information;

[(12) the term “information referral service” means the function that assists officials and persons in obtaining access to the Federal Information Locator System;

[(13) the term “information resources management” means the planning, budgeting, organizing, directing, training, promoting, controlling, and management activities associated with the burden, collection, creation, use, and dissemination of information by agencies, and includes the management of information and related resources such as automatic data processing equipment (as such term is defined in section 111(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a));

[(14) the term “information systems” means management information systems;

[(15) the term “person” means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

[(16) the term “practical utility” means the ability of an agency to use information it collects, particularly the capability to process such information in a timely and useful fashion; and

[(17) the term “recordkeeping requirement” means requirement imposed by an agency on persons to maintain specified records.

### **[(§ 3503. Office of Information and Regulatory Affairs**

[(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

[(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information policy and shall report directly to the Director.

### **[(§ 3504. Authority and functions of Director**

[(a) The Director shall develop and implement Federal information policies, principles, standards, and guidelines and shall provide direction and oversee the review and approval of information collection requests, the reduction of the paperwork burden, Federal statistical activities, records management activities, privacy and se-

curity of records, agency sharing and dissemination of information, and acquisition and use of automatic data processing, telecommunications, and other information technology for managing information resources. The authority of the Director under this section shall be exercised consistent with applicable law.

[(b) The general information policy functions of the Director shall include—

[(1) developing and implementing uniform and consistent information resources management policies and overseeing the development of information management principles, standards, and guidelines and promoting their use;

[(2) initiating and reviewing proposals for changes in legislation, regulations, and agency procedures to improve information practices, and informing the President and the Congress on the progress made therein;

[(3) coordinating, through the review of budget proposals and as otherwise provided in this section, agency information practices;

[(4) promoting, through the use of the Federal Information Locator System, the review of budget proposals and other methods, greater sharing of information by agencies;

[(5) evaluating agency information management practices to determine their adequacy and efficiency, and to determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director; and

[(6) overseeing planning for, and conduct of research with respect to, Federal collection, processing, storage, transmission, and use of information.

[(c) The information collection request clearance and other paperwork control functions of the Director shall include—

[(1) reviewing and approving information collection requests proposed by agencies;

[(2) determining whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility for the agency;

[(3) ensuring that all information collection requests—

[(A) are inventoried, display a control number and, when appropriate, an expiration date;

[(B) indicate the request is in accordance with the clearance requirements of section 3507; and

[(C) contain a statement to inform the person receiving the request why the information is being collected, how it is to be used, and whether responses to the request are voluntary, required to obtain a benefit, or mandatory;

[(4) designating as appropriate, in accordance with section 3509, a collection agency to obtain information for two or more agencies;

[(5) setting goals for reduction of the burdens of Federal information collection requests;

[(6) overseeing action on the recommendations of the Commission on Federal Paperwork; and

[(7) designing and operating, in accordance with section 3511, the Federal Information Locator System.

[(d) The statistical policy and coordination functions of the Director shall include—

[(1) developing and periodically reviewing and, as necessary, revising long-range plans for the improved coordination and performance of the statistical activities and programs of the Federal Government;

[(2) reviewing budget proposals of agencies to assure that the proposals are consistent with such long-range plans;

[(3) coordinating, through the review of budget proposals and as otherwise provided in this chapter, the functions of the Federal Government with respect to gathering, interpreting, and disseminating statistics and statistical information;

[(4) developing and implementing Government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classification, statistical information presentation and dissemination, and such statistical data sources as may be required for the administration of Federal programs;

[(5) evaluating statistical program performance and agency compliance with Government-wide policies, principles, standards, and guidelines;

[(6) integrating the functions described in paragraphs (1) through (5) of this subsection with the other information resources management functions specified in this chapter; and

[(7) appointing a chief statistician who is a trained and experienced professional statistician to carry out the functions described in paragraphs (1) through (6) of this subsection.

[(e) The records management functions of the Director shall include—

[(1) providing advice and assistance to the Archivist of the United States and the Administrator of General Services in order to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information policies, principles, standards, and guidelines established under this chapter;

[(2) reviewing compliance by agencies with the requirements of chapters 29, 31, and 33 of this title and with regulations promulgated by the Archivist of the United States and the Administrator of General Services thereunder; and

[(3) coordinating records management policies and programs with related information programs such as information collection, statistics, automatic data processing and telecommunications, and similar activities.

[(f) The privacy functions of the Director shall include—

[(1) developing and implementing policies, principles, standards, and guidelines on information disclosure and confidentiality, and on safeguarding the security of information collected or maintained by or on behalf of agencies;

[(2) providing agencies with advice and guidance about information security, restriction, exchange, and disclosure; and

[(3) monitoring compliance with section 552a of title 5, United States Code, and related information management laws.

[(g) The Federal automatic data processing (including telecommunications) functions of the Director shall include—

[(1) developing and implementing policies, principles, standards, and guidelines for automatic data processing (including telecommunications) functions and activities of the Federal Government, and overseeing the establishment of standards under section 111(d) of the Federal Property and Administrative Services Act of 1949;

[(2) monitoring the effectiveness of, and compliance with, directives issued pursuant to sections 110 and 111 of such Act and reviewing proposed determinations under section 111(e) of such Act;

[(3) providing advice and guidance on the acquisition and use automatic data processing (including telecommunications) equipment, and coordinating, through the review of budget proposals and other methods, agency proposals for acquisition and use of such equipment;

[(4) promoting the use of automatic data processing (including telecommunications) equipment by the Federal Government improve the effectiveness of the use and dissemination of data in the operation of Federal programs; and

[(5) initiating and reviewing proposals for changes legislation, regulations, and agency procedures to improve automatic data processing (including telecommunications) practices, and informing the President and the Congress of the progress made therein.

[(h)(1) As soon as practicable, but no later than publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information requirement and upon request, information necessary to make the determination required pursuant to this section.

[(2) Within sixty days after the notice of proposed rulemaking is published International Relations the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information requirement contained in the proposed rule.

[(3) When a final rule is published in the Federal Register, the agency shall explain how any collection of information requirement contained in the final rule responds to the comments, if any, filed the Director or the public, or explain why it rejected those comments.

[(4) The Director has no authority to disapprove any collection of information requirement specifically contained in an agency rule, if he has received notice and failed to comment on the rule within sixty days of the notice of proposed rulemaking.

[(5) Nothing in this section prevents the Director, in his discretion—

[(A) from disapproving any information collection request which was not specifically required by an agency rule;

[(B) from disapproving any collection of information requirement contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection; or

[(C) from disapproving any collection of information requirement contained in a final agency rule, if the Director finds

within sixty days of the publication of the final rule that the agency's response to his comments filed pursuant to paragraph (2) of this subsection was unreasonable.

[(D) from disapproving any collection of information requirement where the Director determines that the agency has substantially modified in the final rule the collection of information requirement contained in the proposed rule where the agency has not given the Director the information required in paragraph (1), with respect to the modified collection of information requirement, at least sixty days before the issuance of the final rule.

[(6) The Director shall make publicly available any decision disapprove a collection of information requirement contained in agency rule, together with the reasons for such decision.

[(7) The authority of the Director under this subsection subject to the provisions of section 3507(c).

[(8) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

[(9) There shall be no judicial review of any kind of the Director's decision to approve or not to act upon a collection of information requirement contained in an agency rule.

#### **§ 3505. Assignment of tasks and deadlines**

[In carrying out the functions under this chapter, the Director shall—

[(1) upon enactment of this Act—

[(A) set a goal to reduce the then existing burden of Federal collections of information by 15 per centum by October 1, 1982; and

[(B) for the year following, set a goal to reduce the burden which existed upon enactment by an additional 10 per centum;

[(2) within one year after the effective date of this Act—

[(A) establish standards and requirements for agency audits of all major information systems and assign responsibility for conducting Government-wide or multiagency audits, except the Director shall not assign such responsibility for the audit of major information systems used for the conduct of criminal investigations or intelligence activities as defined in section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, or for cryptologic activities that are communications security activities;

[(B) establish the Federal Information Locator System;

[(C) identify areas of duplication in information collection requests and develop a schedule and methods for eliminating duplication;

[(D) develop a proposal to augment the Federal Information Locator System to include data profiles of major information holdings of agencies (used in the conduct of their operations) which are not otherwise required by this chapter to be included in the System; and

[(E) identify initiatives which may achieve a 10 per centum reduction in the burden of Federal collections of infor-

- mation associated with the administration of Federal grant programs;
- [(3) within two years after the effective date of this Act—
- [(A) establish a schedule and a management control system to ensure that practices and programs of information handling disciplines, including records management, are appropriately integrated with the information policies mandated by this chapter;
  - [(B) identify initiatives to improve productivity in Federal operations using information processing technology;
  - [(C) develop a program to (i) enforce Federal information processing standards, particularly software language standards, at all Federal installations; and (ii) revitalize the standards development program established pursuant to section 759(f)(2) of title 40, United States Code, separating it from peripheral technical assistance functions and directing it to the most productive areas;
  - [(D) complete action on recommendations of the Commission on Federal Paperwork by implementing, with modification or rejecting such recommendations including, where necessary, development of legislation to implement such recommendations;
  - [(E) develop and annually revise, in consultation with the Administrator of General Services, a 5-year plan for meeting the automatic data processing equipment (including telecommunications) and other information technology needs of the Federal Government in accordance with the requirements sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757, 759) and the purposes of this chapter; and
  - [(F) submit to the President and the Congress legislative proposals to remove inconsistencies in laws and practices involving privacy, confidentiality, and disclosure of information;
- [(4) upon the enactment of the Paperwork Reduction Reauthorization Act of 1986—
- [(A) set a goal to reduce, by September 30, 1987, the burden of Federal collections of information existing on September 30, 1986, by at least 5 percent; and
  - [(B) for the fiscal year beginning on October 1, 1987, and each of the next two fiscal years, set a goal to reduce the burden of Federal collections of information existing at the end of the immediately preceding fiscal year by at least 5 percent;
- [(5) maintain a comprehensive set of information resources management policies; and
- [(6) within one year after the date of enactment of the Paperwork Reduction Reauthorization Act of 1986—
- [(A) issue, in consultation with the Administrator of General Services, principles, standards, and guidelines to implement the policies described in paragraph (5);
  - [(B) report to the Congress on the feasibility and means enhancing public access, including access by electronic media, to information relating to information collection re-



quests required by this chapter to be made available to the public; and

[(C) identify further initiatives to reduce the burden of Federal collections of information associated with the administration of Federal grant programs.

**[§ 3506. Federal agency responsibilities**

[(a) Each agency shall be responsible for carrying out its information management activities in an efficient, effective, and economical manner, and for complying with the information policies, principles, standards, and guidelines prescribed by the Director.

[(b) The head of each agency shall designate, within three months after the effective date of this Act, a senior official or, in the case of military departments, and the Office of the Secretary of Defense, officials who report directly to such agency head to carry out the responsibilities of the agency under this chapter. If more than one official is appointed for the military departments the respective duties of the officials shall be clearly delineated.

[(c) Each agency shall—

[(1) systematically inventory its major information systems and periodically review its information resources management activities;

[(2) ensure its information systems do not overlap each other or duplicate the systems of other agencies;

[(3) develop procedures for assessing the paperwork and reporting burden of proposed legislation affecting such agency;

[(4) assign to the official designated under subsection (b) the responsibility for the conduct of and accountability for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759);

[(5) ensure that information collection requests required by law or to obtain a benefit, and submitted to nine or fewer persons, contain a statement to inform the person receiving the request that the request is not subject to the requirements of section 3507 of this chapter; and

[(6) implement applicable Government-wide and agency information policies, principles, standards, and guidelines with respect to information collection, paperwork reduction, statistical activities, records management activities, privacy and security of records, sharing and dissemination of information, acquisition and use of information technology, and other information resource management functions;

[(7) periodically evaluate and, as needed, improve, the accuracy, completeness, and reliability of data and records contained within Federal information systems; and

[(8) develop and annually revise a 5-year plan, in accordance with appropriate guidance provided by the Director, for meeting the agency's information technology needs.

[(d) The head of each agency shall establish such procedures necessary to ensure the compliance of the agency with the requirements of the Federal Information Locator System, including necessary screening and compliance activities.

**§ 3507. Public information collection activities—submission to Director; approval and delegation**

[(a) An agency shall not conduct or sponsor the collection of information unless, in advance of the adoption or revision of the request for collection of such information—

[(1) the agency has taken actions, including consultation with the Director, to—

[(A) eliminate, through the use of the Federal Information Locator System and other means, information collections which seek to obtain information available from another source within the Federal Government;

[(B) reduce to the extent practicable and appropriate the burden on persons who will provide information to the agency; and

[(C) formulate plans for tabulating the information in a manner which will enhance its usefulness to other agencies and to the public;

[(2) the agency (A) has submitted to the Director the proposed information collection request, copies of pertinent regulations and other related materials as the Director may specify, and an explanation of actions taken to carry out paragraph (1) of this subsection, and (B) has prepared a notice to be published in the Federal Register stating that the agency has made such submission and setting forth a title for the information collection request, a brief description of the need for the information and its proposed use, a description of the likely respondents and proposed frequency of response to the information collection request, and an estimate of the burden that will result from the information collection request; and

[(3) the Director has approved the proposed information collection request, or the period for review of information collection requests by the Director provided under subsection (b) has elapsed.

[(b) The Director shall, within sixty days of receipt of a proposed information collection request, notify the agency involved of the decision to approve or disapprove the request and shall make such decisions, including an explanation thereof, publicly available. If the Director determines that a request submitted for review cannot be reviewed within sixty days, the Director may, after notice to the agency involved, extend the review period for an additional thirty days. If the Director does not notify the agency of an extension, denial, or approval within sixty days (or, if the Director has extended the review period for an additional thirty days and does not notify the agency of a denial or approval within the time of the extension), a control number shall be assigned without further delay, the approval may be inferred, and the agency may collect the information for not more than one year.

[(c) Any disapproval by the Director, in whole or in part, of a proposed information collection request of an independent regulatory agency, or an exercise of authority under section 3504(h) or 3509 concerning such an agency, may be voided, if the agency by a majority vote of its members overrides the Director's disapproval or exercise of authority. The agency shall certify each override to the Director, shall explain the reasons for exercising the override

authority. Where the override concerns an information collection request, the Director shall without further delay assign a control number to such request, and such override shall be valid for a period of three years.

[(d) The Director may not approve an information collection request for a period in excess of three years.

[(e) If the Director finds that a senior official of an agency designated pursuant to section 3506(b) is sufficiently independent of program responsibility to evaluate fairly whether proposed information collection requests should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed requests in specific program areas, for specific purposes, or for all agency purposes. A delegation by the Director under this section shall not preclude the Director from reviewing individual information collection requests if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

[(f) An agency shall not engage in a collection of information without obtaining from the Director a control number to be displayed upon the information collection request.

[(g) If an agency head determines a collection of information (1) is needed prior to the expiration of the sixty-day period for the review of information collection requests established pursuant to subsection (b), (2) is essential to the mission of the agency, and (3) the agency cannot reasonably comply with the provisions of this chapter within such sixty-day period because (A) public harm will result if normal clearance procedures are followed, or (B) an unanticipated event has occurred and the use of normal clearance procedures will prevent or disrupt the collection of information related to the event or will cause a statutory deadline to be missed, the agency head may request the Director to authorize such collection of information prior to expiration of such sixty-day period. The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the information collection request a control number. Any collection of information conducted pursuant to this subsection may be conducted without compliance with the provisions of this chapter for a maximum of ninety days after the date on which the Director received the request to authorize such collection.

[(h) Any written communication to the Administrator of the Office of Information and Regulatory Affairs or to any employee thereof from any person not employed by the Federal Government or from an agency concerning a proposed information collection request, and any written communication from the Administrator or employee of the Office to such person or agency concerning such proposal, shall be made available to the public. This subsection shall not require the disclosure of any information which is protected at all times by procedures established for information which

has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

**【§ 3508. Determination of necessity for information; hearing**

【Before approving a proposed information collection request, the Director shall determine whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary, for any reason, the agency may not engage in the collection of the information.

**【§ 3509. Designation of central collection agency**

【The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with any applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by it may not obtain for itself information which it is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority herein is subject to the provisions of section 3507(c) of this chapter.

**【§ 3510. Cooperation of agencies in making information available**

【(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained pursuant to an information collection request if the disclosure is not inconsistent with any applicable law.

【(b) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information. The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

**【§ 3511. Establishment and operation of Federal Information Locator System**

【(a) There is established in the Office of Information and Regulatory Affairs a Federal Information Locator System (hereafter in this section referred to as the “system”) which shall be composed

of a directory of information resources, a data element dictionary, and an information referral service. The system shall serve as the authoritative register of all information collection requests, and shall be designed so as to assist agencies and the public in locating existing Government information derived from information collection requests.

[(b) In designing and operating the System, the Director shall—

[(1) design and operate an indexing system for the System;

[(2) require the head of each agency to prepare in a form specified by the Director, and to submit to the Director for inclusion in the System, a data profile for each information collection request of such agency;

[(3) compare data profiles for proposed information collection requests against existing profiles in the System, and make available the results of such comparison to—

[(A) agency officials who are planning new information collection activities; and

[(B) on request, members of the general public; and

[(4) ensure that no actual data, except descriptive data profiles necessary to identify duplicative data or to locate information, are contained within the System.

#### **§ 3512. Public protection**

[Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter.

#### **§ 3513. Director review of agency activities; reporting; agency response**

[(a) The Director shall, with the advice and assistance of the Administrator of General Services and the Archivist of the United States, selectively review, at least once every three years, the information management activities of each agency to ascertain their adequacy and efficiency. In evaluating the adequacy and efficiency of such activities, the Director shall pay particular attention to whether the agency has complied with section 3506.

[(b) The Director shall report the results of the reviews to the appropriate agency head, the House Committee on Government Operations, the Senate Committee on Governmental Affairs, the House and Senate Committees on Appropriations, and the committees of the Congress having jurisdiction over legislation relating to the operations of the agency involved.

[(c) Each agency which receives a report pursuant to subsection (b) shall, within sixty days after receipt of such report, prepare and transmit to the Director, the House Committee on Government Operations, the Senate Committee on Governmental Affairs, the House and Senate Committees on Appropriations, and the committees of the Congress having jurisdiction over legislation relating to the operations of the agency, a written statement responding to the Director's report, including a description of any measures taken to

alleviate or remove any problems or deficiencies identified in such report.

**§ 3514. Responsiveness to Congress**

(a) The Director shall keep the Congress and its committees fully and currently informed of the major activities under this chapter, and shall submit a report thereon to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary. The Director shall include in any such report—

(1) proposals for legislative action needed to improve Federal information management, including, with respect to information collection, recommendations to reduce the burden on individuals, small businesses, State and local governments, and other persons;

(2) a compilation of legislative impediments to the collection of information which the Director concludes that an agency needs but does not have authority to collect;

(3) an analysis by agency, and by categories the Director finds useful and practicable, describing the estimated reporting hours required of persons by information collection requests, including to the extent practicable the direct budgetary costs of the agencies and identification of statutes and regulations which impose the greatest number of reporting hours;

(4) a summary of accomplishments and planned initiatives to reduce burdens of Federal information collection requests;

(5) a tabulation of areas of duplication in agency information collection requests identified during the preceding year and efforts made to preclude the collection of duplicate information, including designations of central collection agencies;

(6) a list of each instance in which an agency engaged in the collection of information under the authority of section 3507(g) and an identification of each agency involved;

(7) a list of all violations of provisions of this chapter and rules, regulations, guidelines, policies, and procedures issued pursuant to this chapter;

(8) with respect to recommendations of the Commission on Federal Paperwork—

(A) a description of the specific actions taken on or planned for each recommendation;

(B) a target date for implementing each recommendation accepted but not implemented; and

(C) an explanation of the reasons for any delay in completing action on such recommendations;

(9)(A) a summary of accomplishments in the improvement of, and planned initiatives to improve, Federal information resources management within agencies;

(B) a detailed statement with respect to each agency of new initiatives to acquire information technology to improve such management; and

(C) an analysis of the extent to which the policies, principles, standards, and guidelines issued and maintained pursuant to paragraphs (5) and (6) of section 3505 of this title promote or deter such new initiatives; and

[(10) with respect to the statistical policy and coordination functions described in section 3504(d) of this title—

[(A) a description of the specific actions taken, or planned to be taken, to carry out each such function;

[(B) a description of the status of each major statistical program, including information on—

[(i) any improvements in each such program;

[(ii) any program which has been reduced or eliminated; and

[(iii) the budget for each such program for the previous fiscal year and the fiscal year in progress and the budget proposed for each such program for the next fiscal year; and

[(C) a description and summary of the long-range plans currently in effect for the major Federal statistical activities and programs.

[(b) The preparation of any report required by this section shall not increase the collection of information burden on persons outside the Federal Government.

#### **[(§ 3515. Administrative powers**

[(Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

#### **[(§ 3516. Rules and regulations**

[(The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

#### **[(§ 3517. Consultation with other agencies and the public**

[(In development of information policies, plans, rules, regulations, procedures, and guidelines and in reviewing information collection requests, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

#### **[(§ 3518. Effect on existing laws and regulations**

[(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information activities is subject to the authority conferred on the Director by this chapter.

[(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

[(c)(1) Except as provided in paragraph (2), this chapter does not apply to the collection of information—

[(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

[(B) during the conduct of (i) a civil action to which the United States or any official or agency thereof is a party or (ii) an administrative action or investigation involving an agency against specific individuals or entities;

[(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

[(D) during the conduct of intelligence activities as defined in section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

[(2) This chapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

[(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

[(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

#### **[(§ 3519. Access to information**

[(Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records of the Office.

#### **[(§ 3520. Authorization of appropriations**

[(a) Subject to subsection (b), there are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter, and for no other purpose, \$5,500,000 for each of the fiscal years 1987, 1988, and 1989.

[(b) No funds may be appropriated pursuant to subsection (a) unless such funds are appropriated in an appropriation Act (or continuing resolution) which separately and expressly states the amount appropriated pursuant to subsection (a) of this section. No funds are authorized to be appropriated to the Office of Information and Regulatory Affairs, or to any other officer or administrative unit of the Office of Management and Budget, to carry out the provisions of this chapter, or to carry out any function under this chapter, for any fiscal year pursuant to any provision of law other than subsection (a) of this section.



[(c) Funds appropriated pursuant to subsection (a) may not be used to carry out any function or activity which is not specifically authorized or required by this chapter, but funds so appropriated may be used for necessary expenses of a function or activity which is so authorized or required, such as hire of passenger motor vehicles and services authorized by section 3109 of title 5, United States Code. For the purposes of this subsection, the review of a rule or regulation is specifically authorized or required by this chapter only to the extent that such review is for the sole purpose of reviewing an information collection request contained in, or derived from, such rule or regulation.]

### **CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY**

Sec.

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3511. *Establishment and operation of Government Information Locator Service.*

3512. *Public protection.*

3513. *Director review of agency activities; reporting; agency response.*

3514. *Responsiveness to Congress.*

3515. *Administrative powers.*

3516. *Rules and regulations.*

3517. *Consultation with other agencies and the public.*

3518. *Effect on existing laws and regulations.*

3519. *Access to information.*

3520. *Authorization of appropriations.*

#### **§3501. Purposes**

*The purposes of this chapter are to—*

*(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;*

*(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;*

*(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;*

*(4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;*

(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to—

(A) privacy and confidentiality, including section 552a of title 5;

(B) security of information, including the Computer Security Act of 1987 (Public Law 100-235); and

(C) access to information, including section 552 of title 5;

(9) ensure the integrity, quality, and utility of the Federal statistical system;

(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this chapter.

### **§ 3502. Definitions**

As used in this chapter—

(1) the term “agency” means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

(A) the General Accounting Office;

(B) Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

(2) the term “burden” means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

- (A) reviewing instructions;
  - (B) acquiring, installing, and utilizing technology and systems;
  - (C) adjusting the existing ways to comply with any previously applicable instructions and requirements;
  - (D) searching data sources;
  - (E) completing and reviewing the collection of information; and
  - (F) transmitting, or otherwise disclosing the information;
- (3) the term “collection of information” means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—
- (A) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or
  - (B) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes;
- (4) the term “Director” means the Director of the Office of Management and Budget;
- (5) the term “independent regulatory agency” means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;
- (6) the term “information resources” means information and related resources, such as personnel, equipment, funds, and information technology;
- (7) the term “information resources management” means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;
- (8) the term “information system” means a discrete set of information resources and processes, automated or manual, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;
- (9) the term “information technology” has the same meaning as the term “automatic data processing equipment” as defined by section 111(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2));
- (10) the term “person” means an individual, partnership, association, corporation, business trust, or legal representative, an

organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

(11) the term “practical utility” means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

(12) the term “public information” means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public; and

(13) the term “recordkeeping requirement” means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to—

(A) retain such records;

(B) notify third parties or the public of the existence of such records;

(C) disclose such records to third parties or the public; or

(D) report to third parties or the public regarding such records.

### **§ 3503. Office of Information and Regulatory Affairs**

(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.

### **§ 3504. Authority and functions of Director**

(a)(1) The Director shall—

(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

(B) provide direction and oversee—

(i) the review and approval of the collection of information and the reduction of the information collection burden;

(ii) agency dissemination of and public access to information;

(iii) statistical activities;

(iv) records management activities;

(v) privacy, confidentiality, security, disclosure, and sharing of information; and

(vi) the acquisition and use of information technology.

(2) The authority of the Director under this chapter shall be exercised consistent with applicable law.

(b) With respect to general information resources management policy, the Director shall—

- (1) *develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;*
  - (2) *foster greater sharing, dissemination, and access to public information, including through—*
    - (A) *the use of the Government Information Locator Service; and*
    - (B) *the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;*
  - (3) *initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;*
  - (4) *oversee the development and implementation of best practices in information resources management, including training; and*
  - (5) *oversee agency integration of program and management functions with information resources management functions.*
- (c) *With respect to the collection of information and the control of paperwork, the Director shall—*
- (1) *review and approve proposed agency collections of information;*
  - (2) *coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition, and payment and to reduce information collection burdens on the public;*
  - (3) *minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;*
  - (4) *maximize the practical utility of and public benefit from information collected by or for the Federal Government; and*
  - (5) *establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information.*
- (d) *With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to—*
- (1) *apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and*
  - (2) *promote public access to public information and fulfill the purposes of this chapter, including through the effective use of information technology.*
- (e) *With respect to statistical policy and coordination, the Director shall—*
- (1) *coordinate the activities of the Federal statistical system to ensure—*
    - (A) *the efficiency and effectiveness of the system; and*

- (B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;
- (2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;
- (3) develop and oversee the implementation of Government-wide policies, principles, standards, and guidelines concerning—
- (A) statistical collection procedures and methods;
- (B) statistical data classification;
- (C) statistical information presentation and dissemination;
- (D) timely release of statistical data; and
- (E) such statistical data sources as may be required for the administration of Federal programs;
- (4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;
- (5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;
- (6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;
- (7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;
- (8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall—
- (A) be headed by the chief statistician; and
- (B) consist of—
- (i) the heads of the major statistical programs; and
- (ii) representatives of other statistical agencies under rotating membership; and
- (9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—
- (A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and
- (B) all costs of the training shall be paid by the agency requesting training.
- (f) With respect to records management, the Director shall—
- (1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this chapter;
- (2) review compliance by agencies with—

- (A) the requirements of chapters 29, 31, and 33 of this title; and
  - (B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and
  - (3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.
- (g) With respect to privacy and security, the Director shall—
- (1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies;
  - (2) oversee and coordinate compliance with sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and
  - (3) require Federal agencies, consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.
- (h) With respect to Federal information technology, the Director shall—
- (1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services—
    - (A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and
    - (B) oversee the development and implementation of standards under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d));
  - (2) monitor the effectiveness of, and compliance with, directives issued under sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759);
  - (3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;
  - (4) ensure, through the review of agency budget proposals, information resources management plans and other means—
    - (A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and
    - (B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and
  - (5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination

*of public information and the reduction of information collection burdens on the public.*

**§ 3505. Assignment of tasks and deadlines**

*(a) In carrying out the functions under this chapter, the Director shall—*

*(1) in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burdens by at least 10 percent, and set annual agency goals to—*

*(A) reduce information collection burdens imposed on the public that—*

*(i) represent the maximum practicable opportunity in each agency; and*

*(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and*

*(B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public;*

*(2) with selected agencies and non-Federal entities on a voluntary basis, initiate and conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this chapter, particularly with regard to minimizing the Federal information collection burden; and*

*(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Governmentwide strategic plan for information resources management, that shall include—*

*(A) a description of the objectives and the means by which the Federal Government shall apply information resources to improve agency and program performance;*

*(B) plans for—*

*(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;*

*(ii) enhancing public access to and dissemination of information, using electronic and other formats; and*

*(iii) meeting the information technology needs of the Federal Government in accordance with the purposes of this chapter; and*

*(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.*

*(b) For purposes of any pilot project conducted under subsection (a)(2), the Director may waive the application of any regulation or administrative directive issued by an agency with which the project is conducted, including any regulation or directive requiring a collection of information, after giving timely notice to the public and the Congress regarding the need for such waiver.*



**§ 3506. Federal agency responsibilities**

(a)(1) *The head of each agency shall be responsible for—*

(A) *carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and*

(B) *complying with the requirements of this chapter and related policies established by the Director.*

(2)(A) *Except as provided under subparagraph (B), the head of each agency shall designate a senior official who shall report directly to such agency head to carry out the responsibilities of the agency under this chapter.*

(B) *The Secretary of the Department of Defense and the Secretary of each military department may each designate a senior official who shall report directly to such Secretary to carry out the responsibilities of the department under this chapter. If more than one official is designated for the military departments, the respective duties of the officials shall be clearly delineated.*

(3) *The senior official designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this chapter, including the reduction of information collection burdens on the public. The senior official and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this chapter.*

(4) *Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the senior official designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.*

(b) *With respect to general information resources management, each agency shall—*

(1) *manage information resources to—*

(A) *reduce information collection burdens on the public;*

(B) *increase program efficiency and effectiveness; and*

(C) *improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;*

(2) *in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;*

(3) *develop and maintain an ongoing process to—*

(A) *ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;*

(B) *in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate ac-*

*counting of information technology expenditures, related expenses, and results; and*

*(C) establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;*

*(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this chapter; and*

*(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.*

*(c) With respect to the collection of information and the control of paperwork, each agency shall—*

*(1) establish a process within the office headed by the official designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this chapter, to—*

*(A) review each collection of information before submission to the Director for review under this chapter, including—*

*(i) an evaluation of the need for the collection of information;*

*(ii) a functional description of the information to be collected;*

*(iii) a plan for the collection of the information;*

*(iv) a specific, objectively supported estimate of burden;*

*(v) a test of the collection of information through a pilot program, if appropriate; and*

*(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;*

*(B) ensure that each information collection—*

*(i) is inventoried, displays a control number and, if appropriate, an expiration date;*

*(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and*

*(iii) contains a statement to inform the person receiving the collection of information—*

*(I) the reasons the information is being collected;*

*(II) the way such information is to be used;*

*(III) an estimate, to the extent practicable, of the burden of the collection; and*

*(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and*

*(C) assess the information collection burden of proposed legislation affecting the agency;*

(2)(A) except for good cause or as provided under subparagraph (B), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to—

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A) (i) through (iv); and

(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(C) 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 under section 601(6) of title 5, the use of such techniques as—

(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

(iii) an exemption from coverage of the collection of information, or any part thereof;

(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(F) contains the statement required under paragraph (1)(B)(iii);

*(G) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;*

*(H) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and*

*(I) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.*

*(d) With respect to information dissemination, each agency shall—*

*(1) ensure that the public has timely, equal, and equitable access to the agency's public information, including ensuring such access through—*

*(A) encouraging a diversity of public and private sources for information based on government public information,*

*(B) in cases in which the agency provides public information maintained in electronic format, providing timely, equal, and equitable access to the underlying data (in whole or in part); and*

*(C) agency dissemination of public information in an efficient, effective, and economical manner;*

*(2) regularly solicit and consider public input on the agency's information dissemination activities;*

*(3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; and*

*(4) not, except where specifically authorized by statute—*

*(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;*

*(B) restrict or regulate the use, resale, or redissemination of public information by the public;*

*(C) charge fees or royalties for resale or redissemination of public information; or*

*(D) establish user fees for public information that exceed the cost of dissemination, except that the Director may waive the application of this subparagraph to an agency, if—*

*(i) the head of the agency submits a written request to the Director, publishes a notice of the request in the Federal Register, and provides a copy of the request to the public upon request;*

*(ii) the Director sets forth in writing a statement of the scope, conditions, and duration of the waiver and the reasons for granting it, and makes such statement available to the public upon request; and*

*(iii) the granting of the waiver would not materially impair the timely and equitable availability of public information to the public.*

*(e) With respect to statistical policy and coordination, each agency shall—*

*(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;*

*(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;*

*(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;*

*(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;*

*(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and*

*(6) make data available to statistical agencies and readily accessible to the public.*

*(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.*

*(g) With respect to privacy and security, each agency shall—*

*(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency;*

*(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and*

*(3) consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.*

*(h) With respect to Federal information technology, each agency shall—*

*(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;*

*(2) assume responsibility and accountability for information technology investments;*

*(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;*

*(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and*

(5) assume responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is—

(A) integrated with budget, financial, and program management decisions; and

(B) used to select, control, and evaluate the results of major information systems initiatives.

**§ 3507. Public information collection activities; submission to Director; approval and delegation**

(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—

(1) the agency has—

(A) conducted the review established under section 3506(c)(1);

(B) evaluated the public comments received under section 3506(c)(2);

(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

(D) published a notice in the Federal Register—

(i) stating that the agency has made such submission; and

(ii) setting forth—

(I) a title for the collection of information;

(II) a summary of the collection of information;

(III) a brief description of the need for the information and the proposed use of the information;

(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

(V) an estimate of the burden that shall result from the collection of information; and

(VI) notice that comments may be submitted to the agency and Director;

(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except for good cause or as provided under subsection (j).

(c)(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

(3) *If the Director does not notify the agency of a denial or approval within the 60-day period described under paragraph (2)—*

*(A) the approval may be inferred;*

*(B) a control number shall be assigned without further delay;*

*and*

*(C) the agency may collect the information for not more than 1 year.*

*(d)(1) For any proposed collection of information contained in a proposed rule—*

*(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and*

*(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;*

*(2) When a final rule is published in the Federal Register, the agency shall explain—*

*(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or*

*(B) the reasons such comments were rejected.*

*(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.*

*(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion—*

*(A) from disapproving any collection of information which was not specifically required by an agency rule;*

*(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;*

*(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule, and after considering the agency's response to the Director's comments filed under paragraph (2), that the collection of information cannot be approved under the standards set forth in section 3508; or*

*(D) from disapproving any collection of information contained in a final rule, if—*

*(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and*

*(ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.*

*(5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.*

(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

(e)(1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

(2) Any written communication between the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs, and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

(3) This subsection shall not require the disclosure of—

(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

(B) any communication relating to a collection of information, the disclosure of which could lead to retaliation or discrimination against the communicator.

(f)(1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void—

(A) any disapproval by the Director, in whole or in part, of a proposed collection of information that agency; or

(B) an exercise of authority under subsection (d) of section 3507 concerning that agency.

(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

(g) The Director may not approve a collection of information for a period in excess of 3 years.

(h)(1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall—

(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material



change to a collection of information contained in an existing rule, the Director shall—

(A) publish an explanation thereof in the Federal Register; and

(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this chapter.

(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this chapter.

(i)(1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

(j)(1) The agency head may request the Director to authorize collection of information prior to expiration of time periods established under this chapter, if an agency head determines that—

(A) a collection of information—

(i) is needed prior to the expiration of such time periods; and

(ii) is essential to the mission of the agency; and

(B) the agency cannot reasonably comply with the provisions of this chapter within such time periods because—

(i) public harm is reasonably likely to result if normal clearance procedures are followed; or

(ii) an unanticipated event has occurred and the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information related to the event or is reasonably likely to cause a statutory or court-ordered deadline to be missed.

(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this chapter for a maximum of 90 days after the date on which the Director received the request to authorize such collection.

**§ 3508. Determination of necessity for information; hearing**

*Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.*

**§ 3509. Designation of central collection agency**

*The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this chapter.*

**§ 3510. Cooperation of agencies in making information available**

*(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.*

*(b)(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information.*

*(2) The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.*

**§ 3511. Establishment and operation of Government Information Locator Service**

*In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall—*

*(1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Serv-*

*ice (hereafter in this section referred to as the "Service"), which shall identify the major information systems, holdings, and dissemination products of each agency;*

*(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;*

*(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Public Printer, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;*

*(4) consider public access and other user needs in the establishment and operation of the Service;*

*(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and*

*(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.*

#### **§ 3512. Public protection**

*Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain, provide, or disclose information to or for any agency or person if the applicable collection of information—*

*(1) does not display a valid control number assigned by the Director; and*

*(2) fails to state that the person who is to respond to the collection of information is not required to comply unless such collection displays a valid control number.*

#### **§ 3513. Director review of agency activities; reporting; agency response**

*(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.*

*(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to—*

*(1) be taken to address information resources management problems identified in the report; and*

*(2) improve agency performance and the accomplishment of agency missions.*

#### **§ 3514. Responsiveness to Congress**

*(a)(1) The Director shall—*

- (A) keep the Congress and congressional committees fully and currently informed of the major activities under this chapter; and
- (B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.
- (2) The Director shall include in any such report a description of the extent to which agencies have—
- (A) reduced information collection burdens on the public, including—
- (i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;
  - (ii) a list of all violations of this chapter and of any rules, guidelines, policies, and procedures issued pursuant to this chapter;
  - (iii) a list of any increase in the collection of information burden, including the authority for each such collection; and
  - (iv) a list of agencies that in the preceding year did not reduce information collection burdens by at least 10 percent pursuant to section 3505, a list of the programs and statutory responsibilities of those agencies that precluded that reduction, and recommendations to assist those agencies to reduce information collection burdens in accordance with that section;
- (B) improved the quality and utility of statistical information;
- (C) improved public access to Government information; and
- (D) improved program performance and the accomplishment of agency missions through information resources management.
- (b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

**§3515. Administrative powers**

Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

**§3516. Rules and regulations**

The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

**§3517. Consultation with other agencies and the public**

(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this chapter, the person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the

Director shall, in coordination with the agency responsible for the collection of information—

- (1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and
- (2) take appropriate remedial action, if necessary.

**§ 3518. Effect on existing laws and regulations**

(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this chapter.

(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

(c)(1) Except as provided in paragraph (2), this chapter shall not apply to obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions—

(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

(B) during the conduct of—

(i) a civil action to which the United States or any official or agency thereof is a party; or

(ii) an administrative action or investigation involving an agency against specific individuals or entities;

(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

(D) during the conduct of intelligence activities as defined in section 4-206 of Executive Order No. 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(2) This chapter applies to obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of de-

*partments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.*

**§ 3519. Access to information**

*Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.*

**§ 3520. Authorization of appropriations**

*There are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter such sums as may be necessary.*

\* \* \* \* \*

ADDITIONAL VIEWS ON OVERTURNING THE *DOLE VS.*  
*UNITED STEELWORKERS OF AMERICA* DECISION

Although there is bipartisan agreement on many of the provisions of the Paperwork Reduction Act Reauthorization, we must take issue with one controversial provision that the majority has unfortunately included in H.R. 830. That provision would overturn a decision by the Supreme Court in *Dole vs. United Steelworkers of America*, 494 U.S. 26 (1990), which held that the Paperwork Reduction Act does not apply to Federal requirements regarding third party notification. An amendment by Ranking Member Cardiss Collins to delete this provision was narrowly defeated by a vote of 26 to 18.

The case arose out of a 1987 Occupational Safety and Health Administration Hazard Communication Standard that required employers to inform employees of hazardous chemicals in the workplace.

Certain businesses objected to the requirements to notify their workers of hazardous chemicals at the work site, and went to the Office of Management and Budget to plead their case. Unlike the initial regulations that were developed after public comment, the OMB actions were done in secret. The business leaders convinced OMB to cancel the new regulations using the Paperwork Reduction Act as its authority.

The Steelworkers, who represented workers at both chemical plants and construction sites sued. Under OMB's ruling construction workers using paint thinned with benzene would not be told that breathing the paint fumes could cause liver damage. Nor would they be told that the fumes from welding cadmium coated reinforcement rods would cause prostate damage. Foundry workers making iron railings would not know that the dust from the sand used to cool the molds cause lung damage.

The case eventually reached the Supreme Court. In a 7-2 decision, the Court ruled that OMB had improperly interfered in the notification requirements. The Court ruled that the Act was limited to Federal requirements to report information to the Government. Requirements for notifying third parties were not covered by the Act.

H.R. 830, however, overturns this decision by explicitly amending the law to cover third party notifications. We strongly disagree with these provisions.

The intent of the Paperwork Reduction Act is clear. There are too many forms that individuals and small businesses must fill out. Requiring OMB and agencies themselves to be sensitive to this problem, and to take actions to relieve paperwork burden, is a sensible goal.

The Act was never intended as a mechanism to deny workers their rights to know about the hazards they face in the workplace.

The simple posting of a sign in a work site can hardly be called a paperwork burden. The objective to the sign was motivated by the contents of the sign, not its paperwork burden. Some businesses simply wanted to keep their workers in the dark.

The workplace notification regulations were not the only example of OMB interference in agency notification requirements. During the 1980's, disclosure requirements relating to aspirin labeling for Reye's syndrome were held up between 1981 and 1986, in part, due to problems with OMB clearance.

Reversing the *Dole* decision is one more example of how the Contract with America puts business ahead of people. The proponents of this provision have determined that the burden to business of informing their employees about dangers at the workplace exceed the workers' right to know. We disagree. Moreover, even were such an issue subject to debate, the decision should be made when substantive laws on the subject are enacted. The Paperwork Reduction Act should not be a tool for overturning agency policy decision that are unrelated to paperwork burdens.

CARDISS COLLINS.  
FRANK MASCARA.  
COLLIN PETERSON.  
LOUISE SLAUGHTER.  
BOB WISE.  
PAUL E. KANJORSKI.  
MAJOR R. OWENS.  
HENRY A. WAXMAN.  
EDOLPHUS TOWNS.  
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ADDITIONAL VIEWS ON INFORMATION DISSEMINATION  
PROVISION OF H.R. 830

The information dissemination provisions of H.R. 830 are principally contained in §3506(d). Most of these provisions had their historical and intellectual origins with work done by the Committee on Government Operations during the last ten years. In 1986, the Committee issued a report that was prepared by the Subcommittee on Government Information, Justice, and Agriculture chaired by Rep. Glenn English. House Report 99-560—"Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview"—was the first comprehensive look at the policy problems presented by the electronic information revolution.

In 1990, the Committee reported the Paperwork Reduction and Federal Information Resources Management Act of 1990 (H.R. 3696) that included language setting information dissemination policy rules. That work was done by Rep. Bob Wise, who then chaired the Subcommittee on Government Information, Justice, and Agriculture, building on the foundation established in the 1986 report. H.R. 3695 passed the House at the end of the 101st Congress, but the Senate took no action.

The legislative report that accompanied H.R. 3695 contained an extensive discussion of the information dissemination language. Although some of the text has been changed, much of the policy remains identical. As a result, it is worth restating here much of that legislative history material. The material remains relevant to the current bill.

H.R. 830 includes language establishing statutory policies on the dissemination of information by federal agencies.<sup>1</sup> This language has been added to the Paperwork Reduction Act for three basic reasons.

First, the dissemination of information by federal agencies is an essential governmental function. The laws establishing and regulating federal agencies contain many general<sup>2</sup> and specific provisions requiring agencies to make records available to the public. The collection and dissemination of information is the principal mission of some agencies<sup>3</sup> and is necessary for the proper perform-

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<sup>1</sup> The information dissemination provisions in the legislation originated with work done by the Committee in 1986. See Committee on Government Operations, "Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview," H.R. Report No. 99-560, 99th Cong., 2d Sess. (1986) [hereinafter cited as "1986 Information Policy Report"].

<sup>2</sup> There are, for example, general requirements in the Administrative Procedure Act for public disclosure, 5 U.S.C. § 551 et seq. (1988). See especially the Freedom of Information Act, 5 U.S.C. § 552; Privacy Act of 1974, 5 U.S.C. § 552a (1988).

<sup>3</sup> See, e.g., 7 U.S.C. § 2201 (1988) (establishing that one of the duties of the Department of Agriculture is "to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, rural development, aquaculture, and human nutrition); 15 U.S.C. § 77f(d) (1988) (providing that the Securities and Exchange Commission shall issue regulations providing that information in securities registration statements shall be made available to the public); 29 U.S.C. § 1 (1988) (providing that the general duties of the Bureau of Labor

Continued

ance of others. Other dissemination activities are regular agency functions as well.

In fact, the federal government is the largest single producer, consumer, and disseminator of information in the United States.<sup>4</sup> The flow of information from the federal government to its citizens is essential to the successful functioning of the democratic process and to the proper operation of the national economy.<sup>5</sup>

Every segment of American society needs some government information to function. These include the federal government itself, every type of business and industry, libraries<sup>6</sup> and schools, newspapers and television, state and local governments, and ordinary citizens.

Government information is used in many different ways. Voters may use almost any type of federal information to help make political decisions. Federal, State and local agencies use federal statistical and economic data to make social, economic, fiscal, and management decisions. Corporations rely on census information to make strategic business decisions. Contractors want to know what products and services the government needs. Most Americans rely daily on weather information from the National Weather Service.

Federal information is also a valuable economic commodity. The large and growing private information industry functions in part by taking public government data, adding value to it, and reselling it to others. There are thousands of private sector information products and services based in whole or in part on government information.<sup>7</sup> The nonprofit sector—including libraries and public interest groups—provides similar products and services.

The government's obligation to make data available to the public is in no way diminished by the ability of users to make a profit by reselling the information. While the private sector cannot relieve the government of its dissemination responsibilities, private dissemination of government information helps to make government information available to more users.

The press, libraries, public interest groups, nonprofit organizations, and the publishing industry and other components of the private information industry play an important role in meeting the information needs of the American public. American information products and services are valued throughout the world, and the private information industry contributes positively to our Nation's trade balance.<sup>8</sup>

Statistics are "to acquire and diffuse among the people of the United States useful information on subjects connected with labor \* \* \* its relation to capital, the hours of labor, the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity."). For other examples, see "1986 Information Policy Report" at 13-15.

<sup>4</sup>See Office of Management and Budget, "Management of Federal Information Resources," 59 Fed. Reg. 37906 (July 25, 1994) (Circular A-130).

<sup>5</sup>"The 'public's right-to-know' about the business of government is a fundamental principle of our democratic government and open society." "Federal Information Dissemination Policies and Practices," Hearings before the Government Information, Justice, and Agriculture Subcommittee of the House Committee on Government Operations, 101st Cong., 1st Sess. 110 (1989) (testimony of Jerry J. Berman, Benton Foundation Fellow and Director, Information Technology Project, American Civil Liberties Union.)

<sup>6</sup>See "Federal Information Dissemination Policies and Practices," Hearings before a Subcommittee of the House Committee on Government Operations, 101st Cong., 1st Sess. (April 18, 1989) 284-305 (testimony of Harold B. Shill, Evansdale Librarian, West Virginia University).

<sup>7</sup>See id. at 240-260 (testimony of Kenneth Allen, Senior Vice President, Information Industry Association).

<sup>8</sup>Id. at 242 (testimony of Kenneth Allen, Senior Vice President, Information Industry Association).

Second, legislation is needed because of actions taken in the executive branch. Over the last few years, the Office of Information and Regulatory Affairs at the Office of Management and Budget has become the central information policy maker for the federal government. In December 1985, OMB first issued Circular A-130 on the management of federal information resources. There have been several later versions of the Circular.<sup>9</sup> A key part of the circular sets out policies governing the collection and dissemination of information by federal agencies.<sup>10</sup>

All of this policy guidance was issued under the authority of the Paperwork Reduction Act and other statutes. But the Act currently contains no detailed dissemination provisions.<sup>11</sup> Until now, Congress has not provided specific directions for OMB's policy making efforts on information dissemination. H.R. 830 will fill the statutory gap, provide a clear congressional direction for dissemination policy, clarify the relationship between OMB and the agencies, and require OMB to revise its controversial guidance.

Third, changes in information technology have increased the need for legislative direction. Federal agencies are currently planning or operating many large electronic information systems. These systems raise many questions that are simply not addressed by current laws. The Paperwork Reduction Act is one of those laws. The dissemination amendments made by H.R. 830 will bring the Act more squarely into the electronic information age by encouraging federal agencies to disseminate information in electronic formats. H.R. 830 will also make federal dissemination policies more uniform.

Both H.R. 830 and the Freedom of Information Act reflect the policy that the public has a right to copy and use government information not required to be kept secret to protect a legitimate public or private interest. Permitting public use of government information is an important element of the American system of government.

The FOIA and the Paperwork Reduction Act take different approaches to fulfilling public needs for government information. The FOIA is an access statute. It requires agencies to accept and consider requests for information from the public. Information that is not exempt from disclosure must be released. Without a proper request for information, the FOIA imposes few public disclosure requirements on agencies.<sup>12</sup>

H.R. 830 focuses on dissemination of information by agencies. "Dissemination" refers to the distribution of government information to the public through printed documents or through electronic

<sup>9</sup>For the current version, see Office of Management and Budget, "Management of Federal Information Resources," 59 Fed. Reg. 37906 (July 25, 1994) (Circular A-130).

<sup>10</sup>Circular A-130 has been controversial from its inception. See, e.g., comments of Rep. Glenn English, Chairman, Subcommittee on Government Information, Justice and Agriculture (May 15, 1985) reprinted in "Electronic Collection and Dissemination of Information by Federal Agencies," Hearings before a Subcommittee of the House Committee on Government Operations, 99th Cong., 1st Sess. 467 (1985). See also "OMB's Proposed Restrictions on Information Gathering and Dissemination by Agencies," Hearing before a Subcommittee of the House Committee on Government Operations, 99th Cong., 1st Sess. (1985). Later versions cured most of the significant defects of the original 1985 circular.

<sup>11</sup>See, e.g., 44 U.S.C. § 3504(a) (1988) (referring to "dissemination of information" in a list of OMB functions).

<sup>12</sup>Subsections (a)(1) and (a)(2) of the FOIA impose limited publication and affirmative disclosure obligations on agencies. 5 U.S.C. § 552(a)(1), (a)(2) (1988).

and other media, independent of a legal obligation to respond to a request from the public for the information. An agency's obligation to disseminate information is distinct from its obligation to provide access to the information. While related in purpose and sometimes in practice, the functions can be analyzed separately.

The dissemination obligations supplement but do not replace the provisions of the FOIA and other laws specifically requiring the disclosure of public information. There is no conflict between existing statutory access principles and procedures on the one hand and dissemination requirements in H.R. 830 on the other.

To the extent that public needs are not fulfilled by an agency's dissemination activities, the access provisions of the FOIA may be used to fulfill those needs. Thus, a person unable to use an agency information product on CD-ROM can still request the information under the FOIA on paper, magnetic tape, or other electronic media. Also, information released under the FOIA is still subject to the dissemination requirements in H.R. 830.

However, an agency cannot rely on the FOIA's access provisions to fulfill general dissemination obligations. If an agency has an affirmative obligation to disseminate information, it cannot fulfill that obligation simply by entertaining access requests under the FOIA.

Improvements in the operations of the FOIA will result from a better understanding of the technology by the agencies and an even-handed application of the letter and spirit of the FOIA. There are few judicial precedents that interfere with such access. The "leading" case that permits withholding of electronic records has been discredited in an earlier Committee report.<sup>13</sup> The case has rarely been followed, and the effect of H.R. 830 is to overturn whatever remains of the holding that a government database is not an agency record and not available under the FOIA. H.R. 830 imposes a positive obligation on agencies to consider the benefits of disseminating electronically information that is published on paper.

The dissemination amendments to the Paperwork Reduction Act underscore the importance of public access to electronic records in support of the existing principles of the FOIA. These amendments encourage and direct agencies considering requests for electronic records to make the records available in accordance with the letter and the spirit of both the FOIA and the Paperwork Reduction Act.

Also, direct dissemination by agencies of electronic records as provided in this bill may reduce the number of FOIA requests for access by encouraging affirmative dissemination. Data disseminated by agencies in useful formats will be less likely to be requested under the FOIA. Nevertheless, the FOIA will always be available as an alternative mechanism to meet public access requests for information, separate from any dissemination activity by an agency.

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<sup>13</sup>See the discussion of *SDC v. Mathews*, 542 F.2d 1116 (9th Cir. 1976), in "1986 Information Policy Report" at 27-36. Cases like *SDC v. Mathews* and *Dismukes v. Interior*, 603 F. Supp 760 (D.D.C. 1984) were probably incorrectly decided because of a lack of judicial understanding of modern information technology and the failure of the parties to explore the underlying problems with exclusive government control over data formats. Regardless of the status of these cases under the FOIA, the emphasis in H.R. 830 on making information available in a manner that promotes the usefulness of the data to the public eliminates the ability of agencies to deny access to existing electronic copies of data that must be released in hard copy formats.

H.R. 830 amends §3502 of title 44 by adding paragraph (12) defining the term “public information” as “any information, regardless of format, that an agency discloses, disseminates, or makes available to the public:”

The concept of “public information” is fundamental to the information dissemination provisions of H.R. 830. The objective of the definition is to minimize disputes over what government information is subject to dissemination. The definition turns on an easily-made factual determination rather than on a complex legal one. “Public information” is information that an agency has in fact made public.

The scope of the information provisions of H.R. 830 is clearer when contrasted with the scope of the Freedom of Information Act. Under the FOIA, agencies must make determinations of disclosability only when requests are received from the public. The FOIA may require agencies to undertake a page by page review of documents to distinguish between information that must be disclosed and information that may be withheld.

No such page by page review is required under H.R. 830. The bill generally obligates agencies to provide for the dissemination of information. Fulfilling this obligation for identifiable sets of information known to the public will be a sufficient task. To comply with the Paperwork Reduction Act, agencies need not review information that has not already been determined to be public. H.R. 830 will not require that agencies take steps on their own to separate disclosable information from nondisclosable information in information systems that are not currently public. However, agencies are encouraged to separate and disseminate all disclosable information.

Looked at from another perspective, all agency information may be requested under the FOIA. Some of that information must be disclosed and some can be withheld. Not all information that must be disclosed under the FOIA is identifiable at any given time. The class of information subject to the dissemination obligations of H.R. 830 is not the same as the class of information subject to disclosure under FOIA. However, once an agency has received a request under the FOIA and determined that information must be disclosed, the information is subject to the dissemination obligations of H.R. 830 because it has been released.<sup>14</sup>

Dissemination obligations are limited to those classes of information already publicly disclosable because of a law, agency rule or regulation, or existing agency policy or practice. Thus, no dissemination obligation arises with respect to information classified in the interest of national defense or foreign policy, information subject to restrictions under the Privacy Act of 1974, sensitive law enforce-

<sup>14</sup>The dissemination obligations for information disclosed under the FOIA does not require a separate dissemination program for each document. Each disclosed document is eligible for dissemination, but an agency should apply reasonable and practical judgment. It might make little sense to disseminate unorganized agency memoranda released under the FOIA with occasional deletions of exempt material. On the other hand, a dissemination program might be worthwhile following the disclosure of an identifiable set of documents of general public interest or a continuing series of agency decisions, policy documents, or information products. The economy and efficiency of agency operations are another factor to be considered when these decisions are made.

In practice, FOIA and dissemination activities can be related. If an agency receives a significant number of FOIA requests for the same records, the agency may choose to disseminate the information. This may reduce the case-by-case handling of FOIA requests and be cheaper and more efficient for everyone.

ment investigatory data, or other information withheld from disclosure to protect other recognized public or private interests.

For example, an agency's personnel record system contains some information that can be disclosed publicly and some that is not available for public release. H.R. 830 creates no independent obligation to separate out these two classes of information for purposes of dissemination. If an identifiable set of public information has already been separated and disclosed (e.g., an agency telephone directory), then the agency must fulfill the dissemination obligations of H.R. 830 by considering effective dissemination methods.

By contrast, an agency with an obligation to collect securities or tariff filings and to make those documents publicly available is clearly dealing with public information under the definition. Even if a portion of the filings is not public, the dissemination obligation attaches to the remainder if the class of public information can be identified and is routinely released.

The obligation to consider alternate dissemination methods does not preordain any specific result. For example, an agency that publishes a printed telephone directory may reasonably decide that public sale of the printed directory is adequate to meet public needs. H.R. 830 does not mandate that an agency publish such a directory as an online database or on a CD-ROM disk. The judgment about the best way to meet public needs for the information is an agency decision to be made in accordance with the agency's mission and with the standards in H.R. 830.

The definition provides that information is public information regardless of format. This means that information is public information no matter what kind of medium is used during creation or storage. Information on paper, microfiche, magnetic tape, floppy disk, CD-ROM, or other media qualifies if it otherwise falls within the definition. If an agency maintains the same public information in both paper and electronic formats, the dissemination obligation arises with respect to the information in both formats.

Thus, an agency cannot fulfill its dissemination obligations by only considering public needs for a paper product. If an agency publishes information on paper, it must also consider disseminating the same information electronically. This may be accomplished by the release of a copy of a database on magnetic tape or floppy disk. The bill does not require agencies to provide online access to every database containing public information. Similarly, if an agency publishes an information product electronically, it should consider the need to disseminate the same information on paper to meet public needs not addressed by the electronic product.

An agency may consider how the availability of a product in one format affects the need to disseminate the information in other formats. An agency may reach a different result for the dissemination of paper and electronic information. For each distinct product or service, the agency must make an independent evaluation.

The term "public information" generally refers to recorded information. Information conveyed orally within an agency is not within the scope of the definition.

H.R. 830 encourages a diversity of public and private sources for information based on government public information. This language recognizes several important principles. First, government

information is both a public good and an unregulated commodity. Any person may obtain uncopyrighted public information from the federal government and reuse, resell, or redisseminate it as they see fit.<sup>15</sup>

Support for a diversity of sources for government information is an essential feature of the structure of government information activities. The First Amendment to the Constitution, Copyright Act of 1976, Freedom of Information Act, the Paperwork Reduction Act, and other laws are consistent in supporting a completely free marketplace in government information. In a democratic society, the government should not exclusively control how its own information can be used or interpreted.

Second, both the public and private sectors play a necessary, legitimate, and distinct role in disseminating government information. By redisseminating government information, the press, libraries, nonprofit organizations, public interest groups, and the private information industry help the government meet the needs of public users by providing information products and services that the government cannot support or that are beyond the bounds of government activities. At times, the private sector, libraries, and nonprofit organization provide essential products or services to the government that the government is unable to provide for itself. A diversity of information sources for government information, and not a monopoly, best serves the public interest.

Third, the public benefits from having multiple sources for government information. Agencies should encourage a diversity of providers but may not abdicate any of their responsibilities to disseminate information because of the existence of a competing public or private sector product or service. One simple way to promote a diversity of sources is to provide electronic copies of agency databases in ways that will make it easier for public, private, and nonprofit organizations to redistribute the data.

H.R. 830 identifies several categories of dissemination activities that are prohibited, unless specifically authorized by statute. The prohibited conduct interferes with public access to government information.

First, no agency may establish an exclusive, restricted, or other distribution arrangement that interferes with timely, and equitable availability of public information to the public. The purpose of this provision is to prohibit agencies from establishing unfair monopoly distribution arrangements for public information.

The underlying policy is that public information should be disseminated to all and that no agency can or should grant itself or any other person a franchise over public information. No agency may give any user or class of users an unfair advantage in the dissemination of public information. This is fully consistent with the

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<sup>15</sup> Government information is not subject to copyright. 17 U.S.C. § 105 (1982). This was a deliberate choice made by the Congress to keep government data as free as possible of potential restrictions on dissemination. The policy in H.R. 830 is fully consistent with the Copyright Act. The information dissemination provisions of the Paperwork Reduction Act support the same policy objectives. See the discussion of government information and copyright law in "1986 Information Policy Report" at 23-36.

policy against copyright of federal government information in section 105 of the Copyright Act.<sup>16</sup>

The prohibition against exclusive distribution arrangements recognizes that an agency may use a contractor or cooperative agreement to operate an information dissemination system on behalf of the agency. An agency contractor may receive public information from or on behalf of the agency and then disseminate the information to others under the contract. While such distribution arrangements have monopoly elements, they are acceptable if the distribution does not interfere with timely or equal availability of public information to the public.

In other words, a contractor may operate an information dissemination system on behalf of an agency if the contractor disseminates information to the public on the same terms (including a price no higher than the agency could charge) that the agency would if the agency operated the system itself. The bill is not intended to prevent agencies from using contractors to operate information systems if the public is not in any way disadvantaged as a result. The data must remain available to the public as provided in H.R. 830 and other laws.

No agency contractor may be permitted to make use of information—other than for legitimate agency purposes—before the information is made available to other public users. No agency contractor may be permitted to discriminate among public users or to deny, delay, or otherwise limit access or charge higher prices to users who may be competitors with the contractor in the commercial marketplace for agency information.

Second, no agency may restrict or regulate the use, resale, or redissemination of public information products or services by the public. Except where a statute specifically authorizes such as restriction, public information may continue to be used, republished, resold, extracted, and redisseminated in any way by any person.

This prohibition is also fully consistent with the policy against federal government copyright in section 105 of the Copyright Act. The federal government has expressly disclaimed the ability to control the republication and reuse of its information. The language in H.R. 830 underscores that policy and strengthens it by prohibiting copyright-like controls, licensing agreements, and any other agency actions that have the effect of restricting use or redisclosure of public information.

Many companies republish government data on paper or electronically. They are free to do so and to resell government data, in whole or in part, at any price that the public is willing to pay. An agency may not justify restrictions on public data on the grounds that the information will be misquoted, misunderstood, or misused. These are consequences of the free marketplace in speech and ideas that is at the heart of American democracy. Similarly, an agency may not withhold public data because it is incomplete, embarrass-

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<sup>16</sup>The inability of the federal government to copyright information in the United States does not necessarily mean that the government cannot copyright information abroad. Nothing in H.R. 830 limits the ability of the federal government to copyright information in other countries. However, the federal government may not impose any domestic restrictions on information that are inconsistent with H.R. 830 in order to preserve rights under foreign copyright laws. Assuring unrestricted domestic use is a higher priority than preserving foreign copyright rights or foreign commercial opportunities.



ing to the agency, or part of a larger value-added agency product or service.

The evils of government restrictions on use of public information—including political control of speech and higher prices—are considerably worse than anything that could result from any use of public information. Agencies may, of course, take lawful actions to ameliorate any potential negative consequences that result from the way in which others use government information.

Third, agencies are prohibited from charging fees or royalties for resale or redissemination of public information. Any person who has acquired public information may use it, sell it, or otherwise disseminate it without paying any additional fees or royalties to the government. Public information may be used, sold, or redisseminated whether or not the person paid any fees to the government to obtain the information. This prohibition is also fully consistent with the policy against federal government copyright in section 105 of the Copyright Act.

The prohibitions against restrictions and against royalties follow directly from the statutory limitation against government copyright. Copyright is the mechanism available to authors to prevent others from using or reselling their work. Since the government has disclaimed the ability to copyright its own information, it has also disclaimed the ability to restrict use of data and to charge royalties. The prohibitions in H.R. 830 are simply in furtherance of federal copyright policy that has been in place since the beginning of the century.

Fourth, agencies are prohibited from establishing user fees for public information products that exceed the cost of dissemination. This is consistent with a previous finding and recommendation made by the Committee in 1986.<sup>17</sup> While current user fee policies for other goods and services may support other types of price structures, information products can only be priced at cost of dissemination.<sup>18</sup> The government should not treat its information dissemination activities as general revenue sources. It is the policy of H.R. 830 that the government should not make a profit by selling public information collected and compiled at taxpayer expense to the American public.<sup>19</sup>

Costs of data creation, collection, processing, and similar functions are not recoverable from public users. Typically, these costs would be incurred by the government whether or not the information is disseminated to the public. Thus, if the government produces a CD-ROM that it uses itself, the entire cost of organizing the data, formatting and mastering the CD-ROM, writing software

<sup>17</sup>“1986 Information Policy Report” at 10, 12.

<sup>18</sup>“1986 Information Policy Report” at 10, 12, 40–43. See also the January 12, 1990, opinion by the Comptroller General regarding the pricing of information services by the Library of Congress. GAO found that the User Fee Statute, 31 U.S.C. §9701, did not support fees for information based on a subscriber's use of data. GAO noted that the enforcement of licensing agreements that reimburse an agency for lost sales appear questionable in light of the policy of the Copyright Act. If there was ever any doubt on this point, either before or after the GAO decision, H.R. 830 resolves the matter definitely.

<sup>19</sup>Agencies specifically authorized by statute to set fees for information products on an alternate basis may continue to do so. An example of another statute that specifically authorize fees is 44 U.S.C. §1708 (authorizing the Public Printer to set charges at cost plus 50 percent). The User Fee Statute, 31 U.S.C. §9701, does not qualify. See also the remarks of Rep. Glenn English, 132 Cong. Rec. H9464 (October 8, 1986) (daily edition) (describing statutes providing alternate fees for purposes of the Freedom of Information Act).

and manuals, and any other overhead costs are not recoverable from the public. Even if only a single CD-ROM is used for archival purposes by the government, none of these costs is recoverable.

When an agency offers different information products, the fees for each product should be based on the cost of providing that product. Costs that cannot be clearly identified with an individual product should be allocated in a reasonable manner. Any unrecoverable expenses associated with dissemination within the agency, to other agencies, to other governmental entities, or under a fee waiver may not be recovered from public users.

The cost of dissemination pricing standard does not affect fees chargeable under the Freedom of Information Act or by the Government Printing Office. In both cases, a specific alternate fee structure is expressly authorized by law.

New language in H.R. 830 would allow the Director of OMB to waive the cost of dissemination pricing standard. This authority is dangerous and could easily be misused. For example, unfavorable information could be given a high price to make it difficult to obtain. Information could be highly priced to allow favored agencies or private companies to make large profits by making competing government products very expensive. It is to be hoped that the Director of OMB will use the authority very sparingly, if at all.

One protection that is afforded by H.R. 830 is the prohibition against restrictions on use, resale, or redissemination. If a particular information product is highly and unfairly priced, the first purchaser will be able to copy the information and resell it to others at a lower price. Since government information cannot be copyrighted, a high price cannot be sustained artificially. This will help curb any temptation to use information as a source of revenue.

BOB WISE.  
GARY CONDIT.

