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MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES,  
AND INDEPENDENT REGULATORY AGENCIES

FROM: Cass R. Sunstein   
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SUBJECT: Social Media, Web-Based Interactive Technologies, and the Paperwork  
Reduction Act

On January 21, 2009, the President issued a memorandum calling for the establishment of “a system of transparency, public participation, and collaboration.” The memorandum required an Open Government Directive to be issued by the Director of the Office of Management and Budget (OMB), instructing “executive departments and agencies to take specific actions implementing the principles set forth in this memorandum.”

Implementing the President’s memorandum, OMB’s Open Government Directive requires a series of measures to promote the commitments to transparency, participation, and collaboration. Section 4 of the Directive specifically instructs the Administrator of the Office of Information and Regulatory Affairs (OIRA) to “review existing OMB policies, such as Paperwork Reduction Act guidance and privacy guidance, to identify impediments to open government and to the use of new technologies and, where necessary, issue clarifying guidance and/or propose revisions to such policies, to promote greater openness in government.”

This Memorandum responds to that requirement. Animated by the goal of promoting flexible and open interactions between Federal agencies and the public, it clarifies when and how the Paperwork Reduction Act of 1995 (the PRA)<sup>1</sup> applies to Federal agency use of social media and web-based interactive technologies. It explains that under established principles, the PRA does not apply to many uses of such media and technologies.

To engage the public, Federal agencies are expanding their use of social media and web-based interactive technologies. For example, agencies are increasingly using web-based technologies, such as blogs, wikis, and social networks, as a means of “publishing” solicitations for public comment and for conducting virtual public meetings. This Memorandum explains that

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<sup>1</sup> 44 U.S.C. chapter 35; see 5 CFR Part 1320.

certain uses of social media and web-based interactive technologies will be treated as equivalent to activities that are currently excluded from the PRA.<sup>2</sup>

Notably, OMB's regulations implementing the PRA exclude facts or opinions provided in response to general solicitations published in the *Federal Register* or other publications. As agencies increasingly use web-based technologies as a means of "publishing" such solicitations, OMB believes that it is appropriate to exclude these activities as well. This Memorandum identifies a series of other activities that, consistent with the text and purposes of the PRA, OMB has determined may be excluded from its purview. Such activities include many uses of wikis, the posting of comments, the conduct of certain contests, and the rating and ranking of posts or comments by website users.

This Memorandum applies whether agency interactions are occurring on a .gov website or on a third-party platform. OMB continues to recommend that agency staff members, including web staff, consult with their Chief Information Officer, agency paperwork clearance officer, agency counsel, agency privacy officials, and OIRA to ensure that all relevant laws and policies are followed.

## **Background**

The PRA applies to the collection of information "regardless of form or format."<sup>3</sup> It follows that the PRA applies to the collection of information through the use of social media and web-based interactive technologies. When sponsoring an information collection online, or in any other form or format, agencies must comply with the PRA's requirement to maximize the utility of information collected, maintained, used, shared, and disseminated while minimizing the burden imposed on the public.<sup>4</sup>

The PRA does not expressly define "information." OMB's regulations implementing the PRA define "information" as "any statement or estimate of fact or opinion, regardless of form or format, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic or other media."<sup>5</sup> In defining "information," OMB regulations specifically exclude several types of activities, three of which are especially relevant to agency uses of social media and web-based interactive technologies to promote the goals of open government:

- **General Solicitations.** 5 C.F.R. 1320.3(h)(4) excludes "facts or opinions submitted in response to general solicitations of comments from the public, published in the Federal Register or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that

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<sup>2</sup> Nothing in this Memorandum should be read to alter agency obligations under existing law, including the Administrative Procedure Act, the Privacy Act, and the Federal Records Act. Agencies should continue to comply with all applicable OMB memoranda when using web-based technologies, including but not limited to M-05-04, "Policies for Federal Agency Public Websites," Information Quality Act; OMB Circular A-130 - Management of Federal Information Resources; Clinger-Cohen Act of 1996; and the E-Government Act of 2002. OMB also advises agencies to consider resource limitations, per 5 C.F.R. 1320.9(h), in the use of social media and web-based interactive technologies. In these and other areas, agencies shall comply with all applicable laws, regulations, and policies that pertain to privacy.

<sup>3</sup> 44 U.S.C. § 3502(3)(A).

<sup>4</sup> See 44 U.S.C. § 3501.

<sup>5</sup> 5 C.F.R. 1320.3(h).

necessary for self-identification, as a condition of the agency’s full consideration of the comment.”

- **Public Meetings.** 5 C.F.R. 1320.3(h)(8) excludes certain “facts or opinions obtained or solicited at or in connection with public hearings or meetings.”
- **Like Items.** 5 C.F.R. 1320.3(h)(10) reserves general authority for OMB to identify other “like items” that are not “information.”

### Applicability of the PRA to social media and web-based interactive technologies.

Agencies and members of the public have asked whether uses of social media and web-based interactive technologies are information collections subject to the PRA. Although certain uses of such media and technologies unquestionably count as information collections, many do not. This section of this Memorandum discusses several web-based activities and whether they are subject to the information collection provisions of the PRA. (Items collected by third party websites or platforms that are not collecting information on behalf of the Federal Government are not subject to the PRA.)

Regardless of whether a particular activity is a collection of information under the PRA, agencies have an obligation to manage information resources to “improve the integrity, quality and utility of information to all users within and outside the agency.”<sup>6</sup> With social media and web-based interactive technologies, agencies should be aware that their activities may create new Federal information that will need to be managed like other agency information resources.<sup>7</sup> For example, some uses of social media may present novel records management issues.<sup>8</sup>

### General Solicitations

Under the general solicitations exclusion, the PRA does not apply to notices published in the *Federal Register* or other publications that request public comments on proposed regulations, or any general requests for comments “regardless of the form or format thereof.”<sup>9</sup>

A general solicitation may have a degree of specificity. For example, a general solicitation may pose a series of specific questions designed to elicit relevant public feedback; but the solicitation may not be a survey and the responses should be unstructured. Unstructured solicitations, such as those found in the preambles of proposed rules published in the *Federal Register*, give members of the public the option of replying to some or all of the questions in the manner they prefer (e.g., open-ended questions rather than selections from a list of choices). Similarly, agencies may offer the public opportunities to provide general comments on discussion topics through other means, including but not limited to social media websites; blogs; microblogs; audio, photo, or video sharing websites; or online message boards (whether hosted on a .gov domain or by a third-party provider).

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<sup>6</sup> 44 U.S.C. § 3506(b)(1).

<sup>7</sup> See 44 U.S.C. § 3506.

<sup>8</sup> On December 22, 2009, the National Archives and Records Administration (NARA) issued a memorandum to agencies that provided advice on implementing records management requirements of the Open Government Directive: <http://www.archives.gov/records-mgmt/memos/nwm04-2010.html>.

<sup>9</sup> 5 CFR 1320.3(h)(4).

If, however, agencies post surveys of any kind, including web polls and satisfaction surveys that pose identical, specific questions (including through pop-up windows),<sup>10</sup> the PRA does apply.<sup>11</sup> These surveys, like in-person, mail, or telephone surveys, are subject to the public notice and comment requirements of the PRA and must have OMB approval before use.

#### Feedback requests.

Under existing OMB policy, agency uses of general or undifferentiated “suggestion boxes” are not covered by the PRA. Similarly, an agency does not trigger the PRA’s requirements when it posts its email address or uses an application for brainstorming or idea-generating on its website to enable the public to submit feedback. However, if an agency requests information from respondents beyond name and email or mailing address (e.g., age, sex, race/ethnicity, employment, or citizenship status), this request is covered by the PRA because it seeks information beyond what is “necessary” for self-identification of the respondent.

If an agency asks the public to respond to a series of specific questions or a series of specific prompts that gather information (e.g., for purposes of aggregation or survey) about whether, for example, a particular program is or is not effective, the collection of information is subject to the PRA. However, the PRA does not apply to posts that allow members of the public to provide general or unstructured feedback about a program (such as a standard *Federal Register* notice, a request for comments on a report or proposed initiative, or a request for ideas, comments, suggestions, or anything else that might improve the program).

#### Electronic subscriptions to agency notifications or publications.

OMB does not consider mailing addresses collected for agency mailing lists to be information subject to the PRA. Similarly, an agency is not collecting information when it collects email addresses for agency updates, alerts, publications, or email subscription services; mobile phone numbers for text notification lists; or addresses for RSS feeds, which allow individuals to customize and subscribe to updates from websites.

If, however, the agency requests a member of the public to provide additional information (e.g., age, sex, race/ethnicity, employment, or citizenship status<sup>12</sup>) beyond what is necessary to ensure proper transmission of responses, the collection of that additional information is covered under the PRA. As with non-electronic mailing lists, the use of email lists to survey subscribers (about, for example, satisfaction with government program design) is an information collection under the PRA.

If an agency authorizes website users to share content, such as “send to a friend” using a web form, this authorization is not covered by the PRA unless the agency collects the “friend’s” email address or user name to use it for some purpose other than sharing the content selected by

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<sup>10</sup> Agencies are encouraged to contact the relevant OIRA desk officer to explore whether a generic clearance may be appropriate for some of these activities.

<sup>11</sup> Online trivia contests are not subject to the PRA under 5 C.F.R. 1320.3(h)(7), which excludes “examinations designed to test the aptitude, abilities, or knowledge.”

<sup>12</sup> This list, used here and elsewhere in this guidance, is illustrative but not exhaustive.

the sender. Agencies should provide notice to users on the web form if they intend to retain email addresses for future use.

## **Public Meetings**

Under current OMB policy, agencies do not trigger the PRA’s requirements by hosting a public meeting. For purposes of the PRA, OMB considers interactive meeting tools—including but not limited to public conference calls, webinars, blogs, discussion boards, forums, message boards, chat sessions, social networks, and online communities—to be equivalent to in-person public meetings.

However, activities that go beyond the scope of in-person public meetings or hearings are subject to the PRA. For example, focus groups, whether conducted in person or done via webinar, are subject to the PRA. Similarly, if an agency takes the opportunity of a public meeting to distribute a survey, or to ask identical questions of 10 or more attendees, the questions count as an information collection.<sup>13</sup>

## **Wikis and collaborative drafting platforms.**

Wikis are an example of a web-based collaboration tool that generally does not trigger the PRA because they merely facilitate interactions between the agencies and the public.<sup>14</sup> However, some uses of wiki technologies are covered by the PRA, such as using a wiki to collect information that an agency would otherwise gather by asking for responses to identical questions (e.g., posting a spreadsheet into which respondents are directed to enter compliance data).

## **Like Items**

Under its authority to identify other “like items” that are not “information,” OMB does not consider responses gathered from the following types of questions or solicitations to be “information” subject to the PRA:

- **Items collected to create user accounts or profiles for agency websites.**

Agencies are free to offer website users the option of creating user accounts or profiles. When doing so, agencies may request an email address, username, password, and geographic location (e.g., State, region, or ZIP code) for account registration. The collection of such self-identifying information is not subject to the PRA. However, if the agency permits users to create accounts or profiles and collects additional information to establish the account or profile (e.g., age, sex, race/ethnicity, employment, or citizenship status), the request is subject to the PRA because this additional information is beyond what is necessary for self-identification during account registration. Similarly, when agencies use online accounts to collect information for programmatic purposes—by using, for example, the online Free Application for Federal Student Aid (FAFSA) to determine eligibility for student aid—the PRA applies.

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<sup>13</sup> Note, however, that requests for attendee names and geographical location (e.g., state, region, or ZIP code) are not information collections under the PRA.

<sup>14</sup> Wikis and other web-based collaboration tools that are limited to internal agency use are exempt from the PRA. Also exempt is cross-agency use of wikis.

- **Items collected to allow users to customize or influence the appearance of an agency website.**

When agencies permit website users to customize or influence the appearance of an agency website, the items collected to permit this customization are generally not subject to the PRA. This category includes faceted navigation, which permits website users to filter website content. For example, a website might offer a user the option of selecting from a list of topics as a means of customizing the presentation of information; responses to such offers are not “information” under the PRA. Similarly, an agency may link and/or store faceted navigation preferences (e.g., in a user profile) without triggering the PRA. However, information that is collected beyond what is necessary to navigate or customize a website is subject to the PRA.<sup>15</sup> (In these and all other areas, agencies shall comply with all applicable laws, regulations, and policies that pertain to privacy.)

- **Ratings and rankings.**

Ratings and rankings of postings or comments by website users are not considered “information” under the PRA. More broadly, “information” does not include functions common to social media tools that allow the public to rate, rank, vote on, flag, tag, label, or similarly assess the value of ideas, solutions, suggestions, questions, and comments posted by website users. For example, providing users with the ability to rate comments through a thumbs-up/thumbs-down voting feature or through numerical ratings (e.g., scale of one to five) on an agency-sponsored blog is not subject to the PRA. Data gathered to create tag clouds are also not subject to the PRA, including tags created by users or user selections from an agency-provided list of potential tags.

OMB recommends, however, that agencies exercise good judgment and caution when using rankings, ratings, or tagging. Specifically, agency use of the information generated by these tools should be limited to organizing, ranking, and sorting comments. Because, in general, the results of online rankings, ratings, and tagging (e.g., number of votes or top rank) are not statistically generalizable, they should not be used as the basis for policy or planning. Moreover, agency use and dissemination of the information produced by rankings, ratings, and tagging must comply with applicable Information Quality Act guidelines.

- **Items necessary to complete a voluntary commercial transaction.**

If an agency collects information that is necessary for the selection, payment, or delivery of an item, or to identify the person ordering an item, such information is not subject to the PRA if used solely for the purpose of completing a commercial transaction. Similarly, agency use of web-based applications to conduct such transactions is not subject to the PRA.

For example, if the Federal Government sells or gives away maps, information about a person’s shipping address and requested format is not “information” within the meaning of the PRA. Similarly, credit card or other payment information necessary to complete a sale is not

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<sup>15</sup>Agencies might also have ongoing programs to test and improve the appearance and functionality of agency websites. One aspect of these programs may involve routinely collecting input from website users. Agencies are encouraged to contact the relevant OIRA desk officer to explore whether a generic clearance may be appropriate for these activities.

information for such purposes. However, if information is required or requested about a person's qualifications to participate in the transaction (e.g., a person's employment status as a member of law enforcement) or a person's sex or age, the information is subject to the PRA if it is beyond what is necessary to complete the sale.

- **Contests.**

An agency might ask the general public for ideas for improving current practices under a statute that it administers, for potential solutions to a scientific, technological, social, or other problem, or for innovations (e.g., video and software applications) that might advance an agency's mission. These general requests do not become subject to the PRA merely because they take the form of a contest, or because the agency announces that it will give a prize to the best submissions.<sup>16</sup> It follows that, for example, essay or video contests that permit respondents to create their own submissions are not covered by the PRA if no additional information is collected for the contest beyond what is necessary to contact the entrants. As noted above, rankings, ratings, or votes submitted by website users to determine a winner are not "information" subject to the PRA.

If, however, a contest takes the form of a structured response (i.e., a series of questions that entrants must answer to take part in the contest), or if it collects demographic information about the entrants, the information collected as a part of the contest is covered by the PRA. An agency may consider a generic clearance if it has a plan for regularly using this type of contest to encourage input from the public.<sup>17</sup>

### **What resources are available to provide assistance?**

OIRA provides guidance on its website<sup>18</sup> and makes its staff available to assist agencies in determining whether their activities are information collections under the PRA. When questions arise about the applicability of the PRA, an agency's internal resources, coordinated by the agency's CIO or paperwork clearance officer, are the best sources for guidance and assistance. Agencies are encouraged to consult with OIRA desk officers for additional clarification and guidance about specific questions that arise.

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<sup>16</sup> Any contests or prizes must comply with applicable law, regulations, and policies, including OMB guidance.

<sup>17</sup> Agencies are encouraged to contact the relevant OIRA desk officer to explore this option.

<sup>18</sup> [http://www.whitehouse.gov/omb/inforeg\\_default/](http://www.whitehouse.gov/omb/inforeg_default/).