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**OIRA Administrator Calls New Guidelines a “Good Start”; Higher Quality Information Expected**

**Washington, D.C.** -- In a memo to the President's Management Council released today, the OMB Office of Information and Regulatory Affairs (OIRA) praised federal agencies for issuing new guidelines that will improve the quality of information provided to the American people. A copy of the memo, which includes a detailed evaluation of the agencies' draft guidelines, follows this release.

“Receiving trustworthy information from the government is vital to the well-being of American communities and families. I am pleased to report that agencies have made a good start at improving the quality of this information for all Americans,” said OIRA Administrator John D. Graham.

Graham commented that “the power of government information is enormous. A single statistic on a government Web site can cause a consumer to change his or her diet, a producer to stop using a specific input, an employee to refrain from making an equal-opportunity claim, and a mayor's office to allocate scarce funds to one health program rather than another.”

In its detailed evaluation, OIRA proposes constructive strategies for improving the agencies' draft guidelines. The evaluation also highlights the quality of the agencies' administrative mechanisms for addressing public complaints.

The size and scope of the information released by the federal government is vast, as is its effect on the lives of many Americans. Leveraging the power of the Internet, the government regularly provides citizens with population figures, cost-benefit analysis reports, and economic indicators. Every statistic that government releases could be improved through the implementation of better data quality guidance.

The draft guidelines come as part of a year-long effort that began on September 28, 2001, when OMB issued government-wide information quality guidelines. Federal agencies were then required to draft their own guidelines tailored to the types of information they typically release.

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The final version of these agency guidelines, which require OMB review, will be available on the Internet by October 1, 2002.

The information quality law, which gives OMB the ability to request improved information guidelines from federal agencies, was passed by Congress due to concerns that information disseminated by agencies through Web sites, rulemaking notices and other means are not always of high quality. Scientific, statistical and financial information have been highlighted for improvement, especially if the data play an influential role in major public policy decisions.

**BACKGROUND:**

- The President's Management Council (PMC) is comprised of the Chief Operating Officer from each federal department and chaired by the Deputy Director for Management at the Office of Management and Budget (OMB).
- The Information Quality Law was passed by Congress in 2000 and signed into law by President Clinton.
- Rep. Jo Ann Emerson (R-Mo.) was the principal sponsor of the Information Quality Law.

-- memo follows --

June 10, 2002

MEMORANDUM FOR PRESIDENT'S MANAGEMENT COUNCIL

FROM: John D. Graham

SUBJECT: Agency Draft Information Quality Guidelines

The quality of information disseminated to the public by the Federal Government needs to be improved.

Reflecting this need, Congress recently directed 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." The Administration is committed to vigorous implementation of this information quality law.

OMB issued government-wide information quality guidelines on September 28 last year. Each Federal agency is now required to issue its own guidelines that will ensure the quality of information that it disseminates. These guidelines must include mechanisms to allow the public to seek correction of disseminated information that does not comply with the information quality standards in the OMB or agency guidelines. To permit public participation and comment, and to facilitate interagency coordination, agencies are expected to make their draft guidelines available for public comment.

My staff and I have completed a preliminary review of the draft agency guidelines currently available for public comment. We want to thank you for the substantial effort and careful deliberation reflected in the agency drafts. Agencies, with highly diverse program responsibilities, disseminate a wide variety of kinds of information to serve many different purposes. The agency drafts properly reflect this variety.

Some agencies have developed particularly noteworthy provisions that I would suggest for consideration by other agencies in reviewing and revising their own draft guidance. I would also like to point out some provisions in agency drafts that do not appear consistent with the text and intent of the OMB guidelines or are otherwise contrary to Administration policy.

Based on our review, I have attached a discussion of important issues, identified noteworthy approaches for consideration, and provided guidance on those provisions that need to be adopted uniformly in all agency guidance. I request that you send this attachment to the appropriate officials who are responsible for developing your agency's information quality guidelines.

We have asked agencies to submit draft final guidelines to us for review by August 1 (which we have extended from an original July 1 deadline). We encourage you to use this extra

time to extend your public comment period. In light of the recent decision to allow additional time for agencies to extend the period for public comment on agency guidelines (and thus compress the time available for final OMB review), it is my intention to have these OIRA comments considered in conjunction with public comments as agencies shape their final guidelines.

As a related matter, I should note that Mark Forman of OMB is leading work on a content model for presenting information on the web. It will include guidelines on how to present web content, how agencies should identify web-based material, and general guidelines for what should go on the public internet.

Attachment

June 10, 2002

## **OIRA REVIEW OF INFORMATION QUALITY GUIDELINES DRAFTED BY AGENCIES**

By October 1, 2002, agencies must publish in the *Federal Register* a notice that the agency's final guidelines are available on the Internet. Agencies must also provide OMB an opportunity to review each agency's draft final guidelines before they are issued. Drafts must be submitted to OMB no later than August 1.

The underlying legislation is Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658). The OMB Information Quality Guidelines can be found in the *Federal Register* for September 28, 2001 (66 FR 49718), and, as amended, for February 22, 2002 (67 FR 8452).

This attachment discusses important policy issues raised by the agency drafts, identifies noteworthy approaches for consideration, and provides guidance on those provisions that need to be uniformly adopted in all agency information quality guidelines. We urge that draft guidelines submitted for OMB review reflect consideration of this guidance as well as the public comments.

### **I. SCOPE OF AGENCY GUIDELINES.**

In this topic, we discuss a number of constructive approaches agencies used to define the kinds of information that are covered by their guidelines. In some cases, we refer to provisions from agency drafts. These examples are quoted at the end of this attachment.

We cite these agency draft provisions as useful constructive approaches. We caution, however, that these examples are only agency proposals. Based on public comment and other review, the agencies may further refine these examples.

The OMB definitions of "information" and "dissemination" establish the scope of these guidelines. Both definitions contain exceptions. Agencies have elaborated upon the definitions of information and dissemination, and the exceptions thereto, to both broaden and narrow their scope. The specific examples discussed below include modifications that appear reasonable and consistent with the approach OMB takes in its guidelines, as well as suggestions for improvement and greater consistency with the OMB guidelines. We suggest that agencies consider these approaches for their own use.

Use of Statements of "Intent" to Define Scope. Some agencies used statements of intent or purpose to limit the scope of these guidelines. Such use of "intent" clarifies the nature of the inclusion or exclusion in a way to avoid having incidental or inadvertent public disclosure undermine the practical administration of the definition or exclusion. For example, some agencies insert the concept of "intent" into the exemption for intra- or inter-agency use of sharing

of information, e.g., exempted is “information ... not disseminated to the public, including documents intended only for inter-agency and intra-agency communications” (ED, 1 & 4). On the other hand, some agencies quote this definition as stated in the OMB guidelines literally, and do not insert a concept of intent. They may wish to include a concept of “intent” to avoid inadvertent public disclosure from undermining practical administration of the guidelines.

Exemption for Press Releases. Some agencies narrowed the exemption in the OMB definition to provide that the agency should already have disseminated the information discussed in the press release in another way. For example, EPA states “These guidelines do not apply to press releases, fact sheets, press conferences or similar communications in any medium that announce, support the announcement or give public notice of information EPA has disseminated elsewhere” (EPA, 15). This limitation avoids creating an incentive to misuse press releases to circumvent information quality standards.

Exemption for Public Filings. Some agencies refined the exemption for public filings to permit agencies to “pass through” information not subject to the guidelines while properly applying the agency and OMB guidelines to third-party information that the agency disseminates. Agencies need to qualify the public filing exemption to ensure that the agency guidelines continue to apply to third-party information that the agency disseminates, as we discuss below under II, “Coverage of ‘Third-Party’ Information under the Guidelines.”

Exclusion For Agency Employed Scientist, Grantee, or Contractor. The preamble to the OMB guidelines discusses situations in which the dissemination of information by an agency-employed scientist, grantee, or contractor is not subject to the guidelines, namely those situations in which they “publish and communicate their research findings in the same manner as their academic colleagues” and thus do not imply official agency endorsement of their views or findings (67 FR 8453-54, February 22, 2002). On the other hand, an agency disseminates information “where an agency has directed a third-party to disseminate information, or where the agency has the authority to review and approve the information before release” (67 FR 8454, February 22, 2002). Agencies that did not explicitly include such an exemption may wish to consider doing so, but need to do so in the carefully balanced ways quoted at the end of this attachment.

Exclusion for Testimony and Other Submissions to Congress. Some agencies exclude “information presented to Congress (as part of the legislative or oversight processes, e.g., testimony of officials, information or drafting assistance provided to Congress in connection with pending or proposed legislation) *that is not simultaneously disseminated to the public*” (Justice, 3; DOT, 9). As with the exemption for press releases, we think it would be better for agencies to narrow this exemption to provide that the agency should already have disseminated the information discussed in the testimony in another way. This limitation would avoid creating an incentive to misuse testimony and other submissions to Congress to circumvent information quality standards.

Exemption for Subpoenas or Adjudicative Processes. The preamble to the OMB guidelines states that “The exemption from the definition of ‘dissemination’ for ‘adjudicative processes’ is intended to exclude ... the findings and determinations that an agency makes in the course of

adjudications involving specific parties. There are well-established procedural safeguards and rights to address the quality of adjudicatory decisions and to provide persons with an opportunity to contest decisions. These guidelines do not impose any additional requirements on agencies during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal” (67 FR 8454, February 22, 2002). Some agencies adapted the OMB exception very carefully. Other agencies may have broadened this exemption beyond OMB's intent; they need to limit this exemption carefully to be consistent with OMB's intent both as to the adjudicative procedures that are included and the scope of the information covered.

Effective Date. The OMB guidelines establish two somewhat different effective dates (III.4). An agency's obligation to conduct a pre-dissemination review of information quality starts only on October 1: “The agency's pre-dissemination review, under paragraph III.2, shall apply to information that the agency first disseminates on or after October 1, 2002.” An agency's obligation to allow the public to seek the correction of information that does not comply with the information quality standards in OMB or agency guidelines starts on October 1, 2002, for information that the agency disseminates on or after October 1, 2002, even if the agency first disseminated that information before October 1: “The agency's administrative mechanisms, under paragraph III.3, shall apply to information that the agency disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.”

Some agencies followed the OMB guidelines carefully in describing when the information quality guidelines will take effect: “The DOJ information quality guidelines will become effective on October 1, 2002. These guidelines will cover information disseminated on or after October 1, 2002, regardless of when the information was first disseminated” (Justice, 2). Other agencies need to be careful to track accurately the OMB guidelines in this regard (III.4).

The effective date for the agency's administrative mechanisms raises the issue of what constitutes agency dissemination of information after October 1, 2002, if the agency first disseminated this information earlier.

DOT defines dissemination after October 1 to exclude archived information that had been disseminated previously. “As provided in OMB's guidelines, these guidelines apply only to information disseminated on or after October 1, 2002. The fact that an information product that was disseminated by DOT before this date is still maintained by the Department (e.g., in DOT's files, in publications that DOT continues to distribute on a website) does not make the information subject to these guidelines or to the request for correction process” (DOT, 23). This interpretation is consistent with OMB's intent, and equivalent to the “archival records” exemption.

Still to be considered is how a complainant demonstrates that an agency disseminates information after October 1, 2002, if the agency first disseminated that information before October 1, 2002. For example, existing official agency data bases, publicly available through agency websites or other means, that serve agency program responsibilities and/or are relied upon by the public as official government data, need to be subject to the Section 515 administrative

mechanisms to address public complaints because they are, in effect, constantly being redisseminated.

## II. COVERAGE OF “THIRD-PARTY” INFORMATION UNDER THE GUIDELINES.

The preamble to the OMB guidelines states, “If an agency, as an institution, disseminates information prepared by an outside party in a manner that reasonably suggests that the agency agrees with the information, this appearance of having the information represent agency views makes agency dissemination of the information subject to these guidelines” (67 FR 8454, February 22, 2002). Reinforcing this statement of policy, OMB also provided an example in its preamble concerning the applicability of the OMB and agency information quality standards to third-party studies relied upon by an agency as support for a proposed rulemaking, even if the third-party studies had been published before the agency’s use of them (67 FR 8457, February 22, 2002).

DOT incorporated these principles from the OMB guidelines by stating that an agency disseminates information if it relies on information in support of a rulemaking. “If the Department is to rely on technical, scientific, or economic information submitted by, for example, a commenter to a proposed rule, that information would need to meet appropriate standards of objectivity and utility” (DOT, 3). “The standards of these guidelines apply not only to information that DOT generates, but also to information that other parties provide to DOT, if the other parties seek to have the Department rely upon or disseminate this information or the Department decides to do so” (DOT, 8).

EPA explicitly includes a provision embodying the OMB example: “If a particular distribution of information is not covered by these guidelines, the guidelines may still apply to a subsequent distribution of the information in which EPA adopts, endorses or uses the information to formulate or support a regulation, guidance, or other Agency decision or position” (EPA, 17). Other agencies – particularly those likely to be involved with using and/or disseminating “influential” information – must include similar provisions in their guidelines.

## III. AGENCY COMMITMENT TO INFORMATION QUALITY STANDARDS.

In this topic, we discuss (1) ways in which agencies need to commit to information quality standards, and (2) aspects of how those standards should be defined.

Performance Standards. The OMB guidelines state that, “Overall, agencies shall adopt a basic standard of quality (including objectivity, utility, and integrity) *as a performance goal* and should take appropriate steps to incorporate *information quality criteria* into agency information dissemination practices” (III.1). The “information quality criteria” are set forth in the definitions of “Quality,” “Utility,” “Objectivity,” and “Integrity” (V.1-4). Closely related definitions are those for “influential” information, when used in the phrase “influential scientific, financial, or statistical information,” and for “reproducibility” (V.9-10).



Each agency, in structuring its information quality guidelines, must state the agency's information quality criteria (as defined in the OMB and agency guidelines) as performance goals that the agency seeks to attain. Each agency needs to adopt explicitly each aspect of each definition of quality, utility, objectivity, and integrity as an agency information quality standard. Each agency also must explicitly state that it intends to achieve each standard. Otherwise, there will be no benchmark against which a public complainant will be able to suggest non-attainment.

The OMB guidelines also state that, "As a matter of good and effective agency information resources management, agencies shall develop a *process for reviewing the quality (including the objectivity, utility, and integrity) of information before it is disseminated*" (III.2). Given that guideline, many agencies describe in considerable detail the kinds of activities they now undertake to assure information quality. Regardless, we stress that a mere description of current practices – however good – is not a substitute for explicit performance goals. At a minimum, each agency must embrace the OMB quality definitions as information quality standards they are seeking to attain. Examples of constructive agency statements are quoted at the end of this attachment.

In addition, some agencies and agency components do not appear to have adopted any standards for information quality (utility, objectivity, integrity) and/or defined "influential" or "reproducibility" in ways applicable to them. Each agency must either define its standards in ways applicable to it and consistent with the standards in the OMB guidelines, or explicitly adopt the standards from the OMB guidelines as the agency or component standards. For an agency that does not anticipate disseminating much information that is defined as "influential", we suggest that the agency simply adopt the standards from the OMB guidelines as its own.

Core Definition of "Objectivity". The OMB definition of "objectivity" is the most detailed and complex. This definition has different aspects, some that apply to all information covered by the OMB guidelines, others that apply only to "influential" information.

The first issue relates to all covered information. According to the OMB guidelines, " 'Objectivity' has two distinct elements, presentation and substance.

a. 'Objectivity' includes whether disseminated information is being presented in *an accurate, clear, complete and unbiased manner* [ -- as well as "within a proper context"].

...

b. In addition, 'objectivity' involves a focus on ensuring *accurate, reliable, and unbiased information*" (V.3.).

Some agencies have summarized this aspect of the definition of "objectivity" accurately. Other agencies, in summarizing the OMB standard, appear to have left out some of the important standards; those agencies need to summarize the OMB standard accurately.

Peer Review. The discussion of peer review in the definition of "objectivity" relates to all covered information. "If data and analytic results have been subject to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity

[if the peer review satisfies ‘the general criteria for competent and credible peer review’ cited in the definition]. However, *this presumption is rebuttable* based on a persuasive showing by the petitioner in a particular instance” (V.3.b.i).

If an agency or component engages in peer review, it needs to discuss the ways in which it will adhere to the OMB standard in its guidelines. These peer review standards are not limited to information defined as “influential”. These OMB peer review standards apply to all information covered by these guidelines, and need to be integrated into existing agency peer review standards applicable to covered information. In addition, agencies must point out – to be consistent with the OMB standard – that the presumption of objectivity afforded to formal, independent, external peer review is rebuttable, although the burden of proof, as explained more fully below, is on the complainant.

“Influential” and “Reproducibility”. The next issue relates to agency treatment of influential information. “If an agency is responsible for disseminating *influential* scientific, financial, or statistical information, agency guidelines shall include a high degree of *transparency* about data and methods to facilitate the *reproducibility* of such information by qualified third parties” (V.3.b.ii; *see* V.9 for definition of “influential”).

Several agencies provided a carefully considered discussion of the meaning of “influential” in their drafts. See provisions quoted at the end of this attachment.

“Original and supporting data” and “analytic results”. With regard to influential information, the OMB guidelines further distinguish between “original and supporting data” and “analytic results”.

With regard to *original and supporting data* related thereto, agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement. Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicably be subjected to a reproducibility requirement (V.3.b.ii.A).

With regard to *analytic results* related thereto, agency guidelines shall generally require sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public. ...

- i. ... Making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.*
- ii. In situations where public access ... will not occur ..., agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken. Agency guidelines shall, in all cases, require a disclosure of the specific data sources ... used and the specific quantitative methods and assumptions ... employed (V.3.b.ii.B).*

In draft agency guidelines, it does not appear that any agency undertook to delineate when

*“original and supporting data”* would be subject to a reproducibility requirement. Presumably, the public comment period is being used to seek views from the relevant scientific and technical communities. If, at the end of the public comment period, an agency is not prepared to identify what kinds of original and supporting data will be subject to the reproducibility standard, then the agency must include in its guidelines a statement to the effect that the agency shall assure reproducibility for those kinds of original and supporting data according to *“commonly accepted scientific, financial, or statistical standards”* (suggested language).

As to *“analytic results,”* it appears that a number of agencies anticipate that reproducibility will sometimes not be achievable through public access because of confidentiality protections or other compelling interests. In such cases, some agencies do not mention the need to “apply especially rigorous robustness checks.” Instead, they describe their intent to disclose specific data sources and specific quantitative methods and assumptions.

In such situations, agencies need to state explicitly their commitment to the standards stated in the OMB guidelines to applying “especially rigorous robustness checks” to analytic results *and document what checks were undertaken*. In addition, agency guidelines must, in all cases, explicitly require a disclosure of the specific data sources, quantitative methods, and assumptions used. We also recommend that agencies, in generating (or contracting to generate) influential information for dissemination, encourage arrangements that will permit appropriate public access to the related original and supporting data and analytic results.

Analysis of Risks to Human Health, Safety and the Environment. With regard to influential information, the OMB guidelines also state that, “With regard to analysis of risks to human health, safety and the environment ..., agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g-1(b)(3)(A) & (B))” (V.3.b.ii.C).

Some agencies discussed these Congressional risk information quality standards; some agencies discussed these in a limited context; and other agencies failed to mention these standards at all. Those agencies that are likely to use and/or disseminate influential information in their analysis of “risks to human health, safety, and the environment” need to clearly state that they are adopting the SDWA standards, or justify in what ways and for what kinds of information the agency is adapting the SDWA standards. FDA adapts the SDWA standards in a carefully considered, practical way (HHS/FDA, 18-20). We note that FDA read the SDWA standards as applicable to a risk assessment document made available to the public and did not limit their applicability only to documents related to a rulemaking; that is the proper approach.

#### IV. QUALITY INTEGRAL TO CREATION AND COLLECTION OF INFORMATION.

The OMB guidelines state that “As a matter of good and effective agency information resources management, agencies shall treat information quality as integral to every step of an agency’s development of information, including *creation, collection, maintenance,* and dissemination. 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” (III.2). Consistent with the OMB guidelines, the Small Business Administration explicitly included

“information development”, “information acquisition”, and “information maintenance” within the scope of its information quality guidelines, as quoted at the end of this attachment.

In this light, we note that each agency is already required to demonstrate the “practical utility” of a proposed collection of information in its PRA submission, i.e., for draft information collections designed to gather information that the agency plans to disseminate. Thus, we think it important that each agency should declare in its guidelines that it will demonstrate in its PRA clearance packages that each such draft information collection will result in information that will be collected, maintained, and used in a way consistent with the OMB and agency information quality standards. It is important that we make use of the PRA clearance process to help improve the quality of information that agencies collect and disseminate. Thus, OMB will approve only those information collections that are likely to obtain data that will comply with the OMB and agency information quality guidelines.

## V. ADMINISTRATIVE MECHANISM TO ADDRESS PUBLIC COMPLAINTS.

Applicable Standards. The OMB guidelines state, “To facilitate public review, agencies shall 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” (III.3).

Some agencies discuss compliance with both the OMB and agency information quality standards in their discussion of the complaint mechanism. Others discuss compliance only with the agency information quality standards. To be consistent with the OMB guidelines, each agency should explicitly refer complainants to all of the applicable guidelines – the OMB, department, and departmental component’s guidelines – as the applicable information quality standards.

“Affected Person”. Some agencies defined “affected person” quite broadly. For example, “The term ‘affected person’ means anyone who may benefit or be harmed by the disseminated information. This includes persons who are seeking to address information about themselves as well as persons who use information” (OFHEO, 5). HHS took an even more open approach. Rather than defining “affected person,” HHS just asks the complainant to “*describe how the person submitting the complaint is affected by the information error*” (HHS, 13). This invites the complainant to describe how he/she is affected, but specifically avoids any provision that would use this answer to limit or restrict who can point out an error in an agency’s dissemination of information.

We prefer the HHS approach because it best ensures full public access to the complaint process, a goal of Section 515 and the OMB guidelines. The focus of the complaint process should be on the merits of the complaint, not on the possible interests or qualifications of the complainant. Other agencies need to adopt a similar approach.

Decision Criteria and Burden of Proof for Resolving Complaints. Several agencies state that:

“Requesters should be aware that they bear the ‘burden of proof’ with respect to the necessity for correction as well as with respect to the type of correction they seek” (Justice, 6). Having the burden of proof on the complainant is consistent with the OMB guidelines and will be helpful in permitting agencies to dismiss frivolous or speculative complaints. All agencies should make this clear in describing their complaint mechanism to the public. We quote at the end of this attachment carefully presented statements of the decision criteria and approaches that several agencies plan to follow in resolving complaints.

Time Periods for Resolving Complaints and Any Appeals. The OMB guidelines state, “Agencies shall specify appropriate time periods for agency decisions on whether and how to correct the information, and agencies shall notify the affected persons of the corrections made ... The agency shall establish an administrative appeal process to review the agency’s initial decision, and specify appropriate time limits in which to resolve ... requests for reconsideration” (III.3.i & ii).

Each agency must state in its guidelines the time periods for making decisions on both complaints and also on any appeals. Exceptions for unusual cases are appropriate.

Some agencies set a time limit within which, after receiving notice of an initial decision, the complainant could file an appeal, generally 30 days. Setting a time limit for filing appeals appears reasonable.

Some agencies also seek to set time limits for submission of original complaints (in effect, a form of a statute of limitations). OMB has concerns about the potential unintended effects of such limits and will be reviewing them carefully. Sometimes agencies continue, long after the agencies’ initial dissemination, to adopt, endorse, or use information, and thus, in effect, continue to disseminate it. Similarly, agencies may continue to maintain ongoing official agency data bases, publicly available through agency websites or other means, that serve agency program responsibilities and/or are relied upon by the public, that are, in effect, constantly being redisseminated. The damaging effects of poor quality information may not occur or be perceived to have occurred until well after the information was originally disseminated.

An Objective Appeals Mechanism. The preamble to the OMB guidelines discusses our intent that agencies establish an objective appeals mechanism. “Recognizing that many agencies already have a process in place to respond to public concerns, it is not necessarily OMB’s intent to require these agencies to establish a new or different process. Rather, our intent is to ensure that agency guidelines specify an objective administrative appeal process that, upon further complaint by the affected person, reviews an agency’s decision to disagree with the correction request. An objective process will ensure that the office that originally disseminates the information does not have a responsibility for both the initial response and resolution of a disagreement” (67 FR 8458, February 22, 2002).

Some agencies discuss how they plan institutionally to structure their complaint and appeal procedures. Others do not. We strongly suggest that agencies describe to the public how they plan to resolve any complaints and appeals in order to build public confidence in both the reality

and appearance of a neutral, fair decision mechanism.

To enhance transparency, we also suggest that agencies provide the public with timely notice of what information the agency intends to correct after it makes a decision to correct it. In the annual report to OMB, agencies should also provide this information as well as a status report on the numbers and kinds of petitions for corrections, appeals, and any denials or grants of petitions for reconsideration or appeals. Agencies are encouraged, to the extent they practicably can, to give more timely disclosure of this information through, e.g., the use of electronic dockets or agency websites, they are encouraged to do so.

We note, in this regard, that a number of agencies emphasize that their guidelines are not intended to provide any right to judicial review. A few agencies even stress that their guidelines may not be applicable based on unspecified circumstances and that the agency may be free to differ from the guidelines where the agency considers such action appropriate.

Regardless of what kinds of litigation-oriented disclaimers the agencies may include, agency guidelines should not suggest that agencies are free to disregard their own guidelines. Therefore, if you believe it is important to make statements that your agency's guidelines are not intended to provide rights of judicial review, we ask that you not include extraneous assertions that appear to suggest that the OMB and agency information quality standards are not statements of government-wide policy, i.e., government-wide quality standards which an agency is free to ignore based on unspecified circumstances. In addition, agencies should be aware that their statements regarding judicial enforceability might not be controlling in the event of litigation.

## VI. MELDING THE STATUTORY REQUIREMENTS OF SECTION 515 INTO THE PROCEDURAL REQUIREMENTS OF OTHER STATUTES.

The agencies take a uniform approach to complaints filed concerning information disseminated in the course of conducting a rulemaking under the Administrative Procedure Act (providing public notice to obtain public comment, then issuing the regulation in final form). The agencies meld the requirement to establish a Section 515 administrative mechanism to address public complaints into the procedures of the APA, NEPA, and other more specific public-comment statutes. This melding of Section 515 complaint procedures into the structure of existing statutes seems reasonable, and is discussed extremely well by a number of agencies. Of course, the substantive standards of quality, the information quality standards provided in the OMB and agency guidelines, remain applicable to any such dissemination of information. Examples of well-reasoned agency statements are quoted at the end of this attachment.

One of the agency discussions raises an interesting issue:

Requests for Correction Concerning Information on Which DOJ Has Sought Public Comment. Information on which DOJ has sought public comment includes a notice of proposed rulemaking (NPRM), studies cited in an NPRM, a regulatory evaluation or cost-benefit analysis pertaining to an NPRM, a preliminary environmental impact analysis, a notice of availability, and request for comment on a risk assessment.

DOJ's response to the request for correction will normally be incorporated in the next document it issues in the matter concerning which it had sought comment. The response will be provided in this document rather than in a separate communication. *DOJ may choose to provide an earlier response, if doing so is appropriate, and will not delay the issuance of the final action in the matter* (Justice, 6).

We suggest that Justice (and other agencies) explain in a little more detail the circumstances under which “an earlier response” might be “appropriate”. We are sensitive to the procedures and long history behind the Administrative Procedure Act. However, we would suggest that agencies consider adding as criteria for making an early response a demonstration by a complainant of actual harm from the agency’s dissemination of a study relied upon in a Notice of Proposed Rulemaking, or a demonstration by the complainant of substantial uncertainty as to whether the proposed rule will take an unusual length of time to go final.

Another interesting issue arises when an agency disseminates a particular study in a Notice of Proposed Rulemaking (NPRM), i.e., in the context of a particular agency policy decision, and a possible complainant has an interest in the study but not necessarily in the substantive policies embodied in the rulemaking. The possible complainant may only learn that the agency has disseminated the study by reading the NPRM, possibly after the comment period has expired. Agencies need to consider how those not directly interested in the rulemaking need to submit and receive consideration of a complaint about the study.

As a general matter, we urge each agency to carefully articulate the ways in which the APA, NEPA, and other more specific public-comment statutes meld with and thus have the apparent effect of superseding the administrative mechanisms to address public complaints provided by Section 515. For example, an agency may disseminate a risk assessment prior to publication of an NPRM. While the agency may anticipate that this risk assessment may be used in support of the NPRM, the agency should still permit complainants to file complaints under Section 515 unless the publication of the NPRM is imminent. Such a risk assessment may have impacts beyond the scope of the rulemaking.