

United States Senate

May 20, 1982

The Honorable Donald T. Regan
Secretary of the Treasury
Department of the Treasury
15th and Pennsylvania Avenues, N.W.
Washington, D.C. 20220

Dear Mr. Secretary:

I understand the Treasury Department, specifically the Internal Revenue Service, challenges whether the requirements of the Paperwork Reduction Act apply to information collection requirements contained in regulations existing before the Act was passed.

I was an author of the Act when it was written and passed into law. I want to inform you directly that the framers of this legislation intended that the requirements of the Paperwork Act apply to collections of information, including recordkeeping requirements, contained in regulations already existing at the time the Act was passed.

While I have not been formally advised of Treasury's reasoning behind this challenge, it is difficult for me to understand how either the literal language of the statute or its legislative history can be construed to exclude the paperwork requirements contained in existing regulations. We clearly contemplated the scope of the Act on this point and resolved that the requirements for clearance under Section 3507 of the Act and the authority of the Director of the Office of Management and Budget under Section 3508 apply to all collections of information imposed by federal agencies as they are defined in the Act. (The Federal Election Commission and the General Accounting Office, for example, were not considered agencies for purposes of the Act.) The only exceptions to this principle were specifically listed in Section 3518(c)(1) and related to intelligence and certain law enforcement activities. Collections of information either specifically contained or associated with existing regulations were not so listed.

Section 3504(c) of the Act speaks to the authority and function of the Director of OMB to, among other things, review and approve information collection requests, determine their necessity, and ensure they are inventoried and display a control number. Section 3507 stipulates the responsibility both an agency and the Director of OMB have in clearing federal agency paperwork demands on the public. Agencies are to minimize the burden of their requests. They are to submit to the Director their requests and "...copies of pertinent regulations and other related materials as the Director may specify..."

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Section 3507(d) requires collections of information requests be reviewed at least every three years.

Section 3507(f) states that "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."

Several other provisions in the Act are also directed to all collections of information agencies mandate, including those contained or associated with existing regulations. In this context, let me comment on the meaning of 3504(h), of which much has been made. This section does not address all collections of information. Its scope and purpose are much more narrow. Section 3504(h) directs itself exclusively to proposed rulemaking and the rulemaking process. Its purpose is to proceduralize the requirements of the Paperwork Act, in particular those of Section 3507, with those of the Administrative Procedures Act so that when developing new rules which specifically contain collections of information requirements, the requirements of both laws can be met concurrently by an agency and the Director of OMB. Section 3504(h) does not limit the ultimate authority of the Director of OMB granted in Section 3508. Neither does 3504(h) intend to address the Director's authority relating to collections of information contained in existing regulations. That is not its purpose or affect. Any conclusion that Section 3504(h) was designed to exclude the reporting and recordkeeping requirements contained in existing regulations from the Act's coverage would be far afield from any intent the authors of this provision had.

It is also difficult for me to understand why responsible agency officials continue to raise an issue on the Act's scope at this late date. After two years of legislative and executive branch consideration the Act was signed by President Carter on December 11, 1980. The enactment date was April 1 of 1981. The date on which the full force of Section 3512, the Public Protection Section, went into effect was January 1, 1982. We are now in May of 1982, some sixteen months after the law was signed.

Given the importance of reporting and recordkeeping information to the IRS mission any issue concerning the scope of the Paperwork Act should have been resolved long before this much water passed over the dam. The failure to resolve any such issue before January 1 of this year raises serious questions in my mind concerning the judgement of Department officials. The public protection intended is that no person shall be subject to any penalty if collections of information requests do not display a current control number assigned by the Director, or fail to state that such request is not subject to the Act.

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I consider the Public Protection Provision to be the real teeth behind the requirements of the Paperwork Act. It is indeed an unusual enforcement mechanism. My intent was not to tie the hands of federal agencies in their need to impose needed information requirements. Rather, my intent was to ensure the structure of accountability established by the Act be meaningful. Citizens are entitled to know that government has taken steps to minimize the burden of paperwork and to know who is responsible. In my public pronouncements I have stressed the importance of people becoming aware of control numbers, and what they signify. I have stressed they participate in identifying requirements which do not display control numbers and assert the protection provided by the Act. I believe this kind of public participation is necessary to the successful achievement of the Act's objectives.

It concerns me deeply that the Internal Revenue Service and the Treasury Department has shown so little regard for the implications of the public protection provided by the Act. A clear implication is that the Internal Revenue Service may not penalize anyone for not providing or maintaining information which has not been cleared and assigned a control number. This is a potentially serious consequence to the operation of IRS which I wish to bring to your personal attention. The IRS has needlessly put itself in a position of facing serious legal challenges to its ability to collect information.

Sincerely,



LAWTON CHILES

LC/cbr

cc: David Stockman, Director of
Office of Management and Budget



THE DEPUTY SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

June 8, 1982

Dear Senator Chiles:

Secretary Regan has asked that I respond to your letter of May 20, 1982, concerning the Paperwork Reduction Act of 1980.

First, let me assure you that the Department of the Treasury challenges neither the intent nor the purpose of the Act. Reducing the paperwork and regulatory burdens imposed on the American public is a major objective of this Administration and one this Department and the Internal Revenue Service are pursuing vigorously. Last week, for example, in letters to key members of the tax writing committees, I restated the position of this Administration that the IRS should not be exempt from the Act. (Enclosed for your convenience are copies of my correspondence to Representatives Conable and Rostenkowski and Senators Dole and Long indicating that we do not support a legislative effort to exempt the IRS from the Act.)

The Treasury Department does, however, have some legal questions about the scope of the Act, which have been submitted for resolution to the Office of Legal Counsel of the Department of Justice. As you will note in reviewing the enclosed memoranda which we submitted to the Office of Legal Counsel, these are technical issues on which very reasonable counsel have taken opposing views. Significant efforts were made to resolve these issues before OMB referred this matter to the Department of Justice. During 1981, we met several times with OMB to discuss the Act and its implementation, but were unable to agree on the procedures accorded regulations under the Act. By the end of December it became apparent that these differences could not be resolved informally and OMB subsequently referred the matter to the Office of Legal Counsel, as is required under such circumstances pursuant to Executive Order. Our view of the Act has been supported by the Department of Energy in a legal memorandum also enclosed. The matter is still pending before OLC, and we expect a decision shortly.

Notwithstanding our differences over the technical issues, we and OMB have developed a good working relationship for reviewing IRS forms. Both agencies have already agreed to important reforms that will significantly reduce IRS paperwork without jeopardizing collection of revenue. Moreover, OMB and Treasury have agreed to establish a task force for the purpose of reviewing reporting and recordkeeping requirements contained in existing IRS regulations.

Again, let me assure you that the Treasury Department fully supports the objectives of the Act, has implemented those portions in which the Act's directions were clear, and will fully comply with the decision of the Department of Justice.

Sincerely,

A handwritten signature in black ink, appearing to read "R. T. McNamar", written in a cursive style.

R. T. McNamar
Deputy Secretary

The Honorable
Lawton Chiles
United States Senate
Washington, D.C. 20510

Enclosures



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 23 1982

Honorable Lawton Chiles
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

I appreciated receiving a copy of your letter to Secretary Regan about the scope of the Paperwork Reduction Act. Our views on the scope and intent of the Act are completely consistent.

I believe your letter should help resolve the current debate about the meaning and intent of the statute. We will keep you informed about the status and resolution of the issue.

Thank you again.

Sincerely,

A handwritten signature in cursive script that reads "David A. Stockman".

David A. Stockman
Director