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

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SUBJECT: Web-based Interactive Technologies: Data Search Tools, Calculators,
and the Paperwork Reduction Act

In a January 21, 2009 memorandum, President Obama called for a “system of transparency, public participation, and collaboration”¹ and instructed the Director of the Office of Management and Budget (OMB) to issue an Open Government Directive, emphasizing the importance of disclosing information that “the public can readily find and use.” The Director of OMB issued the Open Government Directive on December 8, 2009, asking executive departments and agencies both to take specific, short-term actions and to pursue long-term goals to institutionalize the principles of openness in Federal agencies.²

Section 4 of the OMB Open Government Directive called on 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.” In response, on April 7, 2010, the OIRA Administrator issued a memorandum to clarify when and how the Paperwork Reduction Act (PRA) applies to Federal agency use of social media and web-based interactive technologies (“the Social Media Guidance”).³ The Social Media Guidance explained that, under established principles, the PRA does not apply to many uses of such media and technologies.

This Memorandum expands upon the list of examples provided in the Social Media Guidance and clarifies when and how the PRA applies to Federal agencies’ use of technologies that help the public search for data and receive customized calculator outputs.

To engage the public and increase the accessibility of data, Federal agencies are expanding their use of web-based data search tools and calculators. These tools and calculators can help the public search for fuel economy ratings, compute personal health metrics, and

¹ See “Transparency and Open Government,” January 21, 2009, available at: <<http://www.whitehouse.gov/the-press-office/transparency-and-open-government>>.

² See “Open Government Directive,” December 8, 2009, available at: <http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf>.

³ See “Social Media, Web-based Interactive Technologies, and the Paperwork Reduction Act,” April 7, 2010, available at: <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf>.

analyze the affordability of housing and transportation options. This Memorandum explains that certain uses of data search tools and calculators are treated as equivalent to activities that are currently excluded from the PRA.

This Memorandum applies whether Federal 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.”⁴ It follows that the PRA applies to the collection of information through the use of web-based interactive technologies, such as data search tools and calculators. When conducting or 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.⁵

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.”⁶ In defining “information,” OMB regulations specifically exclude several types of activities, many of which are relevant to agency uses of web-based interactive technologies. The Social Media Guidance explained that the “general solicitations” exclusion⁷ applies to certain electronic subscriptions to agency notifications and that the “public meetings” exclusion⁸ applies to certain wikis and collaborative drafting platforms.

Notably, OMB’s regulations reserve general authority for OMB to exclude “like items” that are not “information.” The Social Media Guidance explained that this “like items” exclusion⁹ applies to certain user account creation platforms, website customization tools, ratings and rankings, voluntary commercial transactions, and contests.

For example, the Social Media Guidance explained that certain “items collected to allow users to customize or influence the appearance of an agency website” are excluded from the PRA.¹⁰ In particular, the PRA does not apply “when agencies permit website users to customize

⁴ 44 U.S.C. 3502(3)(A).

⁵ See 44 U.S.C. §3501.

⁶ 5 C.F.R. 1320.3(h).

⁷ 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 necessary for self-identification, as a condition of the agency’s full consideration of the comment.”

⁸ 5 C.F.R. 1320.3(h)(8) excludes “facts or opinions obtained or solicited at or in connection with public hearings or meetings.”

⁹ 5 C.F.R. 1320.3(h)(10) excludes “like items so designated by OMB.”

¹⁰ See “Social Media, Web-based Interactive Technologies, and the Paperwork Reduction Act,” p. 6.

or influence the appearance of an agency website This category includes faceted navigation, which permits website users to filter website content.”¹¹

Applicability of the PRA to web-based data search tools and calculators

Agencies have asked whether web-based data search tools and calculators are information collections subject to the PRA. Although certain web-based data search tools and calculators may be information collections, many are not. This Memorandum discusses several web-based data search tools and calculators and whether they are subject to the PRA.

In general, web-based interactive technologies, including data search tools and calculators, that are *not* sponsored or conducted by the Federal government are not subject to the PRA. In response to Executive Order 13642, *Making Open and Machine Readable the New Default for Government Information*, many agencies have made government-held data more accessible to the public.¹² Such data sets might be used by third parties outside of the Federal government to produce data search tools and calculators. For those data search tools and calculators, items collected by the private sector—without government sponsorship—are not subject to the PRA.

Many web-based interactive technologies that are sponsored or conducted by the Federal government are also not subject to the PRA. More specifically, under certain circumstances, explained in this Memorandum, items collected by data search tools and calculators are treated as equivalent to the list of “like items” presented in the Social Media Guidance. Similar to the Social Media Guidance, this Memorandum clarifies that items collected by such data search tools and calculators are not subject to the PRA.

Regardless of whether a particular activity is subject to 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.”¹³ With any 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.¹⁴ Agencies shall also ensure and maximize the quality, objectivity, utility, and integrity of any information that they disseminate.¹⁵

¹¹ *Ibid.*

¹² See Executive Order 13642, May 9, 2013, available at: <<http://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government->>. See also “Open Data Round Up, December 9, 2013, available at: <<http://www.whitehouse.gov/blog/2013/12/09/open-data-round>>.

¹³ 44 U.S.C. § 3506(b)(1).

¹⁴ For example, some collections may present records management issues. See “Managing Government Records,” August 12, 2012, available at: <<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-18.pdf>>.

¹⁵ See “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Notice; Republication,” February 22, 2002, available at: <<http://www.whitehouse.gov/sites/default/files/omb/fedreg/reproducible2.pdf>>.

Data Search Tools: Items collected to allow users to select or customize agency data

This Memorandum clarifies that the PRA does not apply to items collected to allow users to select or customize agency data. This category includes filtering data content through drop down menus and standardized text or numeric entries. However, items collected beyond what are necessary for users to select or customize agency data are subject to the PRA.

For example, the Department of Energy's fueleconomy.gov website offers users a "Find and Compare Cars" tool.¹⁶ This website provides users options to select from a list of car models or classes as a means of customizing the presentation of fuel economy and fuel cost data. In this instance, the agency does not collect information beyond what is necessary for users to select or customize data; for example, the agency does not collect information about a user's age, which would not be necessary for the customization of fuel cost data. As such, the user responses to the selection options are not subject to the PRA.

Regardless of whether a particular activity is subject to the PRA, agencies shall comply with all applicable laws, regulations, and policies that pertain to privacy and information quality.

Calculators: Items collected to allow users to obtain information from a formula or table

This Memorandum clarifies that the PRA does not apply to items collected to allow users to obtain information from an agency formula or table, if the items are solely those necessary for the user to obtain such information and will not be used by the agency for other purposes, such as to inform research and statistics or to determine program funding.¹⁷ For web-based technologies, users often obtain information from a formula or table in the form of a calculator output. Information collected beyond what is necessary for a user to obtain a calculator output is subject to the PRA.

For example, the Department of Health and Human Services' National Heart, Lung, and Blood Institute offers users a Body Mass Index (BMI) calculator.¹⁸ To obtain a BMI output, a user must provide height and weight inputs. This tool does not ask the user for any items beyond what are necessary to calculate the BMI, and the items are not used for other purposes, such as to inform research or statistics. The PRA does not apply to the BMI calculator.

In some circumstances, an agency might sponsor or manage a calculator that also includes data search elements. For example, the Department of Labor's Bureau of Labor Statistics offers users a Consumer Price Index (CPI) inflation calculator.¹⁹ This calculator permits users to input a dollar amount—necessary for the valid use of the purchasing power formula—and to select data sets for comparison. The dollar amount is necessary for the formula

¹⁶ See Department of Energy, "Find and Compare Cars," available at: <<http://www.fueleconomy.gov/feg/findacar.shtml>>.

¹⁷ For an example of items collected for program funding-related decisions, please see the Department of Agriculture's "Food and Nutrition Service Pre-Screening Eligibility Tool," available at <<http://www.snap-step1.usda.gov/fns/>>.

¹⁸ See Department Health and Human Services, "Calculate Your Body Mass Index," available at: <<http://www.nhlbi.nih.gov/health/public/heart/obesity/wecan/healthy-weight-basics/body-mass-index.htm>>.

¹⁹ See Department of Labor, "CPI Inflation Calculator," available at: <http://www.bls.gov/data/inflation_calculator.htm>.

that estimates purchasing power, and it is not used for any other purpose, such as to inform research or statistics. The PRA does not apply to the CPI inflation calculator.

Similarly, the Department of Transportation and the Department of Housing and Urban Development jointly offer a transportation cost calculator that allows users to obtain location-specific data by asking for income, housing, and travel inputs.²⁰ These items are necessary for the formula that calculates the transportation cost calculator output, and they are not used for any other purpose, such as to determine area funding or programmatic need. The PRA does not apply to the agencies' joint transportation cost calculator.

These three examples of "like items," which are not subject to the PRA, can also help explain the web-based interactive technologies that would be subject to the PRA. If a calculator or similar web-based interactive technology asks for items that are not necessary for the valid use of their underlying formulas or data sets, they are subject to the PRA. For example, the BMI calculator only collects the necessary formula inputs: height and weight. If the BMI calculator included age or zip code, for example, the calculator would be subject to the PRA. If items collected by web-based interactive technologies inform research or statistics, or determine program funding, eligibility, or need, they would be subject to the PRA.²¹

Regardless of whether a particular activity is subject to the PRA, agencies shall comply with all applicable laws, regulations, and policies that pertain to privacy and information quality.

What resources are available to provide assistance?

OIRA provides guidance on its website²² and is available to assist agencies in determining whether their activities are information collections subject to 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 from this Memorandum.²³

As an additional resource, OIRA is issuing a separate document—concurrent with this Memorandum—with a table showing (1) exclusions to the definition of "information" under PRA regulations and (2) uses of those exclusions for social media and other web-based technologies, as described in OMB guidance on the PRA.

²⁰ See Department of Transportation and the Department of Housing and Urban Development, "My Transportation Cost Calculator," available at: <<http://www.locationaffordability.info/tcc.aspx>>.

²¹ See 5 C.F.R. 1320.3(h) for a list of regulatory exclusions to the definition of "information." Some existing exclusions, such as the clinical examination exclusion at 5 C.F.R. 1320.3(h)(5), may use web-based interactive technologies. The treatment of such excluded items is not affected by this Memorandum; they are not subject to the PRA.

²² See OIRA PRA documents, available at: <http://www.whitehouse.gov/omb/inforeg_default>.

²³ 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.