

FEDERAL DATA QUALITY ACT AND OMB GUIDELINES

Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 set forth the provisions and requirements for the Federal Data Quality Act of 2001. See Consolidated Appropriations for Fiscal Year 2001, Pub. L. No. 106-554 (HR 4577), 114 Stat. 2763 (December 21, 2000). Section 515(a) directs the Office of Management and Budget (“OMB”) to issue government-wide guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.” Sec. 515(a) of Pub. L. No. 106-554, 114 Stat. 2763 (2000).

On September 28, 2001 the OMB published in the Federal Register its Congressionally-mandated “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies.” 66 Fed. Reg. 49718 (Sept. 28, 2001).¹ Congress directed the OMB that the guidelines shall:

- (1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and
- (2) require that each Federal agency to which the guidelines apply –
 - (A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency;
 - (B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

¹ The original guidelines were published, with request for additional comments, on September 28, 2001. See 66 Fed. Reg. 49718. The new guidelines, after comments, were printed in the Federal Register on January 3, 2002. See 67 Fed. Reg. 369. The new guidelines were corrected on February 5, 2002. See 67 Fed. Reg. 5365. Due to numerous errors, the final guidelines were printed on February 22, 2002. See 67 Fed. Reg. 8452.

- (C) report periodically to the Director –
 - (i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and
 - (ii) how such complaints were handled by the agency.

Sec. 515(b) of Pub. L. No. 106–554, 114 Stat. 2763 (2000). “In accordance with section 515, OMB has designed the guidelines to help agencies ensure and maximize the quality, utility, objectivity and integrity of the information that they disseminate (meaning to share with, or give access to, the public).” 67 Fed. Reg. 8452.

The OMB developed their guidelines with several principles in mind. First, the guidelines are designed to apply to a wide variety of government information dissemination activities that may range in importance and scope. OMB also designed the guidelines to be generic enough to fit all media, be they printed, electronic, or in other form.

Second, the guidelines were designed so that agencies will meet basic information quality standards. According to the OMB, “it is clear that agencies should not disseminate substantive information that does not meet a basic level of quality.” 67 Fed. Reg. at 8452.

Finally, OMB designed the guidelines so that agencies can apply them in a common-sense and workable manner. “It is important that these guidelines do not impose unnecessary administrative burdens that would inhibit agencies from continuing to take advantage of the Internet and other technologies to disseminate information that can be of great benefit and value to the public.” *Id.* at 8453.

The OMB guidelines contain three substantive parts. First, the guidelines require agencies to “develop a process for reviewing the quality (including the objectivity, utility, and integrity) of information before it is disseminated.” *Id.* at 8459. This process is referred to as

pre-dissemination review. “This process shall enable the agency to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.” Id. (emphasis added).

Second, the guidelines require agencies to establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines. Id.

Third, and most importantly, Federal agencies shall adopt a basic “standard of quality” as a performance goal. “Quality is to be ensured and established at levels appropriate to the nature and timeliness of the information to be disseminated . . . [a]gencies shall adopt specific standards of quality that are appropriate for the various categories of information they disseminate.” Id. at 8459. This “standard of quality” is the crux of the Federal Data Quality Act and OMB guidelines.

There are four substantive terms incorporated into the “standard of quality” requirement: quality, utility, objectivity, and integrity. In the guidelines, OMB defines “quality” as the encompassing term, of which “utility,” “objectivity,” and “integrity” are the constituents. See id. at 8453. “Utility” refers to the usefulness of the information to the intended users, including the public. Id. “Integrity” refers to the security of information — protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. Id.

“Objectivity” is the most important component of the “standard of quality.” “Objectivity” focuses on whether the disseminated information is being presented in an accurate, clear,

complete, and unbiased manner, and as matter of substance, is accurate, reliable, and unbiased.

Id. “Objectivity” involves two distinct elements: presentation and substance. First, “objectivity” includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. Id. The OMB explains this “presentation” element as follows:

This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, the agency needs to identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a scientific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users.

Id. at 8459.

Second, “objectivity” involves a focus on ensuring accurate, reliable, and unbiased information (i.e. substance element). See id. “In a scientific, financial, or statistical context, the original or supporting data shall be generated, and the analytical results shall be developed, using sound statistical and research methods.” Id. “If data and analytical results have been subjected to formal, independent, external peer review, the information can generally be considered of acceptable objectivity.” Id. (emphasis added).

Furthermore, in situations involving “influential scientific and statistical information,” the results must be capable of being substantially reproduced, if the original or supporting data are independently analyzed using the same models.² This means that independent analysis of the

² “Influential” means the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions. 67 Fed. Reg. at 8460.

original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error. See id. at 8460.

The analysis above constitutes the requirements of the Federal Data Quality Act and the OMB implementing guidelines. Each Federal agency is required to submit for public comment draft-guidelines in accordance with the OMB guidelines no later than May 1, 2002. See 67 Fed. Reg. 9797 (Mar. 4, 2002). Attached to this memorandum is a copy of the Environmental Protection Agency's draft guidelines. I have been unable to locate guidelines for the Forest Service, or the Fish and Wildlife Service. Final guidelines must be issued no later than October 1, 2002.

There is one noticeable limitation in the OMB guidelines regarding the types of information that are subject to these guidelines. Dissemination means "agency initiated or sponsored distribution of information to the public." 67 Fed. Reg. at 8454. However, dissemination does not include "intra- or inter-agency use or sharing of government information." Id. This could prove to be a significant limitation concerning Federal reports such as Biological Assessments or Biological Opinions. While case law has not yet developed under this new law, any sources of scientific information prepared solely for use between or among agencies, and not designed specifically to be shared with the public, may not be subject to the aforementioned quality guidelines or requirements.

In 2004, the OMB issued a memorandum requiring that, after June 15, 2005, influential scientific information representing the views of the department or agency cannot be disseminated by the federal government until it has been peer reviewed by qualified specialists. OMB, Final Information Quality Bulletin for Peer Review (Dec. 16, 2004), available at

http://www.whitehouse.gov/omb/memoranda_fy2005_m05-03.

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