

THE PAPERWORK REDUCTION ACT CERTIFICATION PROCESS: THE SARBANES-OXLEY FOR THE PUBLIC SECTOR

Each periodic report...shall be accompanied by a written statement by the chief executive officer and chief financial officer... The statement...shall certify that the periodic report...fully complies with the requirements...

– Sarbanes-Oxley Act of 2002

With respect to the collection of information and the control of paperwork, each agency shall...certify (and provide a record supporting such certification...

– The Paperwork Reduction Act of 1995

I. Issues

- ▶ Certification is a basic process for ensuring accountability.
- ▶ GAO has determined that agency Chief Information Officers (CIOs) are largely violating the Paperwork Reduction Act's (PRA's) certification requirements.
- ▶ Accountability and enforceability are central to any effective management system.

II. The Sarbanes-Oxley Act's Dual Certification Requirement

- ▶ The Sarbanes-Oxley Act requires that corporate financial reports be certified by both the Chief Executive Officer and the Chief Financial Officer of the company. The certification process is so essential to the Act that the legislation contains two separate certification provisions, one enacted through SEC regulations and one directly promulgated by the law.¹
- ▶ The certifications attest that the company's reports are fully compliant with applicable legal requirements and "that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer."²
- ▶ Thus, there are two key aspects to the Sarbanes-Oxley certifications:
 1. Formal compliance with specific statutory requirements; and
 2. Over and above such compliance, that the publicly disseminated reports fairly and completely presents information.

¹ P.L. 107-204, Sec. 302 (a) and Sec. 906 (a).

² P.L. 107-204, Sec. 906 (a).

- ▶ The Act’s requirements that; 1) certified reports “not contain any untrue statement of a material fact or omit to state a material fact...”³ and 2) the SEC issue rules requiring companies to disclose whether they have a process for ensuring the “full, fair, accurate, timely, and understandable disclosure in the periodic reports...”⁴ incorporate principles that are the basis of the standards in the Information Quality Act.⁵
- ▶ The statute imposes harsh criminal penalties on officials who knowingly certify a report that “does not comport with all the requirements”⁶ set forth in the Act; up to twenty years in prison and a \$5,000,000 fine.

III. Why the Sarbanes-Oxley Act Requires Certification of Financial Reports

- ▶ “It reasonable to expect that corporate officers stand behind the company’s public disclosure and be subject to sanction should they violate that certification.”⁷
- ▶ There is the need “to give legislative teeth to a number of the recommendations that President Bush called for...requiring the CEO and CFO to personally vouch for and certify to the veracity, fairness of their company’s public disclosures, including their financial statements and certification that certain internal control procedures are in place...”⁸
- ▶ The Chairman of the SEC explained that “New requirements coming out of the Act, such as the personal certification by CEO’s and CFO’s of their companies’ financial disclosures...will strengthen companies in the long-run if they focus on the underlying intent of the Act rather than on mere compliance.”⁹

³ Ibid., Sec. 302 (a) (2).

⁴ Ibid., Sec. 406 (c) (2).

⁵ P.L. 106-554 Sec. 515.

⁶ P.L. 107-204, Sec. 906 (a). [Emphasis added].

⁷ House Report, 107-404, Minority Views.

⁸ H.R. 3763—The Corporate and Auditing Accountability, Responsibility and Transparency Act of 2002, Hearings Before The Committee On Financial Services: U.S. House of Representatives, One Hundred Seventh Congress, Second Session, March 13, 20; April 9, 2002, p. 145.

⁹ Senate Hearing 108-107, Hearings before The Committee On Banking, Housing, and Urban Affairs, United States Senate, One Hundred Eighth Congress, First Session, On the Dramatic Change Across the Corporate Landscape to Reestablish Investor Confidence In the Integrity of Corporate Disclosures and Financial Reporting, September 9, 23, and October 2, 2003, p. 7.

- ▶ The Chairman of a small to mid-size company testified that “The certification process has been a disciplining process for executives...and that disciplining process has filtered down to others within the company who report to them. From the board’s perspective, it has provided us with additional comfort as to our ability to rely on management’s representations...”¹⁰
- ▶ Thus, the function of an **enforceable** certification requirement is to:
 1. Establish personal accountability for the quality of an organization’s information disseminations; and
 2. Strengthen the organization itself.

IV. The Paperwork Reduction Act’s Dual Certification Requirement

- ▶ The PRA requires that information collection requests (ICRs) be certified as complying with a set of statutory requirements. The certification process is so essential to the Act that the legislation contains two separate certification provisions, one requiring certification and documentation that the proposed ICR complies with all applicable requirements¹¹ and one directly prohibiting an agency from conducting or sponsoring a collection of information unless they have provided the required certification to the Office of Management and Budget (OMB).¹²
- ▶ The PRA certification attests that an official “sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved”¹³ has reviewed the proposed collection of information and determined that it complies with 10 specific PRA requirements.
- ▶ In addition to the 10 certifications required by the PRA, OMB has also stated that they “will approve only those information collections that are likely to obtain data that will comply with the OMB and agency information quality guidelines.”¹⁴

¹⁰ Ibid., p. 181.

¹¹ P.L. 104-13, Sec. 3506 (c) (3).

¹² Ibid., Sec. 3507 (a) (1) (c).

¹³ Ibid., Sec. 3506 (c) (1).

¹⁴ John D. Graham, Memorandum for President’s Management Council, “Agency Draft Information Quality Guidelines,” June 10, 2002.

- ▶ Thus, there are two key aspects to the PRA certifications:
 1. Formal compliance with statutory requirements; and
 2. A fair evaluation by an independent official as to the agency's compliance.
- ▶ The PRA requirements for certification of a fair and independent compliance assessment parallels requirements in the Sarbanes-Oxley Act and other securities laws.
- ▶ The PRA differs significantly from Sarbanes-Oxley in that the PRA does not contain an explicit judicially reviewable enforcement mechanism.

V. Agency CIOs Are Not Complying with The Paperwork Reduction Act Certification Requirements

- ▶ The PRA certification process is “aimed at helping to achieve the goals of minimizing burden while maximizing utility” of information collections.¹⁵
- ▶ Despite the importance of the certification process to achieving the PRA's goals, there is widespread non-compliance with the process across government agencies.
- ▶ GAO testified before Congress that their review “of 12 case studies showed that CIOs provided...certifications despite often missing or inadequate support... Further, although the law requires CIOs to provide support for certifications, agency files contained little evidence that CIO reviewers had made efforts to improve the support offered by program offices.”¹⁶
- ▶ CIO certifications are often merely *pro forma*, completely lacking in substance. For example GAO noted that the assertion from one agency that “We have attempted to eliminate duplication within the agency wherever possible” provided “no information on what efforts were made to identify duplication or perspective on why similar information, if any, could not be used. Further, the files contained no evidence that the CIO reviewers challenged the adequacy of this support or provided support of their own to justify their certification.”¹⁷

¹⁵ United States Government Accountability Office, Testimony Before the Subcommittee on Regulatory Affairs, Committee on Government Reform, House of Representatives, “ PAPERWORK REDUCTION ACT: Burden Reduction May Require a New Approach,” Statement of Linda D. Koontz, Director, Information Management, GAO-05-778T, Highlights.

¹⁶ Ibid., pp. 3-4.

¹⁷ Ibid, p. 12.

- ▶ The problems GAO found were so severe that “none of the case examples contained support that addressed how the agency ensured that the collection was the least burdensome necessary.”¹⁸
- ▶ The failure of CIOs to carry through on their PRA responsibilities is not a mere technicality. As GAO explained, “Because these reviews were not rigorous, OMB, the agency, and the public have reduced assurance that the standards in the act—such as avoiding duplication and minimizing burden—were consistently met.”¹⁹
- ▶ GAO found what could politely be described as a lackadaisical attitude toward the PRA requirements by agency officials. As they informed Congress, “agency reviewers told us that management assigns a relatively low priority and few resources to reviewing information collections. ... reviewers often have insufficient leverage with program offices to encourage them to improve their justifications.”²⁰

VI. Conclusions

- ▶ The Sarbanes-Oxley and PRA certification requirements are public and private sector counterparts; the primary difference being that the PRA lacks a credible enforcement mechanism.
- ▶ Failure of agency CIOs to take their PRA duties seriously coupled with a lack of leverage by responsible officials and the absence of private-sector enforcement capabilities have effectively gutted much of the PRA leading to a waste of public and private resources.
- ▶ The enforceable management accountability systems that are good for corporate America are good for federal agencies.

VII. Recommendations

- ▶ PRA certifications should be made enforceable at law.
- ▶ The PRA certifications should be updated to include existing information quality standards.

¹⁸ Ibid., pp. 13-14. [Emphasis added].

¹⁹ Ibid., p. 4.

²⁰ Ibid., p. 15. [Emphasis added].