

PEER REVIEW UNDER THE U.S. INFORMATION QUALITY ACT

Editor's Note: This is the first of a series of CRE articles on the U.S. Government's Information Quality Act Guidelines. These Guidelines explain how most U.S. federal agencies establish and ensure the quality of the information they disseminate. They apply both to information originated by the Government itself, and to information originated by other entities that the Government uses or relies on. Links to some of the U.S. Guidelines are provided in the article below. Click on the gray "comments" box above to send any comments or questions.

The U.S. Information Quality Act

On April 24, 2019, The Executive Office of the United States President, Office of Management and Budget ("OMB"), published a "Memorandum for the Heads of executive Departments and Agencies" entitled "Improving Implementation of the Information Quality Act" ("OMB Memorandum").¹ This Memorandum states that its purpose "is to reinforce, clarify, and interpret agency responsibilities with regard to responsibilities under the Information Quality Act (IQA)."²

Readers are referred to this OMB Memorandum for an excellent discussion of the history and intent of the U.S. Information Quality Act Guidelines. The OMB Memorandum explains, *inter alia*:

"Prudent decision making depends on reliable, high-quality information. [The U.S.] Congress has long recognized that federal agencies should make decisions using the best data reasonably available, and Congress has entrusted OMB with the statutory role of ensuring that federal agencies collect, use, and disseminate information that is fit for its intended purpose. Within OMB, the Office of Information and Regulatory Affairs (OIRA) works with agencies to maintain information quality standards."³

In 2002, OMB, after public notice and comment, published Government-wide Information Quality Act Guidelines. Most U.S. federal agencies then had to develop and comply with their own agency-specific IQA Guidelines. The agency-specific IQA Guidelines have to be consistent with the OMB Government-wide IQA Guidelines. As the OMB Memorandum explains:

"Implementing statutory requirements in the IQA, the [OMB/OIRA Government-wide] Guidelines provide a framework for oversight of the

¹ The OMB Memorandum is available at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf>.

² *Id.*, page 1.

³ *Id.*, pages 1-2.

quality of information disseminated by the federal government throughout its lifecycle, which includes creation, collection, pre-dissemination review, transparent and reproducible use, and ultimately correction and disposition. The Guidelines impose three core responsibilities on federal agencies:

1. Agencies must embrace a basic standard of quality and consider quality in their information dissemination practices.
2. Agencies must develop information quality assurance procedures that are applied before disseminating information.
3. Agencies must develop an administrative mechanism for affected parties to request that agencies correct information of inadequate quality, with an appeal process and annual reports to OMB.”⁴

The OMB Memorandum “directs agencies to update their guidelines within 90 days along-the following parameters” set forth in the Memorandum. ⁵ This CRE article discusses the Memorandum’s Peer Review requirements. Subsequent CRE articles will discuss other requirement of the Memorandum and IQA.

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In 2004, OMB published its "Final Information Quality Bulletin for Peer Review."⁶ OMB stated then, “This Bulletin establishes government-wide guidance aimed at enhancing the practice of peer review of [U.S.] government science documents.”⁷ OMB published its Peer Review Bulletin after extensive public review and comment.

OMB’s 2019 IQA Memorandum explains:

The [IQA] Guidelines emphasize the importance of peer review as a tool for determining fitness of scientific information for policy purposes. For the subset of scientific information that is ‘influential,’ peer review is a required component of pre-dissemination review, as described in OMB's Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin's purpose is to increase the quality and credibility of scientific information

⁴ *Id.*, page 2.

⁵ *Id.*, page 2.

⁶ Office of Mgm't & Budget, Exec. Office of the President, OMB M-05-03, Memorandum for the Heads of Executive Departments and Agencies: Issuance of OMB's "Final Information Quality Bulletin for Peer Review" (2004), available at https://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf.

⁷ *Id.*, page 1.

used by the government. The Bulletin includes requirements for the selection of reviewers and transparency of the review, as well as guidance on selecting the appropriate mechanism for peer review and the importance of providing explicit instructions to reviewers (i.e., a peer review charge). Even after the 2004 Bulletin, only some agencies have robust peer review mechanisms.

Proper peer review includes, inter alia, that agencies peer review complex models underlying economically significant regulations before submitting those draft regulations to OIRA under Executive Order 12866. Moreover, agencies must send OIRA the required annual reports of completed peer reviews of influential scientific information. These reports are essential for OIRA to monitor agency compliance with the standards of the IQA.”⁸

The IQA Peer Review Bulletin requirements apply to “Influential scientific information.” The 2019 OMB IQA Memorandum states that

“The {IQA} Guidelines characterize a subset of agency information as ‘influential scientific, financial, or statistical information’ that is held to higher quality standards. This is scientific, financial, or statistical information that ‘the agency can reasonably determine ... will have or does have a clear and substantial impact on important public policies or important private sector decisions.’ For instance, the Principal Federal Economic Indicators are an example of influential statistical information. In the context of a policy decision, a specific piece or body of information is ‘influential’ when it is a principal basis for a decision by a federal decisionmaker, that is, if the same decision would be difficult to reach in that information’s absence or if the decision would lose its fundamental scientific, financial, or statistical underpinnings absent the information. Even if a decision is very important, a particular piece of information supporting it may or may not be ‘influential,’ depending on whether the decision could be reached in the information’s absence. Each agency is authorized to define whether information is ‘influential’ given the nature of issues for which the agency is responsible.”⁹

The IQA Peer Review Bulletin establishes stricter peer review requirements for “highly influential scientific assessments.” The IQA Peer Review Bulletin states that “scientific assessments”

“are a subset of influential scientific information. A scientific assessment is an evaluation of a body of scientific or technical knowledge that typically synthesizes multiple factual inputs, data, models, assumptions, and/or

⁸ OMB Memorandum, page 4, at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf>.

⁹ *Id.*, page 3.

applies best professional judgment to bridge uncertainties in the available information. To ensure that the Bulletin is not too costly or rigid, these requirements for more intensive peer review apply to the more important scientific assessments disseminated by the federal government.”¹⁰

Under the IQA Peer Review Bulletin,

“A scientific assessment is considered ‘highly influential’ if the agency or the [OMB] OIRA Administrator determines that the dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.”¹¹

The IQA Peer Review Bulletin’s requirements can best be gleaned from a review of the Bulletin itself.¹² At this point, we only emphasize the IQA Guideline changes that are required by the 2019 OMB IQA Memorandum. These changes are:

“Implementation Update 1.2: When using scientific information, including third-party data or models, to support their policies, agencies must ensure compliance with the requirements of OMB’s Information Quality Bulletin for Peer Review.

Implementation Update 1.3: When conducting peer review, agencies should ensure reviewers are asked to evaluate the objectivity of the underlying data and the sensitivity of the agency’s conclusions to analytic assumptions.

Implementation Update 1.4: When influential information that has been peer reviewed changes significantly (e.g., as a result of the peer reviewer comments, additional agency analysis, or further consideration), the agency should conduct a second peer review.”¹³

We will respond promptly to any comments or questions on the above.

¹⁰ OMB IQA Peer Review Bulletin, page 2, https://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf.

¹¹ OMB IQA Peer Review Bulletin, page 23, https://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf.

¹² See https://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf.

¹³ OMB Memorandum, page 4, at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf>.