

## **1. Judicial Review of Agency Certifications**

Section 3507(d) is amended by adding after paragraph (6) a new paragraph (7), as follows: “(7) Agency adherence to the standards and procedures set forth in section 3506(c)(3) of this title, and the Director’s oversight thereof, shall be subject to judicial review.”

### **Suggested Report Language**

Private individuals and organizations are being directed by Federal law to certify compliance with a variety of detailed and complex legal standards under, for example, the Sarbanes-Oxley Act. The failure to comply with these certifications may lead to civil or even criminal penalties. However, it appears that Federal agencies are themselves failing to comply with legally required certifications. In a recent report, the Government Accountability Office found that “GAO’s analysis of 12 case studies [in four departments] showed that CIOs [agency Chief Information Officers] certified collections even though support was often missing or partial. \* \* \* Specifically, the support that was provided for certifying the 10 standards in the [PRA] was missing or partial on 65 percent (66 of 101) of the certifications. \* \* \* As shown ..., certifications concerning avoiding unnecessary duplication, reducing burden on the public, and ensuring that an agency has a plan and resources for using the information collected – which are critical to achieving the objectives of the [PRA] – were among those that frequently lacked complete support.” (“Paperwork Reduction Act: New Approach May Be needed to Reduce Government Burden on Public,” GAO-05-424, May 2005, highlights and pages 16 & 17; see GAO website at <http://www.gao.gov/new.items/d05424.pdf>).

The Committee understands, as a general matter, that private individuals are already able to sue Federal agencies (including the Office of Management and Budget) in Federal court for failure to comply with the standards and procedures set forth in the Paperwork Reduction Act. However, agencies are disregarding compliance with the standards for making and supporting the certifications required by section 3506(c) of the PRA. To ensure the required agency compliance, as well as OMB oversight thereof, the Committee has included a provision that emphasizes an agency’s responsibility to adhere to these standards and to provide the required record. This provision would make agency adherence to the standards embodied in the certifications and the procedures required by the PRA, as well as OMB’s oversight thereof, subject to judicial review.

## **2. Certification of Agency Compliance with Data Quality Act Standards**

Section 3506(c)(3) of title 44, United States Code, is amended by redesignating subparagraphs (I) and (J) as subparagraphs (J) and (K), respectively, and by inserting a new subparagraph (I), as follows: “(I) is to result in information that will be collected, maintained, used, and disseminated in compliance with the information quality standards

adopted in the guidelines issued by the Director and the agencies under Public Law 106-554, § 1(a)(3) [title V, § 515], Dec. 21, 2000, 114 Stat 2763, 2763A-153.”

### **Suggested Report Language**

The OMB guidelines issued under Section 515 in title V, Public Law 106-554, state that: “Agencies shall treat information quality as integral to every step of an agency’s development of information, including creation, collection, maintenance, and dissemination.” (Paragraph III, 2 (67 FR 8459 (February 22, 2002))). In guidance provided to agencies during agency development of their information quality guidelines, OMB stated that “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.” (Memorandum of June 10, 2002, entitled, “Agency Draft Information Quality Guidelines,” for the President’s Management Council from OIRA Administrator John D. Graham, p. 12; see OIRA website at <http://www.whitehouse.gov/omb/inforeg/infopoltech.html>).

The Committee agrees with these OMB policies that emphasize the need for agencies to comply with information quality standards as part of their day-to-day implementation of the Paperwork Reduction Act. However, the Committee is also aware of complaints that agencies have not consistently followed them. To ensure that these information quality standards are treated as integral to every step of an agency’s creation, collection, maintenance, and dissemination of information, the Committee has added a provision related to the agency’s certification (and the record supporting such certification) provided as part of each PRA clearance package. This provision requires an agency to certify that each collection of information submitted to OMB for PRA review will be collected, maintained, used, and disseminated in a way that ensures compliance with the information quality standards established by the OMB and agency guidelines issued under the Section 515, Title V, Public Law 106-554. This provision is modeled upon the existing OMB statements of policy.