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ADMINISTRATIVE REFORM NEEDED TO ENSURE QUALITY OF FEDERAL AGENCY DATA

by

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In May 2004, the Office of Management and Budget (OMB) issued its first annual report to Congress describing agency implement of the Federal Data Quality Act (FDQA), commonly referred to as the Information Quality Act. The OMB report addressed eight perceptions associated with FDQA and summarized agency responses to Requests for Correction (RFC). In July 2004, activist watchdog group OMB Watch issued its critique of the OMB report and opined that it was “seriously flawed: data is inaccurate, information is misleading, and overall the report is highly biased.”

FDQA was enacted as part of the Treasury and General Government Appropriations Act of 2001, and in furtherance of the Paperwork Reduction Act. Section 515, Public Law 106-554. FDQA required OMB and federal agencies to issue guidelines for “ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistics) disseminated by Federal agencies.” FDQA also directed federal agencies to “establish administrative mechanism allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the [OMB] guidelines....” FDQA Section 515 (b)(2)(A) and (B). OMB’s final guidelines were published in the Federal Register on February 22, 2002. 67 Fed. Reg. 8452 (Feb. 22, 2002).

Whether FDQA serves a useful public purpose can be assessed by evaluating agency responses to RFCs as reported in the OMB report. The three agencies that received the largest number of RFCs during the FY 2003 reporting period were the Federal Emergency Management Agency (FEMA) (24,433 RFCs); the Department of Transportation (DOT) (98); and the Department of Treasury (19). OMB reported that a large volume of FEMA’s RFCs were for map corrections, and most of DOT’s RFCs were for incorrect reporting of individual accidents. The Treasury Department’s RFCs were all related to updating rates for bonds. However, because these agency RFCs were limited to a narrow range of issues, they are not helpful in assessing the usefulness of the FDQA.

The next two agencies receiving the highest number of RFCs were the Department of Labor (DOL) and the Environmental Protection Agency (EPA). DOL received 18 RFCs while EPA received 13. The DOL and EPA RFCs covered a broad range of agency matters, while both agencies’ responses illustrated a stark contrast between agencies’ response capabilities depending upon the type of federal action involved.

Out of the 18 RFCs that DOL received, the agency made changes in thirteen cases within the allotted 60-90 day correction period. DOL’s correction efforts in two additional cases were delayed because a Federal Register notice was required or a technical amendment had to be issued. In three other cases,

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however, DOL determined that no correction was needed, and the petitioners filed no appeals in these three cases.

Out of 13 RFCs that EPA received, the agency made *no corrections* within the allotted period. In six cases, EPA stated that the RFCs would be considered as comments to ongoing or future rulemakings or updates to EPA publications. In another instance, EPA referred the RFC to the agency that “disseminated” a report to which EPA appears to have substantially contributed the technical data that was the subject of the RFC.

DOL and EPA experiences with FDQA support three observations. First, the DOL experience shows that FDQA can serve a useful public purpose in providing an administrative mechanism to seek corrections to agency information within 60-90 days.

Second, nine DOL and EPA RFCs show that FDQA corrections involving regulations, guidelines, manuals, reports, etc. cannot be addressed within a 60-90 day time frame. For the EPA RFCs, the reason is most likely because environmental matters are complex and determinations as to the quality, objectivity, utility, and integrity of such information cannot be easily or quickly made. This is likely to be a problem with all regulatory agencies.

Third, OMB and federal agencies appear to have interpreted their FDQA responsibilities as active only when an RFC is filed. This contradicts FDQA language which imposes an affirmative responsibility on federal agencies for “ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.” FDQA does not require that an RFC be filed before a federal agency determines whether or not its information meets the statute’s standards.

These observations support the problematic conclusion that FDQA fails to deal with complex regulatory matters in a timely manner. A solution to this problem should first target agency rulemakings, which need to utilize more transparent agency information.

Increased transparency can be accomplished with minimal administrative reform in the OMB guidelines. Currently, the guidelines do not provide a uniform administrative review process but rather allow each agency to establish its own procedures. As a result, at the time a rulemaking is proposed, federal agencies are not held accountable in assuring the public that they have reviewed and approved the information used in the rulemaking to ensure it meets FDQA standards.

The proposed administrative reform is to modify the OMB guidelines so that federal agencies: (1) may implement internal procedures to ensure and maximize the quality, objectivity, utility, and integrity of information they are using by conducting an FDQA review before proposal; (2) provide the public with a summary of the FDQA review as well as a statement, as part of the rulemaking record, that the information used in the rulemaking meets or does not meet FDQA standards; and (3) inform affected persons of their right to submit an RFC.

This modification would not create different procedures or policies since federal agencies already conduct a number of statutory and Executive Order reviews. One of the statutory reviews routinely conducted is for the Paperwork Reduction Act. The proposed reform is a reasonable extension of the Paperwork Reduction Act review since Congress enacted the FDQA in furtherance of the Paperwork Reduction Act. *See* FDQA, § 515. FDQA reviews can be simply added to the Paperwork Reduction Act discussions in the preambles to proposed and final rules. If this modification is adopted for rulemaking, then agencies can adopt similar procedures for their guidelines, manuals, reports, or other complex federal actions.