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# Taming the Paperwork Tiger

## An Experiment in Regulatory Management

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**L**AST DECEMBER a wan President Carter entered the Cabinet Room to sign one of his final legislative achievements—the Paperwork Reduction Act of 1980. The ceremony received about as much press coverage as the latest Bulgarian soccer scores. But in the bureaucracy it was a milestone. In fact, representatives of five cabinet departments had worked long into the previous night trying to get the President to veto the bill.

This law capped a four-year effort to cut the amount of paperwork the federal government imposes on state and local government and the private sector. The result of that effort is elaborate and innovative machinery for “paperwork budgeting,” a device designed to control delegated power. While the law is brand new, major parts of the machinery were put in place by administrative action in November 1979. Based on experience so far, they seem to be doing the job.

The paperwork story offers lessons for the rest of regulatory reform. Even as Congress was passing the Paperwork Reduction Act, it was dismembering Carter’s main regulatory reform bill (S. 755) in a vicious turf war. To the question—“Who regulates the regulators?”—contending factions gave different answers: many lawyers said “the courts” (through tough judicial review); lobbyists said “the Congress” (through the legislative veto); Carter administration officials said “the White House” (through tighter management); and regulatory enthusiasts said “the regulatory agencies themselves.” In the paperwork context, the same question was quickly settled the way the Constitution intended: through clear guidelines to

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the agencies and strong oversight from the White House.

### The Paperwork Problem

Apart from the lessons it offers, paperwork reduction matters for its own sake. According to a national commission, federal paperwork costs up to \$100 billion a year. The Office of Management and Budget (OMB) uses a more reliable measure of the burden: it multiplies the time required to gather information and fill out each form by the number of respondents. OMB figures that in 1981 Americans will spend over 1.2 billion hours filling out 5,000 federal forms. Whatever time is worth, that adds up to a lot of money.

Almost all these forms are either compulsory or are prerequisites for obtaining grants or contracts. Tax forms account for about half the total. Another major source is the recordkeeping required by regulatory programs, such as the logs truckers must file with the Transportation Department and the records handlers of hazardous substances must file with the Environmental Protection Agency (EPA). Most forms are designed by low-level officials who focus on their own program needs and give little thought to cumulative burden or overlap with other programs. And because the great bulk of the cost of information collection is borne by the respondents, agencies are wont to collect more than they really need.

Washington first tried to control the paperwork load with the 1942 Federal Reports Act. That act directed agencies to obtain clearance from OMB for any form aimed at ten or more respondents and authorized OMB to veto a form or order it changed. In recent years, a staff of a dozen working on the management

side of OMB had the joyless task of weeding out unneeded, duplicative, or overly burdensome items. This group faced huge handicaps:

- The Federal Reports Act exempted tax forms and (as amended in 1973) the forms required by the independent regulatory commissions. (The 1973 amendment was adopted when OMB tried to use its clearance power to hold up the Federal Trade Commission's controversial "line-of-business reports" study.) Those two loopholes represented 55 percent of the total paperwork burden.

- The act often was ignored, and OMB lacked the resources even to identify violators, let alone bring them to heel. Thus, for more than a decade the Department of Health, Education, and Welfare (HEW) had required states to prepare several detailed annual plans for welfare programs without ever having submitted the forms for clearance.

- Form-by-form clearance was a losing game. OMB's little team of generalists was pitted against a horde of program managers who could give elaborate reasons why each part of each form was essential to good government. The routine of processing a torrent of paper made it hard for OMB to focus on the big items. And when OMB staffers did reject or delay a form, agency officials appealed to OMB's leaders, who had little appetite for arbitrating a string of relatively trivial paperwork squabbles.

In the mid-1970s, when the public mood turned against big government, the mounting paperwork burden was one of the targets. News stories and constituent complaints led members of Congress to demand action, but since no one was sure what to do, Congress took the usual course. In 1975 it created the Commission on Federal Paperwork. About the same time President Ford, facing an election campaign, ordered his department heads to cut the number of reports by 10 percent at a stroke. The action backfired. Agencies simply combined two or three reports into one, so the number of reports went down, but the burden went up.

President Carter arrived on the scene in January 1977, having spent two years on the hustings promising to slice red tape. At his first Cabinet meeting he directed his department heads to deliver on those promises. Later that year the report of the Commission on Federal Paperwork proposed hundreds of individual cuts that the agencies could not ignore. Cabinet

members told assistant secretaries to produce results and, for the first time, program officers' decisions about forms were reviewed at a department-wide level. OMB, changing its focus from numbers of forms to numbers of hours, used the paperwork commission's recommendation and its own long experience to develop a hit list. The man who ran the process, OMB Deputy Assistant Director Louis Kincannon, put it this way: "We'd been watching those forms for years and knew where to cut. The agencies knew President Carter would back us up, so we were finally able to get their attention."

For a time, this effort paid off. The Labor Department cut reporting on pension plans by 1.4 million hours by deleting the requirement that an entire new description be filed each time a pension plan was amended. The Occupational Safety and Health Administration dropped reporting requirements for 40,000 small businesses with good safety records. The Internal Revenue Service (IRS) cut its "short form" tax return by a third. Government-wide, the paperwork burden fell 15 percent in two years.

In 1979, however, progress ground to a halt. OMB was running out of easy targets, and huge new reporting requirements loomed ahead, especially from environmental and energy regulations. More fundamentally, the program had encountered the classic nemesis of regulatory reform: the superior staying power of the bureaucracy. President Carter and his department heads naturally were distracted by more urgent problems. OMB's little team was bogged down in the process of clearing thousands of forms. As pressure from above abated, assistant secretaries—who face endless struggles with program managers over money, personnel, legislative priorities, and so on—found it easy to forget about paperwork. And the program managers had the same old incentives to collect all the information they could. Thus, White House planners faced the dreary prospect of a rising paperwork burden in 1980—not a helpful footnote for a campaign position paper.

### The 1979 Program

Clearly, new machinery was needed to strengthen OMB's hand and make the agencies do more of the work. The plan that was developed by a half dozen staffers from OMB, the White House, and Capitol Hill reflected the paperwork com-

mission's recommendations and the 1977-79 experience. As announced by President Carter in November 1979, the plan had eight parts:

- *A paperwork budget.* This scheme, officially named the "Information Collection Budget," was designed to work like the spending budget, except that OMB—not Congress—would make the final decisions. Every summer, the agencies would list for OMB all the forms they expected to use in the following fiscal year, estimating the time burden for each. After OMB "budget hearings" at which agency officials would defend their requests, OMB would make cuts—which the agencies could appeal to OMB's director or, in theory, to the President. The final budget would prescribe burden ceilings for each agency and mandate cutting back or eliminating individual forms. New forms could not be added without OMB permission.

- *Oversight offices.* Each department and agency would designate a unit to run paperwork control, while OMB would create a new high-level office to handle the paperwork budget and enforcement of Executive Order 12044 (Carter's regulatory management program).

- *An information locator.* OMB would set up a computerized listing of all the types of information the government collects. Before a new form could be approved, its author would have to check to see if another agency was already collecting the information.

- *Sunset.* Each form would terminate in three years unless resubmitted to OMB.

- *Sharing.* If two agencies wanted similar data, OMB would designate one of them to do the collecting for both.

- *Closed loopholes.* OMB's authority over paperwork would be extended to cover the IRS and the independent commissions.

- *Delegation.* OMB would be permitted to delegate the routine clearance job to agencies that had established effective internal controls. This would allow OMB's small staff to concentrate on the most productive work and give agencies incentives to discipline themselves.

- *Enforcement.* To underscore OMB's authority, agencies would be forbidden from taking action against persons who failed to fill out a form not submitted for clearance.

Legislation was needed to put the last four items into effect as well as to apply the first four to the independent commissions. But the paperwork budget was the heart of the program, and

the President was able to launch that immediately. He did so in an executive order of November 1979 that also created the oversight offices, the information locator, and the sunset process. Let us first examine the progress made under the machinery established by this executive order and then return to the legislative front.

### The Paperwork Budget

Initially, the bureaucracy paid little attention to the new procedures, but in mid-1980, when the agencies had to prepare their budget submissions, there was a tidal wave of protest. Some departments discovered they did not even have lists of all the forms they had issued. And some program officers, who suddenly had to predict paperwork requirements in advance, protested that there was no way of knowing the length of forms not yet written or of anticipating all the information needs that might arise. They claimed that it was unreasonable to evaluate all forms by the same standard—hours required to fill them out—when some provide much more valuable information than others. They contended that the budget process was itself a huge paperwork machine which would disrupt program operations. The most passionate complaints came from IRS and some of the regulators, who argued that the budget would let OMB's career civil servants control substantive decisions.

Several cabinet members urged that the paperwork budget be killed, but the President and OMB Director McIntyre stuck to their guns. Once it was clear that the budget was inescapable, most agencies tried in good faith to make it work. After all, officials in the agency oversight offices now had career incentives to cut paperwork and in any case could not delegate to program managers a task that involved making trade-offs among programs.

Some of the payoffs were immediate. The budget-compiling process flushed out hundreds of forms that had never been reported, including HEW's welfare planning forms. Overall, an astounding 188 million hours of paperwork was discovered. Moreover, because the process forced administrators to take a hard look at each form for each program, many of them came up with their own ideas for reductions. For example, the Agriculture Department decided it could collect data on the demographic

breakdown of school lunch recipients annually instead of monthly, thereby saving the nation's schools about 9 million hours of paperwork. Equally important, OMB, in a position at long last to look beyond the myopic clearance process, found broad areas for cuts. When it noticed, for example, that those newly discovered welfare forms forced states to put identical information into several plans, it simply cut the whole category by an arbitrary 10 percent. That compelled the program people to get together—for the first time—and develop a consolidated report. OMB also cut the Department of Education's budget by ordering that some data be collected by sampling. And it suspended nine agencies' surveys on the uses of public lands pending the development of a uniform questionnaire by the Interior Department.

The White House announced the final budget figures in January 1981. From a fiscal 1980 base of 1,276 million hours of reporting (including the newly discovered forms), the agencies had requested a net increase of 8 million. OMB's cuts yielded a final budget of 1,228 million—for a saving of 56 million hours.

In evaluating paperwork budgeting, the first question is whether these numbers mean anything. The estimates necessarily come from the same program officers who design the forms; and the best and most commonly used approach is to quiz a sample of the respondents on how much time they spent filling out the forms. This approach leaves the door open to error and cheating. OMB maintains, however, that its numbers for the fiscal 1981 paperwork budget are fairly good. Burden estimates have been required as part of the clearance process for years, and OMB's spot checks showed that the figures submitted by the agencies this time were consistent with earlier ones. While some agencies did consider trying to escape OMB's scrutiny by underestimating the burden caused by new forms, apparently few did so—presumably fearing that if OMB spotted inconsistencies, it would force the guilty agency into a difficult squeeze by raising the number of hours counted as "spent" without raising the ceiling.

Forms not yet designed pose another estimation problem. For example, the Environmental Protection Agency submitted only a rough estimate for its new Toxic Substances Control Act rules and did not even make a guess for the then-pending "super fund" legislation.

These kinds of problems will require budget adjustments throughout 1981 as forms are written and submitted for clearance—a process similar to the supplemental appropriations and recissions needed to keep the spending budget up-to-date.

In any event, and perhaps fortunately, success does not depend on perfect accuracy. The real size of the paperwork burden matters less than whether the trend is up or down—and, in this case, the trend is relatively easy to determine. When OMB orders a form revised or killed, it can easily verify that the action has been taken, even if there may be doubt about the exact amount of time saved. OMB's Kincannon is convinced that the fiscal 1981 process yielded enough of those cuts to turn an expected paperwork increase into a modest decline.

The second major question about the budget is whether it is worth the amount of effort it requires. The first year's experience suggests reason for optimism. OMB was able to handle the new system without adding personnel. Its paperwork staff simply spent less time clearing forms and more on strategic decisions, and its top officials did their job of hearing appeals in the late summer when the pace at OMB is relatively calm. At the agencies the load was a bit heavier because the budget demanded attention from senior administrators and program managers, plus full-time work by a few assistants. Thus there were complaints about having to do all this new work without being given additional people or funds—a reasonable gripe. On the other hand, the system strengthened agency administrators vis-à-vis their program managers—just as it strengthened OMB. By the end of the process, views in the bureaucracy were mixed. Most program managers still resented the budget because of the time it took and the external control it imposed. Some department administrators—at Labor, for example—shared that view. Others—at Health and Human Services, for example—found the budget useful in their efforts to impose central management on far-flung bureaucratic fiefdoms.

### **Meanwhile, on Capitol Hill . . .**

As noted, although a great deal could be accomplished by executive order, some important features of the paperwork program required legislation. In November 1979, a paperwork

reduction bill containing these reforms was introduced by Senator Lawton Chiles and Representatives Jack Brooks and Frank Horton. To spice up the package, the sponsors had added provisions that paperwork be cut 25 percent in three years, that the OMB oversight office be renamed the Office of Information and Regulatory Affairs, and that its mandate be broadened from paperwork and regulatory reform to cover information policy issues such as privacy, statistics, and the procurement and use of computers and telecommunications systems.

At first the bill's progress was rapid, as its proponents easily resolved problems that had stymied other regulatory reform bills:

- The advocates of subjecting new agency regulations to a legislative veto could logically have extended their campaign to paperwork. But the paperwork bill's sponsors had no interest in drowning themselves in forms, and no one else suggested the idea.

- The independent regulatory commissions argued that submitting their forms to OMB for clearance would threaten their sacred freedom from the White House. The compromise was to let a majority of the commissioners themselves override any OMB veto. As a practical matter this is good enough: if an OMB veto is reasonable, commissioners are more likely to revise the form than to vote publicly to insist on it. (Although the new law does not cover the paperwork budget, OMB can use this veto provision and public pressure to rope the independent commissions into the process.)

- Perhaps because few lawyers were lobbying on this bill, there was no effort to require judicial review of paperwork.

The political appeal of paperwork reduction may have accounted for the bill's easy sailing through those waters. Perhaps few saw at the time the link between regulatory enforcement and information-gathering. The bill passed the House without debate. But by mid-summer when the Senate was ready to act, there were problems. Regulators, shocked by their first close encounter with the budget, saw that the legislation would strengthen OMB's leverage. And the Defense Department objected to the provision giving OMB control over computers and telecommunications systems.

To avoid a floor fight over paperwork (of all things!) there were negotiations and compromises. Supporters of regulation won a pro-

vision saying OMB's authority over substantive policy would not increase and another requiring procedures for public comment when OMB objects to paperwork requirements in a proposed rule. (As a practical matter, these restrictions make OMB's job more burdensome but should not diminish its broad new powers.) And the Defense Department got a provision exempting military and intelligence equipment from OMB's reach.

All this took time. Then in late November, just when the bill seemed dead for the year, Brooks and Chiles arranged for it to be quietly revived and passed. Opponents, caught off guard, sought a presidential veto. The Defense Department was not satisfied with its amendment because some of its systems arguably are not "military." Treasury claimed that OMB clearance of IRS forms would disrupt and perhaps politicize the tax system. Labor and EPA said that OMB's new powers would hamper their ability to manage their programs.

But President Carter rejected these arguments and signed the bill. In the Cabinet Room ceremony he proclaimed, "We've addressed the bureaucrats and we've won."

FOR A WHITE HOUSE determined to cut paperwork, the new arrangement is ideal. It gives the executive important new tools to influence regulatory policy, without using the President's time or embroiling him in controversy. After decades of erosion in presidential authority over the independent regulatory commissions, it takes a first small step in the opposite direction. And it allows OMB to focus on the most important decisions and leave time-consuming implementation to the agencies. But OMB cannot possibly find the right balance between program needs and public burdens for 5,000 forms. Thus, the biggest test will be what happens at the agencies. If the program institutionalizes bureaucratic self-control, it will be a success.

Paperwork reduction is what newspaper editors call a "three-bowler." (It has so little sex appeal that a reader's face will plop into his cereal bowl three times before he finishes the story in the morning newspaper.) That may be one reason why paperwork legislation got farther than the administration's regulatory reform bill. In any case, all the tools are finally in place, and a fascinating experiment in government management is under way. ■