

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally *United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).<sup>4</sup>

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37,40 (D.D.C. 2001). Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).<sup>5</sup> In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; see also *Microsoft*, 56 F.3d

<sup>4</sup> The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also *SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

<sup>5</sup> Cf. *BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). See generally *Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so consonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is "within the reaches of public interest." *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the

court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.<sup>6</sup>

### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: March 5, 2008.

Respectfully submitted,  
Weeun Wang, Attorney,  
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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 08-026]

### Notice of Information Collection Under OMB Review

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 30 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Sharon Mar, Office of Information and Regulatory Affairs;

<sup>6</sup> See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

Room 10236; New Executive Office Building; Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The need for educational survey(s) is to inform NASA and specific projects about education and programmatic issues and topics leading to improved customer service for stakeholders. The NASA-funded education programs served are primarily from the Earth Science education initiatives.

**II. Method of Collection**

NASA will utilize a Web-based education survey to inform NASA and specific projects about education and programmatic issues and topics leading to improved customer service for its stakeholders. The NASA education programs served, including those from REASON (Research, Education and Applications Solutions Network) program are primarily from Earth Science initiatives.

**III. Data**

**Title:** NASA Education Customer Survey.

**OMB Number:** 2700-XXXX.

**Type of Review:** New Collection.

**Affected Public:** Individuals or households, business and other for-profit, and Federal Government.

**Estimated Number of Respondents:** 5000.

**Estimated Time Per Response:** 0.25 hours.

**Estimated Total Annual Burden Hours:** 1250.

**Estimated Total Annual Cost:** \$31,500.

**IV. Request for Comments**

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated

collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Gary Cox,**

*Associate Chief Information Officer (Acting).*

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**BILLING CODE 7510-13-P**

**NATIONAL INSTITUTE FOR LITERACY**

**National Institute for Literacy Advisory Board**

**AGENCY:** National Institute for Literacy.

**ACTION:** Notice of an open meeting with a closed session.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of an upcoming open meeting of the National Institute for Literacy Advisory Board. The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

**DATES:** April 24-25, 2008.

**Time:** April 24 from 8:30 a.m.-5 p.m.; April 25 from 8:30 a.m.-11:30 a.m. and 12:15 p.m.-2 p.m.; closed session April 25 from 11:30 a.m.-12:15 p.m.

**ADDRESSES:** On April 24: U.S.

Department of Labor, 200 Constitution Avenue NW., 5th Floor, Room C5515 (Executive Board Room), Washington, DC 20210. The general public is advised to notify Steve Langley no later than April 17, 2008 to attend the first day of the meeting at the U.S. Department of Labor. Mr. Langley can be reached at telephone number (202) 233-2043 or by e-mail at *slangley@nifl.gov*.

All attendees must have valid photo identification.

On April 25: The National Institute for Literacy, 1775 I St. NW., Suite 730, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:**

Steve Langley, Staff Assistant, the National Institute for Literacy, 1775 I St. NW., Suite 730; phone:(202) 233-2043; fax:(202) 233-2050; e-mail: *slangley@nifl.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** The National Institute for Literacy Advisory Board is authorized by section 242 of the Workforce Investment Act of 1998,

Public Law 105-220 (20 U.S.C. 9252). The Board consists of 10 individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group that administers the Institute. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services. The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals.

Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The purpose of this meeting is to discuss the Institute's future and current program priorities; status of on-going Institute work; other relevant literacy activities and issues; and other Board business as necessary.

On April 25, 2008 from 11:30 a.m. to 12:15 p.m., the Board will meet in closed session to discuss personnel issues. This discussion relates to the internal personnel rules and practices of the Institute, including consideration of the Director's term of appointment and performance. The discussion is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Steve Langley at 202 233-2043 no later than April 17, 2008. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

**Request for Public Written Comment.** The public may send written comments to the Advisory Board no later than 5 p.m. on April 17, 2008, to Steve Langley at the National Institute for Literacy,