

# How to Use the Paperwork Reduction Act to Stop IRS and Other Agency Abuses

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# Outline

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- ① Paperwork Reduction Act Primer
- ① The IRS Scandal
- ① Causes
- ① Is the IRS Unique?
- ① Remedies
- ① Strategy

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# **PAPERWORK REDUCTION ACT PRIMER**

# Key provisions

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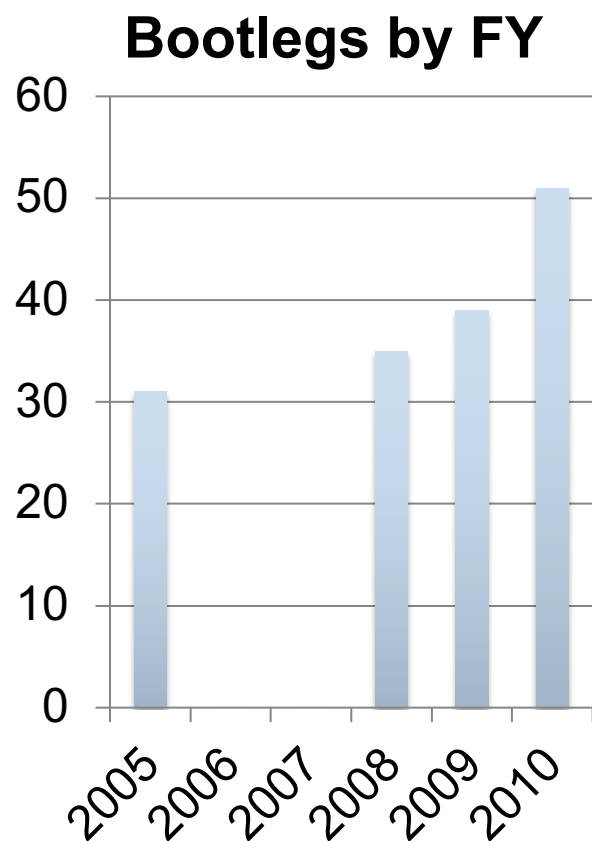
- ⊙ Agencies must obtain prior OMB approval for almost all information collections
- ⊙ Forms 1023 and 1024 are approved under OMB Control Nos. 1545-0056 and 1545-0057
- ⊙ ‘Nonstandardized follow-up questions designed to clarify responses to approved collections of information’ also are approved
- ⊙ All other follow-up questions are not approved

# Types of PRA violations

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1. No OMB approval
2. Lapsed OMB approval
3. Invalid display
4. Information collection requirements contrary to OMB's terms of clearance
5. Information collection requirements beyond the scope of OMB's approval
6. Abuse of a regulatory exemption
7. Abuse of statutory authority to require a response

# 1. No OMB approval



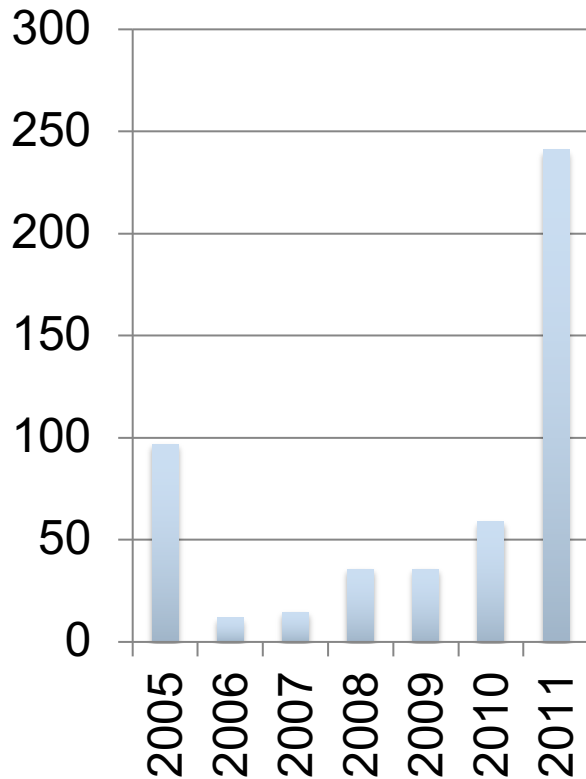
🎯 Data are not reliable

🎯 Common characteristics

- Evasive program management
- Lax agency CIOs
- ‘Holding company’ problem
- Information is required to obtain a benefit

## 2. Lapsed OMB approval

Lapses by FY



- ⊙ DHS/ICE: Form I-9
- ⊙ EPA/OPPTS: TSCA § 8(c) Health and Safety Data Reporting Rule
- ⊙ HHS: Hospital Outpatient Quality Data Program
- ⊙ State: Supplemental Questionnaire to Determine Entitlement for a US Passport
- ⊙ DOT: Testing for Rear Visibility Rulemaking

### 3. Invalid display

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- ③ Missing, incorrect, or lapsed OMB control number displayed
- ③ Missing or incorrect 44 USC 3512 disclosure



## 4. Information collection requirements contrary to OMB's terms of clearance

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- ⊙ Regulatory limits
- ⊙ Research/survey method requirements
- ⊙ Data use limits

## 5. Information collection requirements beyond the scope of OMB's approval

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- ① Duplication
- ① Unapproved information
- ① Secret respondents
- ① Protocol violations
  - Sampling defects
  - Altered survey methods
  - Altered reporting
  - Altered usage

## 6. Abuse of a regulatory exemption

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- ① 1320.3(b)(2) 'normal course of activities'
- ① 1320.3(h) 'affidavits', 'nonstandard follow-ups'
- ① Compulsory process
- ① Limited investigations
- ① Lawful intelligence activities

# 7. Abuse of statutory authority to require a response

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## ⊙ Statistical agency rentseeking

### ■ Census: *Pollution Abatement Costs and Expenditures (PACE) Survey*

- ⊙ Performed on contract for EPA
- ⊙ Methodologically deficient
  - Misses inframarginal compliance costs
  - Misses all opportunity costs
- ⊙ EPA uses data to underestimate cost of environmental regulation

# PRA's public protection provisions: *What are they?*

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'Notwithstanding any other provision of law,  
no person shall be subject to any penalty for  
failing to comply with a collection of  
information' lacking a valid OMB control  
number.

44 USC 3512(a)  
5 CFR 1320.6(a)

# PRA's public protection provisions: *Why agencies take them seriously*

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'The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.'

44 USC 3512(b)  
5 CFR 1320.6(b)

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# THE IRS SCANDAL

# Form 1024

*The OMB control number is here...*

Form <b>1024</b> (Rev. September 1998) Department of the Treasury Internal Revenue Service	<b>Application for Recognition of Exemption Under Section 501(a)</b>	OMB No. 1545-0057  If exempt status is approved, this application will be open for public inspection.
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*The PRA notice is referenced here...*

<b>PLEASE SIGN HERE</b> ▶	I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization, and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.		
	..... (Signature)	..... (Type or print name and title or authority of signer)	..... (Date)
For Paperwork Reduction Act Notice, see page 5 of the instructions.		Cat. No. 12343K	

*The public protection disclosure is buried in the instructions and presented incompletely...*

**Paperwork Reduction Act Notice.**—We ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want your organization to be recognized as tax exempt by the IRS, you are required to give us this information. We need it to determine whether the organization meets the legal requirements for tax-exempt status.

The organization is not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number.



# Types of violations committed by IRS

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- ① Invalid display
  - Incorrect 44 USC 3512 disclosure
- ① Information collection requirements beyond the scope of OMB's approval
  - Duplicate demands
  - Demands to same respondents for unapproved information

# The Case of the Richmond Tea Party, Inc.

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- ① [Comparision](#) of September 12, 2010 IRS letter to OMB approval of Form 1024
- ① [Comparison](#) of January 8, 2012 IRS letter to OMB approval of Form 1024

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# CAUSES

# Why violations were committed

## 1. Broad delegation of legislative discretion

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(c)(4)(A): Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

# Why violations were committed

## 2. Coordinated political pressure

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- ⊙ [Baucus/Durbin](#) 2010 letters demanding IRS investigations into (c)(4) applications of political opponents
- ⊙ Obama 2010 SOU attack on Supreme Court's *Citizens United* opinion
- ⊙ [Public Citizen](#), [Daily Kos](#), [Campaign Legal Center/Democracy 21](#)
- ⊙ [NYT](#), [WaPo](#), [The Nation](#)

# Why violations were committed

## 3. Internal agency factors

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- ③ Leadership accommodation to (or sympathy for) political pressure
- ③ Staff accommodation to (or sympathy for) improper leadership directives
- ③ Disregard for
  - Limits on statutory authority
  - Paperwork Reduction Act
  - Rule of law generally

# Why violations were committed

## 4. Criminal acts

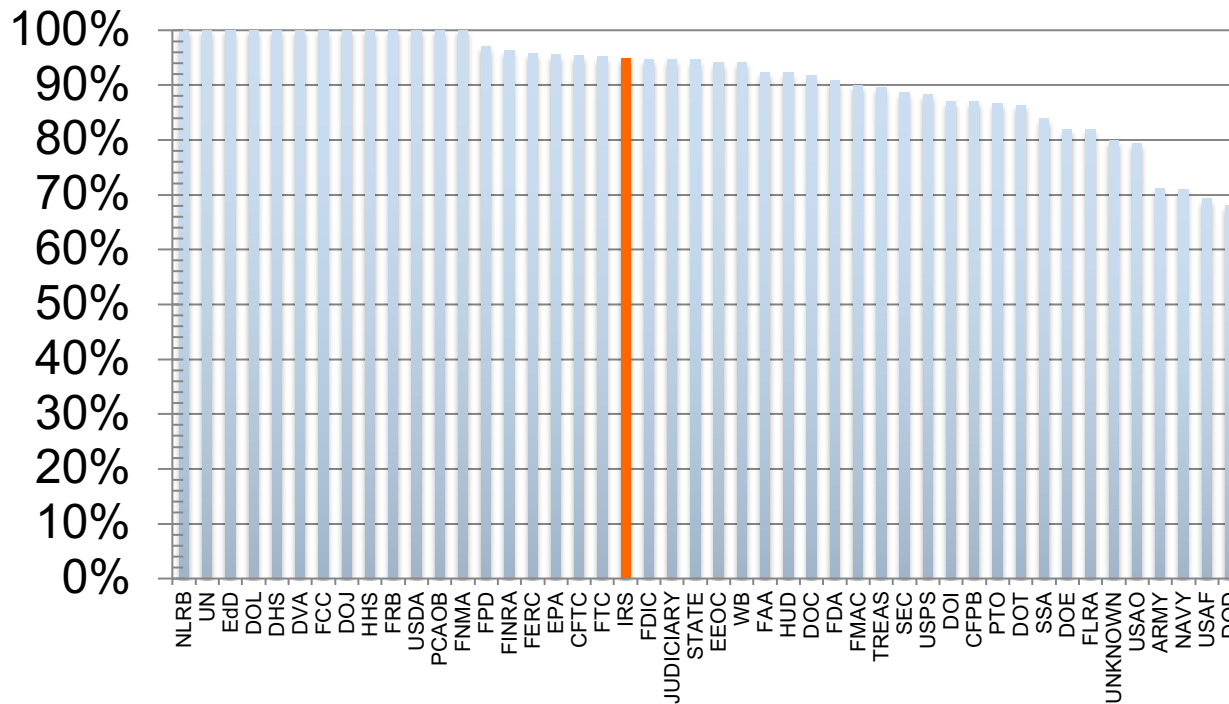
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- ⊙ Data sharing with FEC
- ⊙ Disclosure of confidential information to political opponents (e.g., ProPublica)

# Why violations were committed

## 5. Politicization of permanent government

Obama Share of 2012 Campaign Contributions  
Made by Federal Lawyers



Source: [Anderson 2013](#)



# Why violations were committed

## 6. Compliance required for federal benefit

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- ◎ 501(c) status is a public benefit
- ◎ IRS 'must' respond to (c)(3) applications ≤270 days
  - Number of violations is not known
  - Applicants may seek declaratory judgment
  - But judicial review exacerbates delay
- ◎ IRS has no obligation to respond to (c)(4) applications

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# REMEDIES

# Textbook remedies

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## ① Political controls

- Congressional oversight
- White House oversight
- TIGTA

## ① Process controls

- Public guidance
- Stakeholder participation
- Use IRS Manual

## ① Managerial controls

- Professional norms
- Managerial norms

## ① Legal controls

- Judicial review of rulemaking
- Judicial review of exercise of discretion

# Textbook remedies will fail

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## ⊙ Political controls

- Politicization can't solve excess politics
- WH is not a trusted supervisor

## ⊙ Process controls

- Agencies do not commit *hara-kiri*
- Law of Conservation of Discretion

## ⊙ Managerial controls

- More lawyers = more delay + more burden

## ⊙ Legal controls

- *Chevron* prong 2 ensures judicial review would be ineffective except in most egregious cases

# An effective alternative: Better PRA public protection provisions

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- ① Empower applicants to protect themselves
  1. Require meaningful public notice, not inscrutable boilerplate
  2. Establish agency procedures to quickly hear and act on alleged violations
  3. Allow judicial review of agency decisions, imposing significant sanctions for violations
  4. Bounty hunter and litigation expense provisions
- ② Require violations to be publicly disclosed

# Positive externalities of better PRA public protection provisions

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- ③ Other agencies would be subject to the same reforms
- ③ Of 9,134 active OMB control numbers, 3,690 (40%) require compliance to obtain a federal benefit
- ③ Rentseeking that restrains government enhances liberty and yields net social benefits

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# STRATEGY

# Achieving reform via the PRA

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- ③ Congressional action required
- ③ House Government Reform & Oversight has original jurisdiction over PRA
- ③ OMB is worthy indirect target
  - Ample evidence of nonfeasance and malfeasance
  - GAO audit
  - Model legislation