



June 21, 2005

Lorraine Hunt
Office of Information and Regulatory Affairs
Office of Management and Budget, NEOB, Room 10202
725 17th Street, NW
Washington, DC 20503

RE: Draft 2005 Report to Congress on the Costs and Benefits of Federal Regulations

Dear Ms. Hunt:

OMB Watch appreciates the opportunity to comment on the Office of Management and Budget's Draft 2005 Report to Congress on the Costs and Benefits of Federal Regulations. These comments will focus on Chapter III of the draft report, which focuses on the implementation of the Information Quality Act (IQA) or Data Quality Act (DQA).

OMB Watch is a nonprofit research and advocacy organization that has as its core mission government accountability and improving citizen participation. Public access to accurate and reliable government information has been an important part of our work for more than 20 years. While OMB Watch supports efforts to promote the quality of government information, the DQA and its subsequent guidelines are a faulty way of approaching this issue. OMB's continued support of the DQA and its suggested reforms in the draft report need to be reassessed.

Background

In 2001, Congress passed the DQA provisions requiring the establishment of guidelines to ensure that information used by government agencies is of high quality. While promoting data quality may sound reasonable and innocuous enough, many government officials, public interest groups, academics and others expressed a great number of concerns that these particular policies could be misused to delay, derail and dilute safeguards and rules being written at federal agencies.

The first two years of the law's implementation have shown the law's burdens on agencies are not balanced by many benefits. Before Congress passed the DQA, agencies had data quality mechanisms in place, and there was never any evidence that a significant data quality problem existed. As OMB moved forward with implementation of the DQA, an appropriate role for the new mechanism would have been to simply fill in any gaps in agencies' data quality process. Instead, OMB used the DQA as a means to interfere in agencies' regulatory and information policies by establishing broad guidelines that encompass all information disseminated by agencies, regardless of the data quality processes already in place. Given the reasonable attention data quality was already receiving from agencies that deal with large amounts of information, it is not too surprising that the overarching guidelines have garnered few

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1742 Connecticut Ave NW
Washington, DC 20009



tel: 202.234.8494
fax: 202.234.8584



email: ombwatch@ombwatch.org
web: <http://www.ombwatch.org>

corrections. Agencies have internal processes like comment periods, peer review, and science advisory boards that provide opportunities for public input and extensive fact checking. As many believed would be the case from the beginning, industry primarily uses the law as a way to interfere with the regulatory process and to stop the dissemination of health and safety information to the public.

Correction Requests Processed by Agencies in FY03

In its 2005 draft report, OMB approximates that "35 substantive correction requests have been submitted by the public to the departments and agencies in FY03."¹ This is the report's first incorrect fact. As we will detail further in our comments, this is greatly downplaying the number of requests process under the DQA. Discounting less substantive requests ignores the fact that under the law and OMB guidelines, agencies have to use the same time-consuming process to document and respond to all requests. For FY03, agencies received well over 24,000 requests for correction.²

OMB also comments on the "influential" designation for requests agencies feel concerns "scientific, financial and statistical information having a clear and substantial impact on important public policies or important private sector decisions." In OMB's draft report it states, "Classifying correction requests as to whether or not they were influential has not been easy for the agencies... At least some agencies have told OMB that the lack of an 'influential' designation does not alter how the agency actually treats the correction request."³ Again, agencies must give the same attention to all requests no matter how influential or inconsequential the request may seem, with the end result being significant new burdens on agencies.

Furthermore, OMB Watch would like to take this opportunity to point out that the actual report template that OMB supplied to agencies for yearly reporting is inadequate at best. OMB provided agencies with details of the annual reports in an October 4, 2002 Memorandum for the President's Management Council, noting "the descriptions you provide to OMB should be designed to help us (and the public) understand the substance of the issues the agency has resolved through the administrative correction processes and the effectiveness of the administrative correction processes in resolving the concerns of the complainants."⁴

OMB released another memorandum in October 2003 providing agencies with a report template, which almost all reporting agencies used. It supposedly fulfills the requirements mentioned above. However, this template does not provide information useful in determining the effectiveness of agencies' correction processes or if the guidelines are being properly administered. Instead, it asks for the following information:

¹ Office of Management and Budget, "2005 Draft Report to Congress on the Costs and Benefits of Federal Regulations," March 9, 2005, p. 49. (online at http://www.whitehouse.gov/omb/inforeg/2005_cb/draft_2005_cb_report.pdf)

² OMB Watch, "The Reality of Data Quality Act's First Year: A Correction of OMB's Report to Congress," July 2004, p.6. (available at: <http://www.ombwatch.org/info/dataqualityreport.pdf>).

³ Office of Management and Budget, "2005 Draft Report to Congress on the Costs and Benefits of Federal Regulations," March 9, 2005, p. 47.

⁴ OMB's Memorandum For The President's Management Council "Guidance for the Information Quality Annual Agency Report to OMB," Oct. 17, 2003. (online at http://www.whitehouse.gov/omb/inforeg/pmc_oct03report.pdf)

- Agency Receiving Correction Request
- Requestor
- Date Received
- Summary of Request
- Description of Requested Correction
- Whether the Information is "Influential"
- First Agency Response
- Resolution
- Appeal Request
- Summary of Request for Reconsideration
- Type of Appeal Process Used
- Appeal Resolution

While this covers core data for individual requests received, it fails to collect valuable information about each agency's overall data quality programs. Quantifiable indicators offer more useful reference points—the number of staff that worked on data quality requests, total staff hours, total program costs, and budget allocation for the program. By totaling such metrics, OMB could gauge the IQA's impact throughout government and compare the difference in burden between agencies.

The report template should have also asked for an estimate of benefits, if any, yielded from information changes triggered by data quality petitions. Additionally, including space in the template for agency timelines of challenges would help track the pace of submissions. Within a larger scope, the OMB annual report template does not provide information about the IQA's overall impact on agency activities. That is, whether this new program adversely affects agencies' abilities to disseminate information, if it stalls rulemakings, or has any other unintended impacts on agencies' primary missions. Providing narrow request-specific summaries does not adequately address these larger impacts. If the aforementioned suggestions had been in the reports, OMB and the public could better analyze how data quality programs operated in Fiscal Year 2003 (FY03).

General Evaluation: Perceptions and Realities

In the "General Evaluation" section of the 2005 draft report, much of the information provided by OMB derives from its FY03 report to Congress on the perceptions and realities of the DQA. OMB Watch published a report that challenges OMB's sense of the "reality" in July 2004, entitled "The Reality of Data Quality Act's First Year: A Correction of OMB'S Report to Congress," and many of these findings are still relevant.⁵

The information OMB provides suffers from several problems, which, taken as a whole, probably would fail standards established under the OMB's own information quality guidelines. For example, because OMB authored the IQA guidance for agencies and oversees the program, it is hard to determine if OMB is fairly evaluating IQA implementation. In the information guidelines' own terms, one can question OMB's objectivity. The very selection of the "perceptions" OMB addresses and the responses themselves indicate that OMB goes out of its way to put the best spin on the IQA. Many of OMB's insights in these responses contain erroneous information and misleading statements. These factual inaccuracies clearly constitute

⁵ OMB Watch, "The Reality of Data Quality Act's First Year: A Correction of OMB's Report to Congress," July 2004. (available at: <http://www.ombwatch.org/info/dataqualityreport.pdf>).

a failure in the integrity of the report's information, another key criterion under the information guidelines. The report does not explain the methodologies used in evaluating the DQA programs, thereby compromising the information's transparency and reproducibility.

OMB Watch has re-analyzed the perceptions OMB presents and have detailed their exact problems and shortcomings.

PERCEPTION #1: "Information Quality Act was a last minute addition to the appropriations bill"

OMB'S RESPONSE: It was not a last-minute addition, previous legislative language asked for the requirements.

REALITY: The DQA was a last minute addition to a bill that was never debated by Congress.

In the 2005 draft report, OMB asserts that language in multiple appropriations bills mandated the development of information quality guidelines, and therefore it had the appropriate amount of debate. However, OMB Watch finds it highly questionable that OMB does not specifically quote these other mandates. It is also revealing that OMB did not list any other provisions or legislation—appropriation or otherwise—in the DQA guidelines it produced to instruct agencies in implementation of the DQA. Additionally, the explanation that provisions in other appropriation bills guarantees that the concepts had sufficient debate is incorrect. While previous appropriation bills contained report language addressing the importance of data quality as an issue, none of the provisions mandated a government-wide mechanism. It is one thing to have discussions about an issue, but that does not replace careful consideration and debate about the merits of a formal program or the details of an appropriate mechanism. Congress never debated the mandate to create data quality standard, no discussions on the scope, the purpose, the merits, the limits.

OMB did not present this perception in its FY03 report; however the explanation is similar to one in a short report on DQA published by the Republican Policy Committee (RPC) earlier this year.⁶ In that report, RPC asserts that the DQA was not a last-minute rider that had no debate in Congress (it was attached to the Treasury and General Government Appropriations Act for Fiscal Year 2001 at the last second by Rep. Jo Ann Emerson (R-MO)). The RPC explains that the DQA was simply another version of the data quality measures contained in the Paperwork Reduction Act of 1995, and that several hearings were held on that law. Although the Paperwork Reduction Act does mention quality of information several times, it does not contain any instructions for specific criteria or the creation of a mechanism to allow companies to challenge particular information. Therefore, any hearings or analyses could not have explored the issue substantively since the law only vaguely alluded to the principle. The RPC's claim that this was equal to debate on the DQA is unconvincing.

OMB Watch recommends that this section be eliminated from the final report. The legislative history of the DQA is entirely irrelevant to any summary of OMB's actions to implement the act.

⁶ Republican Policy Committee, "The Data Quality Act: History and Purpose," Jan. 18, 2005. (available at http://rpc.senate.gov/_files/Jan1805DQAbackgrounderPG.pdf.)

PERCEPTION #2: "Agencies might be inundated with requests for corrections."

OMB'S RESPONSE: Agencies received about 35 requests.

REALITY: Agencies received 24,618 total requests for correction in FY03 and after eliminating requests previously handled through other procedures, 98 IQA requests remain.

During FY03, agencies received 24,618 requests to correct information. While OMB acknowledges that there may be more than 35 requests, it dismisses many of these requests, explaining that many of these information corrections "had previously been addressed through a different mechanism at the agency."⁷

For instance, OMB claims that the 24,433 requests received by the Federal Emergency Management Agency (FEMA) and the 87 received by the Federal Motor Carrier Safety Administration (FMCSA) were types of requests that these agencies received prior to the IQA.

However, even after subtracting those requests, 98 requests still remain from FY03, nearly triple the number cited by OMB. Considering these challenges came under the IQA and its guidelines during this first year, nearly 100 new data challenges seem like significant use.

Additionally, it should be noted that these numbers only address the initial requests for data correction. Under the information quality guidelines, each agency must also provide an administrative mechanism to handle reconsideration requests, or appeals, from those dissatisfied with an initial request's outcome. In many respects these appeals amount to entirely new requests. Many agencies have completely different procedures to respond to appeals. Requestors often cite new issues and reference new reports. According to OMB Watch's analysis of agency reports, there have been 16 reconsideration requests filed in addition to the 98 substantive requests.

OMB misrepresents the burden the DQA imposes on agencies. OMB Watch believes the use of the term "inundated" in the perception, misdirects the focus and makes the outcome to appear overly positive. However the reality is that agencies received a significant number of requests in FY03, especially when considering the program's young age. Additionally, these requests come at the expense of burden increases and diversions of resources from other activities. OMB Watch recommends that OMB rewrite this section to include a more accurate and complete accounting of the DQA challenges received and more honest estimation of the burden on agencies.

PERCEPTION #3: "The Information Quality correction process is a review mechanism that would be used only by industry."

OMB'S RESPONSE: Everyone has used it.

REALITY: The IQA has predominately been used by industry. Several other categories of stakeholders have used the IQA but in much smaller numbers.

⁷ Office of Management and Budget, "Information Quality: A Report To Congress," Apr. 30, 2004, pp. 8-9. (online at http://www.whitehouse.gov/omb/inforeg/fy03_info_quality_rpt.pdf)

In OMB's FY03 report, it asserted that the IQA has been used by everyone. In the 2005 draft report, it makes the same statement, although qualifies it. OMB acknowledges that industry is the primary user of the law and, for the first time states that "one would expect that private-sector groups most affected by disseminations would be active users of the correction request process."⁸

OMB cites both OMB Watch's 2004 report, which found that 72 percent of requests were filed by industry, and also an article in the *Washington Post*, which found a higher percentage of industry filings for petitions with potentially broad impacts.⁹

Most of the contested information relates to health, safety and environment—toxicology reports, transportation safety reports, health advisories, a global warming report, etc. Many of the petitioners sought correction of information that would directly affect their business interests. OMB Watch recommends OMB provide a specific accounting for the level of use the DQA has received from different stakeholders, either in percentages or total challenges.

PERCEPTION #4: "The Information Quality Act could result in slowing down the regulatory process and chilling agency disseminations."

OMB'S RESPONSE: There has been no noticeable slowdown in regulatory process and agency disseminations are not chilled by the guidelines.

REALITY: The IQA is a slow process that has contributed to an overall slowdown in regulatory action and rulemaking under the Bush administration. Information quality challenges have sought to chill agency disseminations. It remains unclear how the guidelines affect agencies' dissemination of new information.

In both the FY03 and the 2005 reports, OMB asserts that the IQA has not slowed down the regulatory process at all. In support of this contention in the FY03 report, it argued that the regulatory agendas it received twice a year from agencies indicate that there has been no change in the speed of rulemakings. OMB Watch pointed out that the regulatory agendas offer no insight into the connection between the IQA and speed of the regulatory process. They may be useful in analyzing regulatory priorities and objectives by looking at the number and types of regulations introduced, removed, and/or completed. But, there is no way to directly connect the IQA's impact on rulemaking through the regulatory agendas.

In the 2005 draft report, OMB no longer rests its case on the regulatory agenda but continues to maintain that there has been no adverse effect on rulemakings. Instead it states that it "believes that only 5 correction requests were directly related to a rulemaking." Regardless of how many rulemakings are directly challenged by DQA requests for correction, the fact remains that these challenges can slow down and influence agencies' processes to develop and disseminate information. This overly simplistic view also completely ignores the fact that information is a vital part of the overall regulatory process. OMB's statement only considers the impact on the regulatory process in its final stages—rulemaking. The rulemaking process contains many earlier steps—collecting information, conducting research, discussing options,

⁸ Office of Management and Budget, "2005 Draft Report to Congress on the Costs and Benefits of Federal Regulations," March 9, 2005, p. 52.

⁹ Rick Weiss, "'Data Quality' Law is Nemesis of Regulation," *Washington Post*, Aug. 16, 2004, p.A-1.

and garnering feedback—all of which depend on information. Any policy that could impact these functions at an agency can slow down the process and eventually result in weaker, less effective rules.

In fact, evidence indicates that an ongoing overall slowdown in the regulatory process under the Bush administration is occurring, despite OMB's statement. Stakeholders have noticed a slowdown in the regulatory process due to a number of new OMB policies including the IQA. One former high-level career civil servant at EPA recently argued that this policy is being used to slow down the work at EPA, directly affecting regulatory work.¹⁰

With budget cuts seen at a number of agencies, they are working with limited resources. The new data quality guidelines force a resource shift away from normal agency duties in order to answer these requests. OMB's FY03 report clearly describes one way the IQA slows down agency activities, including rulemaking, by taking an unexpectedly long time to resolve requests.

Agencies are finding that it takes longer than they expected to respond to correction requests. Similarly, it is also taking longer than expected for agencies to implement the appeals processes. At some of the larger agencies, finding the correct specialist to respond to specific requests has not been an easy task. Furthermore, ensuring that the correct specialist has sufficient time to give priority to an information quality correction request has also been challenging.¹¹

OMB's above statement proves that finalization or implementation of regulations, both developed and emergent, can be delayed because the resolution of data quality requests is time intensive. For example, EPA conducted a risk assessment of the herbicide atrazine in April 2002.¹² The results indicated it causes endocrine disruptions for a number of organisms including frogs, an important indicator species. EPA was considering possible regulatory action in light of this finding. The Center for Regulatory Effectiveness (CRE), an industry-funded organization, challenged the underlying test methods of the risk assessment in order to delay any regulatory action on atrazine.

This verifies public interest groups' concerns—that industry would try using the IQA to manipulate the regulatory process. Agencies such as EPA have significant experience weighing conflicting information and partial data when determining appropriate regulatory directions. The regulatory process already allows several opportunities for stakeholder participation. The IQA should not become a backdoor for industry to increase its already substantial influence over the process.

While OMB says it has "no evidence that points to a reduced number of agency disseminations," it also has no evidence to the contrary. Neither OMB nor the public is able to judge if the information guidelines chill or alter agencies' information dissemination plans. Agencies do not provide a public schedule for the release of agency materials. Therefore, one cannot detect any change in agencies' disseminations, much less one attributable to a specific policy. Only direct information gathering from agency officials would indicate whether the IQA

¹⁰ Sylvia Lawrence, statements at the Center for American Progress/OMB Watch event releasing a report entitled "Special Interest Takeover," Mar. 25, 2004.

¹¹ Office of Management and Budget, "Information Quality: A Report To Congress," pp. 9-10.

¹² Environmental Protection Agency, "Registration Eligibility Science Chapter for Atrazine: Environmental Fate and Effects Chapter," Apr. 22, 2002.

prompts the alteration of information development and dissemination procedures. Once again, OMB's poor report template missed a key opportunity to clarify this issue.

OMB should correct its statement in the final report to acknowledge that the impact of the DQA on the regulatory process and information dissemination remains unknown at this point. OMB should insert a commitment into the report to collect the needed information from agencies to make an accurate assessment of whether the DQA affects the regulatory process or chills information dissemination.

PERCEPTION #5: "The appeals process, the public's opportunity to ask for reconsideration of a correction request, will not improve anything."

OMB'S RESPONSE: The appeals process has been used by almost everyone and fosters corrections.

REALITY: The appeals process has neither been highly used nor produced significantly useful corrections; it primarily represents another opportunity to use delay tactics and influence agency action.

In its 2005 draft report, OMB asserts, "Most of the responses to requests for correction that were denied in FY03 have subsequently been appealed." This claim is entirely incorrect. In reality, out of the 98 requests received in FY03 (not including the FEMA or FMCSA requests) 58 were denied and only 16 (28%) of those were subsequently appealed. It is unclear under what methodology OMB classifies 28 percent as "most."¹³

The report also states that the appeal process "appears to have fostered corrections." Only five appeals, about a third of those filed, actually resulted in partial or full corrections. According to OMB's own evaluation, four of these corrections were for non-influential information. These figures do not support OMB's characterization that the appeal process has been significantly useful.

OMB Watch would like to note that Congress did not include an appeals process requirement in the IQA—OMB added it when drafting guidelines for the agencies. It appears as though the appeals process serves only to provide further opportunities to delay agencies' action and dissemination of information. While it may be important to have an appeals process, agencies already provide such an opportunity through the public comment process for rulemakings. Under this mechanism, if an agency creates a new rule or alters a standard because of disputed information, a formal notification process alerts stakeholders of changes and they can then reassert their position in a public comment process. Therefore, an IQA appeals process is duplicative of the public comment process and provides little benefit to agencies.

OMB Watch urges OMB to correct this section of the report and accurately describe the appeals process as infrequently used and resulting in few substantive corrections.

¹³ Office of Management and Budget, "2005 Draft Report to Congress on the Costs and Benefits of Federal Regulations," March 9, 2005, p. 53.

PERCEPTION #6: "The Information Quality Act is only about numerical data."

OMB'S RESPONSE: IQA is about all types of information and analyses.

REALITY: This is not a common perception; the real perception issue among petitioners seems to be the reverse—that any and all information is covered by the IQA, which is untrue.

OMB correctly states that the IQA "has been used to address complex issues and analyses." Agencies handle IQA requests challenging everything from risk analyses to guidance documents to agency reports. However, a serious debate over this issue has never been raised and this misleading "perception" implies that stakeholders were concerned the IQA would cover only numerical data. This is simply not the case. Reviewing the comments submitted to OMB and individual agencies on the IQA guidelines reveals that stakeholders' concerns were about how broadly the information guidelines would be applied to agencies' information.

OMB's original guidance to agencies established several forms of information and dissemination methods that are not covered by the IQA. These exemptions were sensible restrictions that allow for smooth agencies operations—timely responses to Freedom of Information Act requests and citizens' letters or emails, and development of presentation materials, speeches and databases that compile reports from regulated industry. However, numerous industry comments urged OMB to apply the IQA guidelines to all information generated and disseminated by agencies. Challenges reflect these desires by unreasonably targeting information the IQA does not technically cover including spoken statements, meeting minutes, and web links.

OMB Watch recommends that this perception be broadened to address the confusion about the scope of the DQA and its guidelines. We also urge OMB to better describe not only what information the IQA covers but also what information is not covered. OMB issued memos to agencies explaining that IQA challenges received during the comment period of rulemakings should be handled through the public comment process rather than separately under the IQA mechanism. Additionally, in OMB's original IQA guidelines several examples of information and dissemination were provided that would not be covered under the IQA. After two years of implementation, OMB should provide a more complete listing of the types of information and forms of dissemination that are not covered by the IQA.

PERCEPTION #7: "Colleges and universities are regulated by the Information Quality Act."

OMB'S RESPONSE: Colleges and universities are not regulated under the IQA.

REALITY: While colleges and universities are not "regulated" by the IQA, the guidelines could have an unintended secondary effect on research. Challenges could aim to eliminate or alter any academic studies used by federal agencies.

The final "perception" OMB addresses in its report to Congress sheds little light on IQA's impact on academic research. Colleges and universities are not covered under the IQA and OMB clearly conveys this point in its response. "The Information Quality Act covers only disseminations by Federal agencies, specifically those agencies covered by the Paperwork Reduction Act. The Act does not cover colleges and universities, even when Federal research funding is involved. More generally, the law covers only agency disseminations, not disseminations made by third parties (e.g., academics, stakeholders and the public)." However,

OMB's response ignores the fact that the IQA establishes new information standards for any data supporting agency actions. If colleges and universities anticipate agencies will use their research, then the IQA may eventually be used in data evaluation. Hence, the IQA may unintentionally alter or influence prominent colleges and universities' research practices.

This perception is the result of an industry-funded lobbying group's efforts to expand the IQA's delays to colleges and universities, which regularly produce the underlying research for protective regulations. In August 2003, CRE sent a letter to universities and their national organizations urging them to review their data quality standards. CRE also made specific recommendations for university compliance with the IQA.¹⁴

This action by CRE was unfounded and unwarranted. It was meant to discourage academics from submitting comments and materials to federal agencies. Academia produces valuable information for federal agencies, as it contains expertise and resources that many government agencies depend on. However, it emphasized a long-standing effort by industry to shape academic research.

OMB should further emphasize the fact that the DQA does not apply to colleges and universities and these institutions should not operate under the assumption that they do.

Legal Developments under the Information Quality Act

OMB summarizes the two court cases filed under the IQA since its inception—one a direct result of a request for correction under the law, and another related case. Both rulings correctly identified the fact that there are no provisions in the law that allow for judicial review. What OMB fails to mention, is that not only have the courts affirmed this, but the Department of Justice did as well.

The Justice Department issued a brief June 25, 2004 recommending the dismissal of a lawsuit filed by the Chamber of Commerce and the Salt Institute under DQA. DOJ asserts that the court does not have subject matter jurisdiction, and even if it did, there is no statutory basis for federal court review, as the DQA contains no provisions allowing private parties to enforce the statutory terms in court.¹⁵

It is clear that some parties would like the DQA to be judicially reviewable—primarily industry groups. Because the DQA is focuses on guiding agency decisions, it is important that agencies maintain the flexibility to adapt the law to their needs. More importantly, decisions about agency information must be made by the experts at the agencies and not the courts.

Increasing Transparency under the Information Quality Act

In OMB's draft report, it notes that while it believes it is too early to recommend legislative changes to the DQA, it did offers agencies suggestions for improving the process. This included increasing transparency; increasing timeliness of agency responses; increasing engagement of agency scientific and technical staff; and earlier consultation with OMB.

¹⁴ Center for Regulatory Effectiveness, "Letter to Jane Buck, President of American Association of University Professors," Aug. 6, 2003. (available at <http://www.thecre.com/pdf/universityDQltrBuck.pdf>)

¹⁵ Department of Justice, "Memorandum in Support of Defendant's Motion to Dismiss," June 25, 2005. (available at http://www.ombwatch.org/info/dataquality/justice_dept_brief.pdf)

OMB focuses on the transparency recommendations, which it also covered in an August 2004 memo from OMB to agencies, requesting online dockets for all DQA requests.¹⁶ To that date, only a few agencies had posted such dockets. Currently, over 25 have the online dockets. Additional agencies have webpages devoted to DQA, but they are limited to the guidelines and provide no information on actual challenges. OMB Watch believes that providing online access to DQA request is vital to ensuring the transparency of the law and its processes, and we applaud the agencies that are doing so.

OMB's other recommendations are not detailed in this report, but merit brief discussion. Its point about increasing timeliness is a complicated matter. Response time has been extensive for some requests, with many taking months. Obviously, it is generally preferable for any government procedure to be completed sooner rather than later. However, as many critics pointed out in the beginning, the law does impose burden (in staff time, resources, etc.) on the agencies, the extent of which has never been accurately assessed. While requiring agencies to respond to IQA challenges more quickly might seem like an improvement, such a speed up could force agencies to shift resources from other activities. Therefore, while agencies should be mindful of the timeliness issue, it is hard to recommend any solutions without the contextual information. OMB Watch recommends OMB remove this suggestion, until such time that the office has better information on the burden the IQA places on agency resources.

OMB's recommendation to further involve technical staff and experts also contributes to the problem of timeliness and adds to the burden on agencies. At the law's inception, OMB Watch warned that using specialists' time to respond to administrative requests may not be an effective use of public dollars. While it is important to get the proper people responding to requests, agencies must consider the current agency activities and priorities that are delayed because they do not have the attention of these experts and technical staff.

In regard to earlier consultation with OMB, Congress, according to the precise wording of the IQA, only instructed OMB to "issue guidelines...that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality" of data disseminated. The IQA also includes requirements that agencies report "periodically" to the OMB Director about implementation of the guidelines. However, the IQA does not designate OMB to monitoring the quality of information disseminated by agencies. Nor does the IQA instruct OMB to interfere in individual information quality disputes.

Initially, OMB seemed to understand this boundary. OMB established the guidelines but the agencies were responsible for adapting and implementing their own standards. John Graham stated at a data quality workshop that he believed "it is unlikely that OMB will play a major role in resolving information-quality disputes on a case-by-case basis." He went on to describe OMB's oversight role as using the annual reports to evaluate design and implementation of agency procedures.¹⁷

¹⁶ Office of Management and Budget, Memorandum from John D. Graham to the President's Management Council, Aug. 30, 2004. (available at http://www.whitehouse.gov/omb/infocore/info_quality_posting_083004.pdf.)

¹⁷ John Graham, Remarks to National Academy of Sciences Workshop on Information-Quality Guidelines concerning "OMB's Role In Overseeing Information Quality," Mar. 21, 2002, p. 11.

Unfortunately, a few months later OMB instructed agencies differently in a Memorandum for the President's Management Council. In this document, OMB requested that agencies provide OMB with copies of requests, appeals and agency responses for key complaints—those related to major policy questions; those challenging "influential" information or information of strong interest to two or more agencies; requests that raise novel procedural, technical or policy issues concerning IQA; or where complainant alleges a reasonable likelihood of suffering actual harm from that dissemination. OMB also requested that agencies invite OMB to any meeting with any outside parties concerning information quality complaints in these categories.¹⁸

OMB asserted that this regular interaction with agencies about specific information quality challenges would provide it with a concrete sense of what issues were being raised and how they were being resolved. Additionally, OMB predicted that the information would allow it to "provide the agencies with clarifying guidance and assistance on applying the OMB guidelines" and "discuss with agencies the issues that have been raised regarding the case-specific application of the OMB Information Quality Guidelines."

Some months later, OMB produced a bulletin proposing new government-wide standards for scientific peer review. The office claimed that it derived its authority in part from the IQA and that the proposal built on the information quality guidelines. Within the draft bulletin, OMB reiterated its requirement that agencies provide it with copies of non-frivolous information quality challenges. The bulletin also contained a consulting requirement for agencies that "if requested, consult with OIRA regarding the request." OMB asserted that this requirement would assist "in discharging its responsibility under the Information Quality Act to monitor the quality of information disseminated to the public." However, the IQA did not assign OMB any such monitoring responsibility.¹⁹ OMB Watch urges OMB to drop this recommendation and return to the limited role authorized by Congress.

Role of OMB's New Peer Review Policy

In the draft report, OMB touts its new Peer Review Bulletin, stating:

OMB is confident that the requirements of the Final Peer Review Bulletin will assist in improving the accuracy and transparency of agency science. Additionally, the peer review planning process described in the Bulletin, which includes posting of plans on agency websites, will enhance the ability of OMB to track influential scientific disseminations made by agencies.²⁰

However, OMB Watch believes the Peer Review Bulletin to be severely flawed for several reasons. First, OMB states that authority for the peer review policies is implied in the Information Quality Act and OMB's general authorities. This is incorrect, as none of the laws or executive orders referenced provide any specific instructions on peer review. Furthermore, OMB did not seek any clarifying or supporting language from Congress. OMB should explain to Congress in this report the theory used to extrapolate authorization for a Peer Review policy

¹⁸ Office of Management and Budget, "Memorandum For The President's Management Council: Executive Branch Implementation of the Information Quality Law," Oct. 4, 2002, p. 3.

¹⁹ Office of Management and Budget, "Peer Review and Information Quality Proposed Bulletin and Request for Comment," Aug. 29, 2003, p. 7.

²⁰ Office of Management and Budget, "2005 Draft Report to Congress on the Costs and Benefits of Federal Regulations," March 9, 2005, p. 57.

from multiple provisions that do not specifically require such action. This would provide Congress with an opportunity to clarify if previous provisions were meant to authorize such policies.

OMB also implies that a problem has been identified and defined. However, OMB has not been able to articulate or establish that an overarching problem or failure of peer review policies has occurred at federal agencies. While OMB has referenced various materials about peer review, none of them address government wide issues, nor do any recommend the establishment of uniform requirements for scientific peer review. Instead, materials OMB references address the importance of peer review, the need for changes at certain agencies, or types of reviews. Yet, without a clear understanding of any problem in peer review standards, OMB finalized these policies assuming they will do more good than harm.

In the peer review provisions, OMB again places itself in the role of oversight. Specific provisions invest OMB with the authority to grant exemptions, approve alternative peer review processes, and designate information for stricter review requirements. OMB requires all federal agencies to submit an annual report to OMB detailing the use of peer review for the fiscal year. It is important to note that while OMB has hired some staff with scientific and technical backgrounds, it remains a political office, not a scientific office. OMB Watch continues to believe that the bulletin grants too much influence over the scientific peer review process to the politically-motivated offices of OMB and the Office of Science and Technology Policy. Such power would enable an administration to easily influence peer reviews and in turn, the rulemakings that follow. OMB should remove itself from the role of oversight and place the responsibility with an objective scientific organization with more experience on the subject of peer review, such as National Academies of Science or the National Institutes of Health.

OMB Watch also believes that the Peer Review Bulletin's requirement for the independence of reviewers is flawed. While the bulletin acknowledges that it is possible for government employed experts to provide independent and unbiased advice while reviewing government information, it implies that even government experts completely separate from the agency producing the material to be reviewed should generally not be used except in rare circumstances. Experts associated with affected industries are still allowed to serve as peer reviewers with only a requirement that their affiliations be disclosed. This results in an uneven treatment of experts inside and outside of government. We should not penalize experts for serving their country in government positions; we should utilize their expertise to the fullest. OMB should remove the independence requirement and allow government experts to serve as peer reviewers as long as they disclose their affiliation to a government agency just as industry funded experts must do.

Additionally, OMB's peer review policies will likely exacerbate the delays caused under the IQA because OMB instructs agencies to engage in the peer review agenda process and provide an opportunity for public comment at several stages. This is further complicated, as OMB lists 10 specific requirements for each entry on an agency's peer review agenda. The proposal also adds new requirements—each agency must submit annual peer review reports to OMB and certifications in the administrative record about how the agency has complied with the requirements of this peer review policy for each and every piece of highly influential scientific information.

OMB should collect information on the impacts of the Peer Review Bulletin on agencies' ability to develop and disseminate information in a timely manner and report these impacts to Congress.

Conclusion

In summary OMB Watch recommends the following modifications to OMB's Report to Congress:

- Eliminate perception #1 from the final report. The legislative history of the DQA is entirely irrelevant to any summary of OMB's actions to implement the act.
- Rewrite Perception #2 to include a more accurate and complete accounting of the DQA challenges received and more honest estimation of the burden on agencies.
- Provide a specific accounting for the level of use the DQA has received from different stakeholders, either in percentages or total challenges.
- Correct the final report to acknowledge that the impact of the DQA on the regulatory process and information dissemination remains unknown at this point. Also commit to collecting the needed information from agencies to make an accurate assessment of whether the DQA affects the regulatory process or chills information dissemination.
- Correct Perception #5 in the final report so that it accurately describe the appeals process as infrequently used and resulting in few substantive corrections.
- Provide a more complete listing of the types of information and forms of dissemination that are not covered by the IQA.
- Emphasize the fact that the DQA does not apply to colleges and universities and these institutions should not operate under the assumption that they do.
- Include information about the Department of Justice's brief on whether the DQA is judicially reviewable.
- Remove the suggestion for agencies to respond to requests for correction more quickly until such time that OMB has better information on the burden of the IQA on agencies.
- Drop the recommendation for more collaboration with agencies and return to the limited role authorized by Congress.
- Collect information on the impacts of the Peer Review Bulletin on agencies' ability to develop and disseminate information in a timely manner and report these impacts to Congress.

We thank you for considering these comments.

Sincerely,



Sean Moulton
Senior Information Policy Analyst



Cheryl Gregory
Information Policy Analyst