



**THE REALITY OF DATA QUALITY ACT'S FIRST YEAR:  
A CORRECTION OF OMB'S REPORT TO CONGRESS**

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OMB Watch is a nonprofit research and advocacy organization that has government accountability and improving citizen participation as its core mission. Public access to government information has been an important part of our work for more than 15 years and we have both practical and policy experience with disseminating government information. OMB Watch also actively engages in agency regulatory processes, encouraging agency rules to be sensible and more responsive to public need.

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## Overview

In 2001, Congress passed provisions entitled the Information Quality Act (IQA), otherwise known as the Data Quality Act, 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.

OMB recently published a report to Congress that analyzes and summarizes the first year of operations under the new information quality guidelines. The report provides OMB's

### **OMB's 8 Data Quality Perceptions**

1. Agencies might be inundated with requests for corrections.
2. The Information Quality correction process is a review mechanism that would be used only by industry.
3. The Information Quality Act could result in slowing down the regulatory process at the agencies.
4. Implementation of the guidelines could chill agency disseminations.
5. The appeals process, the public's opportunity to ask for reconsideration of a correction request, will not improve anything.
6. The Information Quality Act is aimed primarily at information in Federal rulemakings.
7. The Information Quality Act is only about numerical data.
8. Colleges and universities are regulated by the Information Quality Act.

perspectives on the first year under the law, as well the IQA reports submitted to OMB from individual agencies. Unfortunately, upon careful review of the report, OMB's insights seem biased and its facts inaccurate. The report mischaracterizes the use and impact of the IQA guidelines at agencies. OMB's report addresses eight points – what they call "perceptions" – which are listed in the box on this page.

OMB's report is seriously flawed: data is inaccurate, information is misleading, and overall the report is highly biased. For example:

- OMB claims that agencies only had 35 information quality challenges in Fiscal Year 2003. Yet, even eliminating challenges handled by other procedures, the number is 98, nearly triple the number in the report.
- OMB states that "most" IQA challenges that were denied by agencies were then appealed and that the appeals process "appears to have fostered corrections." Yet only 28 percent of

denied challenges were appealed – clearly not "most." And of these appeals, only five resulted in partial or full corrections – and four of these were for what is called non-influential information.

- OMB accurately states that a wide range of stakeholders have filed information quality challenges, attempting to dismiss fears that these challenges would be dominated by industry. But OMB fails to disclose that 72 percent of the challenges – nearly three-quarters – were from industry.
- OMB claims that the IQA has not slowed down agency rulemakings or dissemination activities. Yet OMB has no data to draw such conclusions. OMB did not collect

information from the agencies about impact on rulemakings or dissemination. Instead, OMB relies on conjecture or highly flawed logic to make its point.

In addition to the inaccuracies and misleading statements, OMB's report fail to cover several important and controversial issues associated with the IQA. The most egregious exclusions include; the judicial reviewability of the information quality guidelines; the scope of OMB oversight and authority; and the burden agencies bear implementing the IQA. The omission of these issues slants the report unfairly and leaves Congress with a gravely incomplete picture of the first year of implementation of the IQA.

The template OMB created for the first year reports from agencies does not collect the type of information that would allow for a thorough assessment of the new law. For example, OMB does not ask agencies to send information on amount of resources devoted to IQA activities or the impact the IQA has on other agency activities such as rulemakings and information dissemination. Such information is essential to Congress in evaluating the law's implementation.

The OMB report to Congress contains so many problems it probably would not meet the standards established under the agency's own information quality guidelines. There are problems with reproducibility, transparency of the methodology, accuracy of the data, and general reliability – all key criteria under the information quality guidelines.

Regardless of the merits of OMB's report to Congress, it is clear that this law has had a significant impact on government operations. It is surprising that Congress has never had a hearing – not even during development of the law – on a policy with such far-reaching impact. In light of the OMB report, it is now time for congressional oversight, which needs to include a General Accounting Office assessment of the law's implementation and congressional hearings on whether the law needs modification.

## **Data Quality Act Background**

The IQA was added at the last minute as an appropriations rider to the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658). There were no hearings on the rider – which was added by Rep. Jo Ann Emerson (R-MO) and Sen. John Shelby (R-AL) – and no debate on the floor, providing little information about the congressional intent behind the legislative language.

The short rider directed OMB to issue "policy and procedural guidance to Federal agencies" subject to the Paperwork Reduction Act (44 U.S.C chapter 35) requiring that they issue their own data quality guidelines "ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated."<sup>1</sup> The agencies were also to include "administrative mechanisms allowing affected persons to seek and obtain correction of

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<sup>1</sup> Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658), Information Quality Act.

information maintained and disseminated by the agency that does not comply with the guidelines."<sup>2</sup>

OMB greatly exceeded its vague congressional mandate in setting these requirements, as they are overly strict and complex standards of information quality. In doing so, OMB created an extremely high burden of proof for dissemination and, ultimately, regulatory action. In fact, several business groups categorized these guidelines as the best opportunity to challenge regulatory protections since passage of the Administrative Procedure Act in the 1940s. According to William Kovacs of the U.S. Chamber of Commerce, "This is the biggest sleeper there is in the regulatory arena and will have an impact so far beyond anything people can imagine."<sup>3</sup>

### **Agency Annual Reports**

Under the IQA, agencies must periodically report to the director of OMB on the number of IQA requests received and how the complaints were resolved. OMB mandated submission of the first status reports by January 1, 2004.

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."<sup>4</sup> OMB clearly establishes the expectation that the reports will enable both government officials and the general public to analyze and evaluate implementation of the IQA within the various agencies.

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<sup>5</sup>:

- Agency Receiving Correction Request
- Requestor
- Date Received
- Summary of Request
- Description of Requested Correction
- Whether the Information is "Influential"

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<sup>2</sup> Ibid.

<sup>3</sup> Andrew C. Revkin, "Law Revises Standards for Scientific Study," New York Times, Mar. 21, 2002.

<sup>4</sup> Office of Management and Budget, "Memorandum For The President's Management Council: Executive Branch Implementation of the Information Quality Law," Oct. 4, 2002, p. 2. (online at [http://www.whitehouse.gov/omb/inforeg/pmc\\_graham\\_100402.pdf](http://www.whitehouse.gov/omb/inforeg/pmc_graham_100402.pdf))

<sup>5</sup> 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](http://www.whitehouse.gov/omb/inforeg/pmc_oct03report.pdf))

- First Agency Response
- Resolution
- Appeal Request
- Summary of Request for Reconsideration
- Type of Appeal Process Used
- Appeal Resolution

While this does produce 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).

### **OMB's Evaluation**

After receiving first year reports from agencies, OMB published each in a report to Congress, which also contained OMB's own overall summary of the data quality program. This summary does not fill in the gaps the report template leaves; it does not address the efficiency of the IQA process or the costs and benefits of implementation. Nor does the summary evaluate trends or patterns detected among the information challenges.

Instead, OMB discusses "the experiences and insights from OMB Staff who have worked with the agencies to oversee the implementation of the government-wide information quality guidelines."<sup>6</sup> It is unclear how many OMB staff worked with agencies to implement the IQA. OMB's Office of Information and Regulatory Affairs (OIRA), which oversees IQA implementation, is a relatively small office with a number of responsibilities. It seems likely that the report's government-wide summary of the IQA only reflects a handful of OIRA staff experiences.

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<sup>6</sup> Office of Management and Budget, "Information Quality: A Report To Congress," Apr. 30, 2004, p. 5. (online at [http://www.whitehouse.gov/omb/info/fy03\\_info\\_quality\\_rpt.pdf](http://www.whitehouse.gov/omb/info/fy03_info_quality_rpt.pdf))

While OMB produced its own information quality guidelines, it has not yet received an information challenge; therefore its staff has no direct experience responding to information quality requests. A more useful summary of "experiences and insights" would have come from agencies that did receive and respond to information quality requests. Perhaps if OMB had encouraged this type of reporting from the agencies it could have produced an overview with more credibility, by culling important and reoccurring observations from the agency reports.

The summary 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 a failure in the integrity of the report's information, another key criterion under the information guidelines. Is it possible that OMB did a stunningly poor job of fact checking? Or it may be that it chose such highly questionable and illogical methodologies to support their statements that they defy deduction and reproduction. Either way, the number and obvious nature of the errors severely undermines the validity of the report.

OMB Watch has re-analyzed each of the report's eight perceptions and OMB's responses in order to detail the exact problems and shortcomings of the report.

***PERCEPTION #1: "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 substantive IQA requests remain.***

OMB argues that agencies have only received "about 35 correction requests that appear to be stimulated by the Information Quality Act." It is unclear how OMB derived the number 35, but review of the agency reports to OMB reveals this number is not accurate.

During FY03, agencies received 24,618 requests to correct information. While OMB acknowledges that there may be more than 35 requests, the report never provides an exact number. Instead, OMB dismisses many of these requests, explaining that many of these information corrections "had previously been addressed through a different mechanism at the agency."<sup>7</sup>

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.

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<sup>7</sup> Ibid., pp. 8-9.

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. It is unknown whether these requests came later in the fiscal year as the correction process became more publicly well known. It is possible that as stakeholders become more accustomed to the IQA and its procedures that the number of challenges will increase.

Additionally, it should be noted that these numbers only address the initial requests for data correction. As a part of 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 tries to portray the IQA and its interpreted guidelines as a useful tool that has no burdensome impacts on agencies. By using the term "inundated" in the perception, OMB arranges the outcome to appear positive. However the reality is that agencies received a significant number of requests in FY03, especially when considering the program's young age. And these requests are accompanied by corresponding burden increases and diversions of resources from other activities.

<b>Information Correction Challenges (FY 2003)</b>	
<b>Federal Agency</b>	<b>Requests</b>
USDA	5
Commerce Dept.	4
Defense Dept.	1
Education	1
HHS	10
Interior	6
Justice	2
Labor	18
DOT	89
Treasury	19
Veterans Affairs	1
Consumer Protection	4
EPA	13
FEMA	24,433
NASA	1
NARA	8
OSTP	1
Futures Trading	1
FDIC	1
<b>Total</b>	<b>24,618</b>

Source: OMB, "Information Quality: A Report To Congress"

**PERCEPTION #2:** *"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.*

OMB refutes this perception claiming that the IQA "has been used by virtually all segments of society."<sup>8</sup> While it is factually accurate that different stakeholders have used the data quality mechanism, the majority of the requests were submitted by industry. Not including the

<sup>8</sup> Ibid., p. 9.

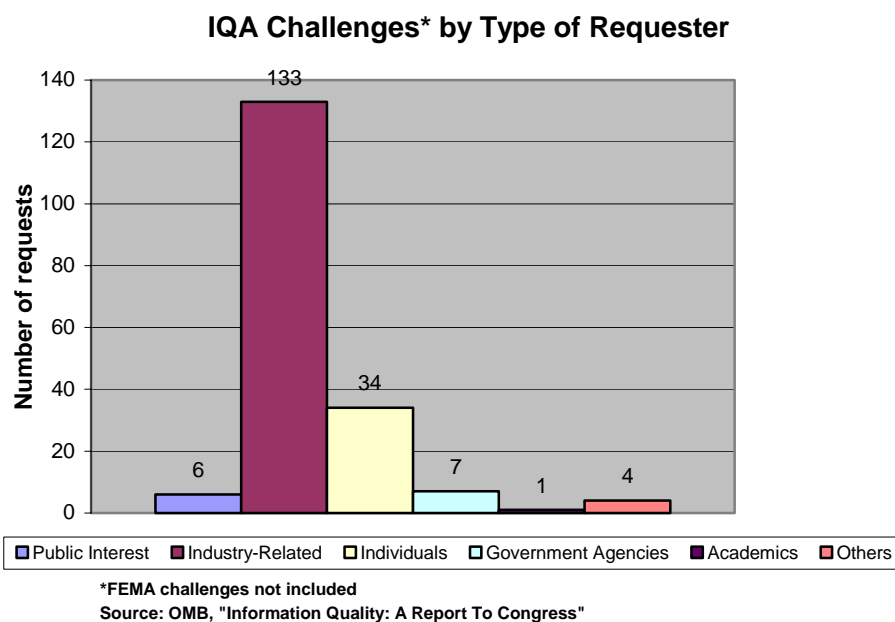
submissions to FEMA, industry accounted for 72 percent of all requests for correction.<sup>9</sup> Therefore, a more accurate evaluation would acknowledge that the perception has been partially realized and that industry has been the predominant user of the IQA.

The majority of the 133 industry requests were directed to the Department of Transportation (88). Beyond these, industry requests were submitted to the Departments of Agriculture, Commerce, Health and Human Services, Interior, and Labor, and Consumer Product Safety Commission, Environmental Protection Agency, Office of Science and Technology Policy, Commodity Future Trading Commission, and Federal Deposit Insurance Corporation.

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. For example, the Animal Health Institute (AHI), a trade organization for developers and manufacturers of animal drugs and biological products, filed a challenge against the Centers for Disease Control (CDC).

CDC believes that use of a certain antibiotic in poultry creates antibiotic-resistant food borne bacteria, making it harder to treat people infected from eating undercooked poultry with illnesses such as campylobacteriosis. AHI believes that statements like this rely on flawed data and should be removed from disseminated information.<sup>10</sup>

In another example, the Chemical Products Corporation (CPC) submitted a data quality petition to the Environmental Protection Agency (EPA) that challenges a barium risk assessment. CPC is a barium producer and wants EPA to publish new risk information for barium that would allow higher thresholds for the chemical in waste products.<sup>11</sup>



<sup>9</sup> The FEMA requests for correction were from a mix of submitters and OMB Watch was not able to discern the exact numbers by type of requester. "Information Quality: A Report To Congress," pp. 105-107.

<sup>10</sup> Animal Health Institute, "Request for Correction of Information under Section 515 of Public Law 106-554; Data Quality," Dec. 6, 2002. (online at [http://www.ombwatch.org/info/dataquality/HHS\\_FluoroquinolonesRequest.pdf](http://www.ombwatch.org/info/dataquality/HHS_FluoroquinolonesRequest.pdf))

<sup>11</sup> Chemical Products Corporation, "Request for Correction of the IRIS Barium and Compounds substance file - Information disseminated by EPA that does not comply with EPA or OMB Information Quality Guidelines," Oct. 29, 2002. (online at <http://www.epa.gov/quality/informationguidelines/documents/2293.pdf>)

Although OMB asserts that all types of individuals and groups are submitting requests, by looking at the numbers one can see that industry is the most frequent user of the IQA. Analysis of the individual challenges also reveals that industry related requests are consistently larger and more substantial than other challenges, such as those submitted by individuals. It is not unprecedented for industry challenges to reach over a hundred pages in length and come with numerous attachments, extensive notations and detailed references. Many of these challenges are also researched and written by law firms. In contrast, many of requests received from individuals are only one or two pages long and often submitted through a website form. Therefore industry requests represent a much greater burden on agencies than those from other submitters.

***PERCEPTION #3: "The Information Quality Act could result in slowing down the regulatory process at the agencies."***

***OMB'S RESPONSE: There has been no noticeable slowdown in regulatory process.***

***REALITY: The IQA is a slow process that has contributed to an overall slowdown in regulatory action and rulemaking under the Bush administration.***

OMB argues that it, and other stakeholders, have not "noticed or commented on any slowdown of the regulatory process." To support this statement, OMB notes that it receives regulatory agendas from agencies twice a year and claims that this information provided the public an opportunity to track the speed of rulemakings. Therefore, claiming that the regulatory agendas make the office knowledgeable and informed on this point OMB concludes that, "To [its] knowledge, the Information Quality Act has not affected the pace or length of rulemakings."<sup>12</sup>

Unfortunately, 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. OMB could have easily collected data from the agencies in their annual reports, by creating a section for agency IQA program officials' input on whether they believe future rulemakings were delayed by any of the challenges. Indeed, the agencies would be in a much better position to make such an evaluation.

Since OMB neglected to collect such insights from the agencies, it was left to rely on the regulatory agendas which lack context for the regulatory process. Different rulemakings and actions may progress through an agency at different rates depending on any number of factors – type and amount of supporting evidence, public pressure, Congressional attention, etc. Since the regulatory agendas cannot capture these factors, OMB cannot determine if the pace of regulatory action has slowed from the pace the agency originally anticipated.

Other evidence has indicated an ongoing overall slowdown in the regulatory process under the Bush administration, despite OMB's statement. Stakeholders **have** noticed a slowdown in the

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<sup>12</sup> "Information Quality: A Report To Congress," p. 9.

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.<sup>13</sup> 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 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.<sup>14</sup>

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.<sup>15</sup> 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.

OMB's use of regulatory agendas to gauge impacts is misleading because the agendas themselves are not reliable with regards to the announced timetables. Additionally, information quality challenges may delay future rulemakings, which are not yet present on regulatory agendas. Prior to officially scheduling a rulemaking, agencies accumulate numerous types of information pertaining to the issue. At some point, the collection of data becomes definitive or compelling enough to initiate plans for a new rulemaking. Although previous to this point in agencies' processes there is no "rulemaking" to stall, industry is familiar enough with the regulatory process to understand that questioning and delaying the accumulation of good data can impede the initiation of a rulemaking.

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<sup>13</sup> Sylvia Lawrence, statements at the Center for American Progress/OMB Watch event releasing a report entitled "Special Interest Takeover," Mar. 25, 2004.

<sup>14</sup> "Information Quality: A Report To Congress," pp. 9-10.

<sup>15</sup> Environmental Protection Agency, "Registration Eligibility Science Chapter for Atrazine: Environmental Fate and Effects Chapter," Apr. 22, 2002.

***PERCEPTION #4: "Implementation of the guidelines could chill agency disseminations."***

***OMB'S RESPONSE: Agency disseminations are not chilled by the guidelines.***

***REALITY: Information quality challenges have sought to chill agency disseminations. It remains unclear how the guidelines affect agencies' dissemination of new information.***

While OMB says it has "no evidence that points to a reduced number of agency disseminations," it also has no evidence to the contrary.<sup>16</sup> 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 prompts the alteration of information development and dissemination procedures. Once again, OMB's poor report template missed a key opportunity to clarify this issue.

However, we do know that every agency's data quality procedures require a pre-dissemination review provision for all information. Obviously, a very strict review process will slow dissemination and even chill releases as officials become frustrated with the process or the inevitable challenges. This sluggish mechanism could also sap timely releases, such as health advisories, of all usefulness.

Furthermore, a former EPA assistant administration for enforcement and compliance stated that the data quality act is slowing down work on the publication of reports and the release of important information.<sup>17</sup> OMB is inundating agencies with burdensome policies such as the IQA and forcing them to expend resources on administrative and procedural work instead of disseminating substantive agency information.

Even if the extent to which IQA procedures chill disseminations remains unclear, several information quality challenges plainly indicate that some stakeholders, mostly industry, desire such an outcome. Several of the FY03 challenges specifically requested that disseminated information be withdrawn entirely from agency websites and paper materials. For instance, a law firm that clearly represents industry in asbestos cases challenged an EPA pamphlet that provides guidance to mechanics on the hazards of asbestos exposure from old break pads. Rather than recommend specific changes to improve the quality of the government's data, the law firm requested the pamphlet simply be discontinued.<sup>18</sup> EPA still disseminates the pamphlet and has informed the requester that the information is being updated as part of a larger informational asbestos effort.

In another example, a series of industry sponsored data quality petitions challenged U.S. Forest Service documents restricting logging and forest use in order to protect the Northern Goshawk, a

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<sup>16</sup> "Information Quality: A Report To Congress," p. 10.

<sup>17</sup> Lawrence.

<sup>18</sup> Morgan, Lewis & Bockius, "Correction of Information Request to EPA," Aug. 19, 2003. (online at <http://www.epa.gov/quality/informationguidelines/documents/12467.pdf>)

hawk listed in several regions as a "sensitive species." Each petition recommends that the agency correct the data quality by withdrawing the entire document or expunging whole sections.<sup>19</sup> Only minor changes were made to the various reports in response to the challenges and subsequent appeals.

The continual focus of these information quality challenges on "de-publishing" information can chill agency dissemination in two ways. First, agency officials may alter the type, level of detail, or timing of disseminations to resolve a specific data quality challenge. Second, similar reductions might then be made to future materials as a means of avoiding similar future challenges.

***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.***

OMB asserts, "Most of the Information Quality responses to requests for correction that were denied have subsequently been appealed."<sup>20</sup> This claim is entirely incorrect. In reality, out of the 98 substantive 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."

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. 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.

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. While it may be important to have an appeals process, agencies already provide such an opportunity through the public comment process for rulemaking. 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.

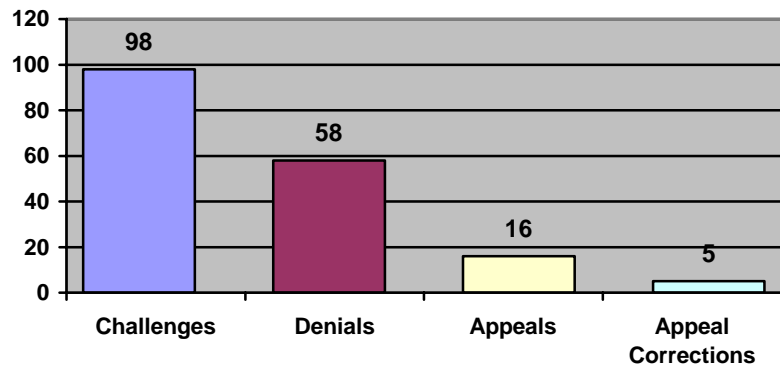
<sup>19</sup> The Washington Contract Loggers Association, Northern Arizona Loggers Association, Coalition of Arizona/New Mexico Counties and W.K. Olsen & Associates; "Petition to Correct Information Disseminated by the USDA Forest Service," Jan. 17, 2003. (online at <http://www.fs.fed.us/goi/documents/2003/01/rm-217-goshawk-petition.pdf>)

<sup>20</sup> "Information Quality: A Report To Congress," p. 10.

Additionally, the IQA appeals process is open to manipulation. In one prime example, BMW submitted an IQA appeal to EPA because the agency's Enforcement Compliance History Online database lists a BMW facility as being in Significant Non-Compliance with the Resource Conservation and Recovery Act.<sup>21</sup> EPA formed an executive panel to review BMW's appeal. Instead of experienced and knowledgeable enforcement

officials or an objective and impartial administrative law judge handling the review, a three-person political appointee panel oversaw the process. Allowing the injection of politics into what is supposed to be an objective review of data quality creates too high a potential for abuse and an unfair evaluation of the appeal.<sup>22</sup> Although EPA received this appeal after its FY03 report to OMB, it provides a perfect example of how the IQA appeals process can be misguided.

**Usefulness of Appeal Process**



Source: OMB, "Information Quality: A Report To Congress"

**PERCEPTION #6:** *"The Information Quality Act is aimed primarily at information in Federal rulemakings."*

**OMB'S RESPONSE:** *The majority of requests are unrelated to rulemakings.*

**REALITY:** *A significant portion of the FY03 petitions target agency activities that potentially lead to future rulemakings.*

This perception is somewhat duplicative of OMB's Perception #3 – that the IQA would slow down the regulatory process. However, in this sixth perception OMB narrows the scope by using the word "rulemakings" instead of "regulatory process." OMB reports that most requests "have not been directly related to rulemakings" and instead targeted information in reports, notices, or webpage materials. The report never states an exact figure, but in FY03 seven information quality challenges targeted rules or ongoing rulemakings.<sup>23</sup>

As noted previously in this analysis, rulemaking under the Bush administration has become an ever-shrinking target, as industry is successfully stalling or eliminating rules it dislikes. The Bush administration has been criticized for finalizing fewer significant rules than recent previous

<sup>21</sup> BMW Manufacturing Corp., "Request for Correction - Information Quality Guidelines to EPA," Feb. 7, 2003. (online at <http://www.epa.gov/quality/informationguidelines/documents/7421.pdf>)

<sup>22</sup> Lawrence.

<sup>23</sup> "Information Quality: A Report To Congress," Appendix pp. 21-122.

administrations.<sup>24</sup> Many of the significant rules given priority under the Bush administration are already categorized as "industry friendly," and several are rollbacks and reductions of stricter rules passed during the Clinton administration. Given the industry's success in reducing rulemaking targets, it is not surprising that only a handful of IQA requests directly addressed rulemakings.

OMB's report does acknowledge that some of the contested information "may eventually lead to regulations" but suggests it is of lesser importance because this information is not typically contained in rulemaking notices. Given the range of information challenged among the various agencies, this is an overly generalized statement. OMB erroneously suggests that only information included in a notice of rulemaking is important to the overall process. As mentioned above, agencies first collect and analyze information to determine if a rulemaking is appropriate. Allowing data quality challenges at this collection stage leaves the process susceptible to abuse by those wishing to stall rulemakings. In other words, rather than trying to stop a car by throwing up roadblocks they have the opportunity to prevent the car from being started.

In this case, the listed "perception" itself is misleading and only partially conveys the concerns regarding the IQA's potential impacts. The realistic manifestation of this perception is that many use the IQA to delay and weaken agency activities aimed at protecting health, safety and the environment. At least ten risk assessments and chemical or product safety reports were challenged. Examples include a report on carcinogens that includes nickel compounds, a requested ban of chromated copper arsenate treated wood in playground equipment, a report on the characteristics of lint ignition in electric clothes dryers, an evaluation of risks from atrazine that mentions endocrine disruption effects, the oral dose limit for barium, and the listing of bromate as a carcinogen.<sup>25</sup>

Also, eight challenges concerned information affecting agency actions such as enforceable standards, protection plans and product bans. Forest management plans, grazing permits, endangered species listings, equal opportunity standards, a livestock antibiotic withdrawal notice, and air monitoring measures were all challenged.<sup>26</sup> Although there might not be a rulemaking in progress addressing these issues, these types of challenges can inhibit agencies' abilities to create necessary future regulations and enforce existing ones that are under attack.

***PERCEPTION #7: "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.***

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<sup>24</sup> OMB Watch, Executive Report, "Regulatory Output Under the Bush Administration," Jan. 15, 2003. (online at <http://www.ombwatch.org/article/articleview/1257/>)

<sup>25</sup> "Information Quality: A Report To Congress," Appendix pp. 21-122.

<sup>26</sup> Ibid.

OMB correctly states that the IQA "has been used to address complex issues and analyses."<sup>27</sup> 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.<sup>28</sup> However, numerous industry comments urged for the application of 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.

***PERCEPTION #8: "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 is 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)."<sup>29</sup> 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

<sup>27</sup> "Information Quality: A Report To Congress," p. 11.

<sup>28</sup> Office of Management and Budget, "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies," Sept. 28, 2001. (online at [http://www.whitehouse.gov/omb/fedreg/final\\_information\\_quality\\_guidelines.html](http://www.whitehouse.gov/omb/fedreg/final_information_quality_guidelines.html))

<sup>29</sup> Ibid.

organizations urging them to review their data quality standards. CRE also made specific recommendations for university compliance with the IQA.<sup>30</sup>

This action by CRE is unfounded and unwarranted. It is 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 emphasizes a long-standing effort by industry to shape academic research.<sup>31</sup>

### **Missing Perceptions**

In addition to the errors, misleading statements, and generally biased tone contained in OMB's report, it also neglects to address major issues and concerns. This report should have properly communicated the impacts of the new program by describing the most important and controversial issues. Instead, OMB excludes many issues and by doing so, unfairly molds Congress' impressions of the IQA's effects. OMB Watch has identified three major "missing perceptions" and examines them below.

#### ***MISSING PERCEPTION #1: Agency denials of information quality challenges may be judicially reviewable.***

Since the promulgation and implementation of the data quality guidelines at federal agencies, much debate has revolved around whether the guidelines are judicially reviewable. This unresolved question is so critical because it could take ultimate decision-making authority out of agencies' hands. In an effort to prevent such an outcome, several agencies stress their DQA guidelines are not rules nor are they legally binding. OIRA, architect of the IQA guidelines, never made a clear statement addressing the issue of the judicial reviewability. However, John Graham, OIRA's administrator has said, "If agencies do not develop an objective appeals process, I predict that there will be efforts down the road to authorize appeals outside the agency."<sup>32</sup>

Corporate law firms began preparing immediately for IQA cases declaring the guidelines a new potential litigation tool. Firms dismissed agencies' disclaimers and instead believed that the IQA's "language creating the obligation to use only high quality data is mandatory, not discretionary."<sup>33</sup> OMB's indecision encouraged firms, which noted, "OMB has warned these

<sup>30</sup> Center for Regulatory Effectiveness, "Letter to Jane Buck, President of American Association of University Professors," Aug. 6, 2003. (Online at <http://www.thecre.com/pdf/universityDQltrBuck.pdf>)

<sup>31</sup> This is can be seen in a number of ways. The increased role industry has in funding academic research. Or a legislative effort called the Shelby amendment that was passed during the Clinton administration that potentially serves as a backdoor way of using the Freedom of Information Act as a vehicle for obtaining the underlying data of academic research used by government in regulatory matters.

<sup>32</sup> 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.

<sup>33</sup> CapAnalysis "Client Alert: Federal Data Quality Guidelines – A Potential New Litigation Tool," Nov. 2002. (Online at <http://www.capanalysis.com/docs/ClientAlert20021119.pdf>)

agencies that these disclaimers may not control in the event of litigation."<sup>34</sup> It was not long before industry began pursuing information quality litigation.

Two IQA lawsuits were filed in FY03. It should also be noted that two more IQA lawsuits have been filed in the first months of FY04. The first FY03 lawsuit challenges a White House Office of Science and Technology (OSTP) climate change report. The second lawsuit challenges equal opportunity for participation of women and men in athletics under Title IX. For a variety of reasons neither of the cases made it to court in FY03. OSTP settled out of court by posting a notice stating the challenged global warming reports were not "subjected to OSTP's Information Quality Act Guidelines." Even without a court decision, the IQA lawsuits in FY03 established the importance of this issue.

In June 2004 the first IQA case was decided in court. A federal district court in Minnesota made the first ruling and held that the IQA does not permit petitioners to seek judicial review. A coalition of industry-related groups charged the Army Corps of Engineers' with violating the IQA in its plan for operation of the Missouri River and an underlying Biological Opinion ("BiOp") from the Fish and Wildlife Service. The court also rejected the plaintiffs' use of the Administrative Procedure Act to seek judicial review of the DQA issues. The court essentially held that there are no substantive standards in the DQA that permit the court to review the agencies' actions under the Act. Looking at the key terms of the IQA's requirements for data quality – "quality," "objectivity," "utility," and "integrity" – the court held that the terms are so broad that the plain language of the Act creates no meaningful standard against which to judge agency compliance.

OMB's glaring omission of this important and highly debated IQA issue significantly detracts from the report's usefulness. Even though OMB has been willing to interpret Congress' intent in the IQA when it came to OMB's authority, it has been reluctant to take a firm position on the judicial reviewability. Given this reluctance, Congress should be fully informed of the issue in order to clarify the IQA, if it chooses. In the recent court decision, the judge was forced to interpret Congress' intention. The court found, "Absent any 'meaningful standard' against which to evaluate the agency's discretion, the Court finds that Congress did not intend the [IQA] to provide a private cause of action." Congress should certainly be notified if its intentions are so unclear that courts are being called upon to interpret them.

***MISSING PERCEPTION #2: Implementation of the IQA guidelines has not been burdensome to or wasted resources of federal agencies.***

Another glaring omission from OMB's report is any discussion of the costs associated with implementation of the government-wide guidelines. As noted previously, the format OMB provided for agency annual reports does not prompt agencies to quantify in any way the burdens they experienced from the IQA guidelines. Agencies regularly use several standard indicators to quantify burden, such as work hours or dollar cost, which could have easily been included in the agency annual reports. Such information would have allowed for a comparison of response

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<sup>34</sup> Ibid.

times to data quality requests, analysis of the different burdens associated with each type of challenge, as well as an overall calculation of the total cost of implementing IQA.

It is particularly ironic to witness OMB, a fervent advocate of cost-benefit analysis, ignoring the costs of its own intrusive policy. Perhaps OMB believes the implementation costs are not an important concern. In a draft bulletin for government-wide peer review standards which OMB claims stem from the IQA, the agency estimated that the new policy "may not impose substantial costs and burdens on the agencies that they are not already incurring."<sup>35</sup> Perhaps, OMB also assumes that the implementation costs for the information quality guidelines are negligible.

However, Graham publicly stated "OMB guidelines recognize that responding to information complaints will be costly and time consuming."<sup>36</sup> Even in the report to Congress OMB acknowledges the unexpected time burden associated with responding to information quality challenges. "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."<sup>37</sup> Larger financial burdens almost certainly coincide with the increased time commitment agencies make to the IQA. The costs, both financial and lost opportunity, could be higher than expected since these challenges often require the attention of specialists. Appeals at some agencies involve panels of top officials and department heads. Using this type of staff, which has higher salary grades and significantly more important responsibilities, makes it expensive to operate data quality programs. OMB's report touches on this when it recounts the difficulties agencies have experienced ensuring that "the correct specialist has sufficient time to give priority to an information quality correction request."<sup>38</sup>

If Congress, or even OMB, wishes to fairly and completely evaluate the usefulness and efficiency of the IQA then burden information must be collected and considered.

***MISSING PERCEPTION #3: OIRA has oversight authority for all IQA issues including individual challenges at federal agencies.***

The report to Congress makes no mention of OMB's assumed oversight role for information quality. OMB claims the report is based upon "the experiences and insights from OMB Staff who have worked with the agencies to oversee the implementation of the government-wide." However, the report does not summarize OMB's involvement or recount specific experiences. The absence of such information is doubly troubling. First, if the report's primary source is the experience of OMB staff, then it seems essential to explain and validate that experience. Second, having the political White House increasingly involved in decisions and general operations of agencies has led to numerous concerns about the potential for abuse and mischief.

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<sup>35</sup> Office of Management and Budget, "Peer Review and Information Quality Proposed Bulletin and Request for Comment," Aug. 29, 2003, p. 8.

<sup>36</sup> Graham, p. 10.

<sup>37</sup> "Information Quality: A Report To Congress," pp. 9-10.

<sup>38</sup> Ibid.

Congress, according to the precise wording of the IQA, instructed OMB to "issue guidelines...that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality"<sup>39</sup> 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 grant OMB the responsibility of 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. 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."<sup>40</sup> He went on to describe OMB's oversight role as using the annual reports to focus on design and implementation of agency procedures.

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.<sup>41</sup>

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."<sup>42</sup>

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 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."<sup>43</sup> However, the IQA did not assign OMB any such monitoring responsibility.

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<sup>39</sup> Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001.

<sup>40</sup> Graham, p. 11.

<sup>41</sup> "Memorandum For The President's Management Council: Executive Branch Implementation of the Information Quality Law," p. 3.

<sup>42</sup> Ibid.

<sup>43</sup> "Peer Review and Information Quality Proposed Bulletin and Request for Comment," p. 7.

OMB elects to neither collect nor relay to Congress any of the opinions or conclusions of agencies' handling IQA challenges. Instead OMB substitutes its own IQA experiences and opinions. Considering this substitution, it becomes imperative that OMB clarify its own experience in order to justify its methodology. Additionally, OMB should more fully explain to Congress the authority it believes it received from Congress granted in the brief lines of the IQA. Only with a complete understanding of the steps taken and authority assumed, could Congress decide if clarification of the IQA is warranted.

## Conclusion

Clearly OMB's "Information Quality: A Report To Congress" contains serious flaws, inaccuracies and misleading information. Since Congress passed the vague short law, it has grown into a burdensome and restrictive set of government-wide policies. OMB's report should have been a definitive explanation of the burdens, challenges, impacts and benefits associated with the first year of implementing this new program. Congress, as well as the public, deserves to have full disclosure on the implementation of IQA, not just the partially informed opinions of a few staff in a political White House office.

OMB failed in the collection of data necessary to fairly evaluate the IQA's impacts at agencies, information that OMB should have realized was critical to such an evaluation. OMB's report provides little aggregated data from the agencies. The figures used and the underlying methodology are not sufficiently explained. The report does not describe the extent or manner of experience the staff obtained during the first year of the IQA's implementation, even though such experience forms the basis for OMB conclusions.

The topics selected for discussion in the report appear incomplete and inconsistent with important IQA issues raised by stakeholders during the policies' development and implementation. OMB opted to avoid the most contentious issues. Additionally, the wording of several issues appears to be carefully chosen to allow simple and positive answers. These factors combine into an overly optimistic tone that does not convey the strong objections raised against the IQA policies. One cannot help but interpret these flaws as problems of objectivity and bias.

OMB designed the information quality guidelines and oversees its implementation at all federal agencies. The office even used the IQA to further expand its influence into agency activities with development of government-wide standards for scientific peer review – policies not expressly authorized by the Congress. OMB has much invested in the IQA. It appears this investment produced an overly positive report. It is telling that the report does not discuss a single serious problem or difficulty. The report gives the impression that the first year of implementing a new government-wide set of policies yielded no serious problems, objections or complaints. Apparently, this directly contradicts OMB's early expectations. Graham previously reported, "OMB's initial steps in this arena may need to be revised and improved as agencies and the public grapple with the practical realities of ensuring quality information."<sup>44</sup>

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<sup>44</sup> Graham, p. 7.

In reality, there are many improvements and revisions that would benefit the IQA and its guidelines. However, OMB is preventing Congress, agencies and the public from grappling with the practical realities of ensuring quality information by producing an incomplete, inaccurate and misleading report. Congress needs to reach beyond OMB's flawed report and actively investigate the impacts of the IQA. Congress should instruct the General Accounting Office to more vigorously and fully examine the impacts and effects of the IQA at federal agencies. Congressional hearings would also enable Congress to hear directly from key agencies officials about implementation of the IQA and explore if the law needs revision. Congress and the general public deserve to have the complete, accurate and unbiased examination of the IQA and its impacts – both positive and negative – as well as the opportunity to improve this controversial program.