

11/12/97

**Draft Outline for Legislation
on Integrity and Dissemination of Federal Information**

Congressional Findings (perhaps split into findings for each title)

- need to address issue: public needs to be able to rely on truth in gov. -- trust and credibility
- need for Congress to act -- issue for many gov. agencies -- no Cong. guidance
 - information by itself can have large impacts without any regulation that is available for administrative or Congressional review
- importance of data integrity and link between data integrity/relevance and data sharing
 - impact of data on taxpayers and link between public funding/taxpayer money and ownership of data
 - ensuring integrity/replication and furtherance of scientific knowledge/efficiency in research and utilization of gov. funds
 - precedents (e.g., journal practices for peer review)/favorable recommendations/current legislation or guidance that comes close but is incomplete (e.g., Paperwork Act)
 - need to lay down rules for accommodating public's interest in obtaining information with competing interests such as protecting individual privacy, intellectual property, prof. reputations/publication rights/acknowledgment of scientific contributions, not imposing undue burdens
- importance of presenting information supporting regulations in a complete and consistent manner

I. Quality Assurance for Information Disseminated to the Public

- definitions
 - "information"

- "public dissemination"
- principles
 - disseminate only information that constitutes knowledge which is based on current norms in the relevant discipline(s), and distinguish from policy-based views, speculation, or hypotheses
 - use of assumptions
 - should be objective and unbiased to the fullest extent possible
 - should be complete and up-to-date, consistent with the use to which it is being put
 - should be clearly relevant and useful to its ostensible purpose
 - tell whether study findings have been validated/reproduced and independently peer reviewed (and how)
 - full disclosure of significant uncertainties and their impact on the information
 - the information should not mislead, and if it has the potential for misleading, or being misused to mislead, or of being misunderstood, efforts should be made to prevent that
- qualifications of persons disseminating information
- applicability
 - types of communications
 - agencies
 - government personnel, contractors, studies funded by government
- oversight
 - administrative review
 - complaints

- appeals
- designated agency official
- external independent expert review
 - point in process where it is done
 - relevant expertise
 - representativeness (not "balance")
 - conflicts of interest
 - selection of reviewers
 - criteria for review (principles in this Act)
 - reporting/disclosure of review findings and comments
- OMB or OSTP review in especially significant situations
- remedies/penalties
 - who can avail (standing)
 - types of breaches to which remedies apply
 - intentional and significant misrepresentations or attempts to mislead
 - individuals
 - agencies
 - consistency with principles is the standard
 - remedy is to require conformance to principles, or withdraw or delete
 - process for obtaining updating of previously disseminated information when there is significant new information
- judicial review

II. Access to Information Developed with Government Funding

- definitions
 - "underlying data" or "primary data" or "basic data"
 - "duly qualified person" (if made a condition of access requestor)
- Congressional directives
 - basic approach: direct Cong. mandates v. development of guidance by OMB or another entity, and process for public (and scientific community) input/notice and comment
 - conditions of grants
 - agreements with study subjects
 - extent and time period of records retention (perhaps special provision for data likely to be used in public policy decisions or when litigation is filed involving the study)
 - recording of data so it is amenable to sharing
 - limiting dissemination of data by limiting place of access and maintaining control
 - duty of Federal grantee to answer questions regarding its analytical methods, data-gathering techniques, quality control/assurance methods -- i.e., explaining and decoding
 - cases in which data has been developed, but researcher does not submit study for publication or it is not published within a certain time period.
- protection of --
 - individual privacy/code linking
 - disclosure to study subjects of possible secondary analysis without invasion of privacy

- business secrets and data with product development implications (private rights concerning patents, trade secrets, copyrights, and U.S. gov. intellectual property rights)
- rights of first publication -- reasonable time provision and process
- attribution
- low-quality re-analysis -- right of original investigator to know of upcoming submission for publication of new analysis utilizing the original data and right to obtain and comment on submission prior to publication; and right of original investigator to obtain information regarding how any new analysis was conducted and why it was done in a certain way rather than another way
- restrictions on requestor giving access to third parties
- cost reimbursement
- applicability/exemptions
 - national security agencies/armed forces/classification
 - law enforcement/criminal justice investigations and actions, personnel actions
 - ad hoc decisions made by Director of OMB or agency head that disclosure would be contrary to the public interest or pose an unreasonable risk of invasion of personal privacy
 - applicability to research already conducted or already under way
- effective date
- process for gaining access
 - who can gain access (any member of public or only duly qualified persons under supervision of Federal grantee?)
 - at what point in time can access be obtained? (after publication v. prior to publication when "in press" manuscript is being used in gov. policy decisions)

- use of central depository
- contents of request for access
- initial request; appeals of restrictions placed on access or costs imposed by Federal grantee or granting agency
- furnishing of copies as opposed to originals
- administrative oversight
 - OMB role
 - independent expert review council for dispute resolution?
 - agency official responsible for guidance on compliance
- reporting of status of Federally-funded research and provisions made for access to data
 - reporting of acceptance of study report for publication and actual publication and abstract
 - person to contact regarding access and location of files
- relationship to other laws
 - Privacy Act
 - Freedom of Information Act
 - Government in the Sunshine Act
 - laws under which OMB controls retention and access (e.g., Chief Financial Officers Act and Federal Procurement Policy Act -- see OMB Circ. A-110, sec. 2 and .53)
- judicial review v. dispute resolution by expert oversight council (or do not mention)

III. Contents of Federal Register rulemaking notices

[use provisions from Title III of CRE draft bill -- copy attached]

Background Papers and Report Language

Title II (access to information developed with gov. funding)

- importance of issue and need for Cong. action
- S. Ct. decision that FOIA does not provide for access if data is not in possession of a Federal agency (Forsham v. Harris, 1980)
- burden on courts and litigants of forcing courts to make ad hoc discovery decisions (e.g., litigation on Reye's syndrome and aspirin)
- precedents for Cong. action
 - gov. and quasi-gov. agencies (e.g., NSF, NRC)
 - states
 - professional societies (e.g., NAS)
 - individual scientists (e.g., op-ed in 12/25/86 issue of NEJM)
 - universities
 - scientific peer-reviewed journals
- anticipation of key issues (is it an infrequent problem? Will it require new gov. resources? Are individual rights of study subjects and investigators protected adequately? Will it interfere with relationships between the government and research entities (i.e., would universities be less willing to undertake research under gov. grants?); would it impede commercialization of new discoveries
- flexibility

**Provisions of the Paperwork Reduction Act of 1995 Pertaining to Information
Dissemination by Government Agencies (P.L 104-13,
May 22, 1995, "The Paperwork Reduction Act of 1995",
44 USC 3501 *et seq.*)**

STATED PURPOSES OF ACT (SEC. 3501) INCLUDE --

- "(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;"
- "(4) improve the quality and use of Federal information . . . ;"
- "(7) provide for the dissemination of public information . . . in a manner that promotes the utility of the information to the public . . . ;"
- "(9) ensure the integrity, quality, and utility of the Federal statistical system . . . ;"

COVERAGE/DEFINITIONS

- covers virtually all Federal departments and agencies, including EOP and independent agencies, with only a few minor exceptions (e.g., GAO, D.C., gov. labs)
- the term "statistical information" is not defined

RESPONSIBILITIES OF OIRA INCLUDE (SEC. 3504) --

- develop, coordinate, and oversee Federal information resources management policies, principles, standards, and guidelines;
- foster greater sharing and access to "public information" (defined as information made available to the public);
- "(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to --
 - (1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and
 - (2) promote public access to public information and fulfill the purposes of this chapter . . ."

- with regard to statistical policy --
 - coordinate Federal statistical activities to ensure effectiveness, integrity, objectivity, impartiality, and utility
 - develop and oversee government-wide policies, principles, standards, and guidelines concerning presentation and dissemination
 - appoint a "chief statistician"
 - establish an "Interagency Council on Statistical Policy", headed by the "chief statistician", to advise and assist OIRA
- in consultation with certain other officials, develop and maintain a government-wide strategic plan that will cover, among other thing, "enhancing public access to and dissemination of, information, using electronic and other formats. . ." (sec. 3505)
- "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter." (Sec. 3516)
- The Director shall submit an annual report to Congress which includes a description of the extent to which agencies have . . . (B) improved the quality and utility of statistical information; (C) improved public access to Government information;" (sec. 3514)
- The Director shall provide an early and meaningful opportunity for public comment on development of information resources management policies, plans, rules, regulations procedures, and guidelines. (Sec. 3517)

FEDERAL AGENCY RESPONSIBILITIES (SEC. 3506)

- comply with the requirements of the Act and any related policies established by the Director
- designate a senior official to carry out the agency's responsibilities under the Act
- manage information resources to "improve the integrity, quality, and utility of information to all users within and outside the agency. . ."

- "(d) With respect to information dissemination, each agency shall -- . . . (B) in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); . . . (2) regularly solicit and consider public input . . . (3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products"
- "(e) With respect to statistical policy and coordination, each agency shall -- (1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes; . . . (4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information:"

DATA SHARING PROVISIONS

- OMB/OIRA has the authority and responsibility to "provide direction and oversee . . . (v) privacy, confidentiality, security, disclosure, and sharing of information" (Sec. 3504) Note that this section does not include the responsibility to "develop . . . principles, standards, and guidelines"; however, sec. 3526 could cover this by requiring OMB/OIRA to "promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter."
- OMB/OIRA has the responsibility to "promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges; . . ." Sec. 3504(e)(5).
- In cases where an agency provides "public information" in electronic format, it must provide "timely and equitable access to the underlying data (in whole or in part)." Sec. 3506(d).

PUBLIC INVOLVEMENT

- With regard to agency information dissemination activities, each agency "shall . . . (2) regularly solicit and consider public input on the agency's information dissemination activities; (3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products" Sec. 3506(d).
- There is no similar provisions for public involvement in OMB/OIRA development of rules, standards, principles, or guidelines under the Act.

MECHANISMS FOR CORRECTION OF INACCURATE DATA

- nothing specific, but presumably OIRA has authority (and perhaps responsibility) to issue guidance/requirements for such mechanisms

II. **Guidance Issued By OIRA to Implement Information Dissemination Provisions of the Above Act**

- The only guidance issued by OIRA is in Circular No. A-130, as revised Feb. 20, 1996. OIRA has stated that no further guidance is contemplated at this time.
 - it sets out a policy of "maximizing the usefulness of information disseminated to the public" (8.a.5.(d)(i), but it does not specifically address quality, integrity, accuracy, or objectivity, other than a single reference, in the Strategic Information Resources Management Planning section referring to preserving "the appropriate integrity" of information (8.2.(b))
 - does not provide any guidance on procedures for correcting inaccurate, etc. information that has been disseminated, or providing public comment opportunities before dissemination (although it does state that agencies shall provide adequate notice when initiating or substantially modifying information dissemination products (8.6.(j)).
 - agencies must "Assure that information dissemination products are necessary for proper performance of agency functions (44 USC 1108)[sic]" (8.6.(a))
 - "OMB will review this Circular three years from the date of issuance to ascertain its effectiveness" (13.) -- i.e., Feb. 1999

ENSURING THE INTEGRITY OF INFORMATION DISSEMINATED TO THE PUBLIC BY FEDERAL AGENCIES

I. Description of the Problem

Federal government agencies, spurred on by the Administration's "reinvention" initiatives under the National Performance Review, are in the process of putting increasing amounts of information on Internet sites, where it can be easily accessed by any member of the public with a personal computer. Much of this information is of importance for private-sector decisionmaking and state and local government legislation and regulation. Such information covers virtually every area imaginable in which the Federal government has some degree of involvement, including health and safety, the environment, economics, trade, education loans, taxation, finance, social services, agriculture, fisheries, weather/climate, geology, demographics, technology standards, energy utilization, and records.

These information dissemination efforts are being undertaken not only by individual Federal departments and agencies, there are also efforts under way to tie together categories of information provided by different agencies through "single points of entry" or "one stop shopping". Examples include FedStats (www.fedstats.gov); the prototype National Environmental Data Index (www.nedi.gov); and Farsite for Federal acquisition regulations (<http://farsite.hill.af.mil>). Public use of such data has been increasing dramatically. OMB's September 1997 report to Congress on Government information dissemination activities and trends notes that in the previous year the number of "hits" on the EPA website had increased from three to five million per day.

Of course, Federal information dissemination is not concentrated on the Internet and other electronic media. It can also take the form of speeches, Congressional testimony, press conferences, and numerous types of hard copy, such as fact sheets, journals, newsletters, and brochures.

Complicating the situation somewhat is the fact that Federal agencies not only disseminate information they have collected or created themselves, often they fund dissemination of information by non-governmental entities. For example, Federal health and environmental agencies fund studies and publish the results in journals such as *Environmental Health Perspectives*, *Public Health Reports*, and the *Journal of the National Cancer Institute*, as well as in fact sheets and press; or they fund educational information dissemination activities under the National Environmental Education Act. An indirect type of information dissemination is the making available of software by Federal agencies that will allow private entities to manipulate either Federal or non-Federal data to produce aggregated or extrapolated information, such as EPA's risk assessment software.

This surge in government information dissemination could be a powerful force for good within our democratic society, making citizens better informed, creating greater efficiencies, and allowing more legislative and regulatory power to devolve from the Federal to the State and local level where it is closer to that better-informed citizenry. On the other hand, such information also has the potential to do great harm if it is inaccurate, incomplete, or misunderstood, or if it intrudes on individual privacy, reveals confidential business information, or increases risks to national security. A recent example has been the controversy over EPA's proposed "Sector Facility Indexing Project. The Agency eventually conceded that there were high error rates and that it needed to take steps for better quality assurance of such data, although not until after numerous industry complaints and the filing of a lawsuit. Federal information dissemination has the potential to act as a type of indirect regulation by persuading citizens and non-Federal political entities to take political action based on such information.

A subsidiary issue is the extent to which the public should have access to the "primary", "raw", or "underlying" data for information disseminated to the public, either by Federal agencies or by private entities with funding by the Federal Government. This is sometimes referred to as data "sharing", as opposed to data "dissemination", to indicate narrower availability and distribution.

Finally, there is the issue of Congressional authorization of Federal information dissemination activities. Presumably, under the Constitution, Federal agencies only have such powers as are delegated to them by Congress. This would include dissemination of information. In some cases, information dissemination is explicitly authorized by statute; however, in many instances currently, such power implied by the Agency as a result of its interpretation of its "mission" (which may be delineated in some detail in the agency's strategic plan under the Government Performance and Results Act, although such a plan would probably not, by itself, constitute a Congressional delegation of authority.)

II. Existing Legislation and Guidance

A. The Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995¹ addresses not only information collection and paperwork reduction, it also contains a number of definite Congressional mandates concerning control of Federal dissemination of public data and sharing of data. There are separate provisions concerning the responsibilities of OMB/OIRA and other agencies. The Act covers virtually all Federal departments and agencies, including EOP and independent agencies, with only a few minor exceptions (e.g., GAO, D.C., gov. labs.).

¹ P.L. 104-13, May 22, 1995, 44 USC 3501 *et seq.*

OMB/OIRA Responsibilities

The stated purposes of the Act concerning information dissemination are important because they are later references under one of the OMB/OIRA directives (sec. 3504(d)(2)). Those stated purposes include --

- "(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;"
- "(4) improve the quality and use of Federal information . . . ;"
- "(7) provide for the dissemination of public information . . . in a manner that promotes the utility of the information to the public . . . ;"
- "(9) ensure the integrity, quality, and utility of the Federal statistical system . . . ;"

It is noteworthy that throughout the Act, "statistical" information is separated from other types of information, but the term "statistical information" is not defined (either in the Act or in OMB guidance). Likewise, the terms "Federal statistical system" and "statistical programs" are not defined. In the absence of a definition, it can be assumed that a commonly accepted definition will apply. One such, from a modern dictionary², is "a numerical fact or datum, esp. one computed from a sample." Such a broad definition could cover such disparate types of information as economic indicators, census figures, crash test results, or quantitative risk assessments. However, use of the terms "statistical system" or "program" might be construed to exclude particularized quantitative estimates such as those contained in quantitative health risk assessments.

A second important term that is not defined in the Act or in guidance is "integrity". This term is used more often in connection with "statistical" information than other types of information. Guidance issued by OMB, and reports issued by GAO, appear to differentiate "integrity" from terms such as "quality", "utility", "objectivity", and "impartiality", by considering it as focusing mainly on maintaining freedom from "political interference and policy advocacy".³

The statements of Congressional purpose in the Act regarding information dissemination (above) are important when linked to the Act's directives to OMB's Office

² *Random House Dictionary of the English Language, 2d Edition, Unabridged* (1987).

³ See GAO report on "Statistical Agencies: Adherence to Guidelines and Coordination of Budgets", Aug. 9, 1995, GAO/GGD-95-65, "Results in Brief" section.

of Information and Regulatory Affairs ("OIRA") with regard to information dissemination generally. OIRA's "responsibilities" , in sec. 3504, include --

(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to --

(1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and

(2) promote public access to public information and fulfill the purposes of this chapter . . . [emphasis added]

In addition, there are separate directives to OIRA for "statistical policy and coordination" in subsection (e). OIRA is ordered to --

(1) coordinate the activities of the Federal statistical system to ensure--

...
(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

...
(3) develop and oversee the implementation of Governmentwide policies, principles, stanards, and guidelines concerning--

...
(C) statistical information presentation and dissemination

Perhaps most importantly, sec. 3516 of the Act contains the directive that OMB "shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter."

Finally, the Act provides that OMB (a) shall submit annual reports to Congress describing how agencies have improved the quality and utility of statistical information (sec. 3514), and (b) shall provide early and meaningful opprotunity for public comment on information resource management policies, plans, rules, regulations, procedures, and guidelines (sec. 3517).

With regard to the issue of acces to, or "sharing" of, underlying data⁴, the Act

⁴ Terms such as "data access" and "data sharing" are potentially confusing. As noted by OMB in Circular A-130, when speaking of publicly disseminated information, use of the term "access" appears redundant because if information is disseminated, the public has access to it. Therefore, the term "access" is probably more appropriately used in speaking of access to data underlying information disseminated to the public. The term "sharing" is also commonly used in connection with access to underlying data, but it appears that it might be understood to be more restrictive, indicating a kind of collegial exchange among persons of similar or related

provides that OMB shall "provide direction and oversee-- . . . (v) privacy, confidentiality, security, disclosure, and sharing of information" (Sec. 3504) OMB also has the responsibility to "promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges." It is noteworthy that these provisions do not use the defined term "public information". Note also that these provisions do not include the responsibility to "develop ... principles, standards, and guidelines"; however, sec. 3526 could cover this by requiring OMB/OIRA to "promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter."

Individual Agency Responsibilities

Individual agencies are responsible for complying with the requirements of the Act and any related policies established by OMB. This includes the requirement that the shall manage information resources to "improve the integrity, quality, and utility of information to all users within and outside the agency . . ." (Sec. 3506) As throughout the Act, statistical policy is addressed separately, and agencies are required to "ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes. . . ." (Id.)

With regard to sharing of underlying data, the Act provides that agencies shall "observe Federal standards and practices for data . . . sharing" And in cases where an agency provides "public information" in electronic format, it must provide "timely and equitable access to the underlying data (in whole or in part)." (Sec. 3506(d))

Agencies are required to "regularly solicit and consider public input on the agency's information dissemination activities; [and] provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products" Sec. 3506(d) There is no similar provision for public involvement in OMB/OIRA development of rules, standards, principles, or guidelines under the Act.

B. OMB Guidance under the Paperwork Reduction Act: Circular A-130

The only guidance issued by OIRA is in Circular No. A-130, as revised Feb. 20, 1996. OIRA sources readily state that no further guidance is contemplated at this time, because, with their limited staff, they will be preoccupied with the Year 2000 Problem ("Y2K") and information technology issues for the foreseeable future.

Circular A-130 sets out a Federal policy of "maximizing the usefulness of

expertise, as opposed to general availability to the public. Such distinction could be useful and important in any further drafting of administrative or legislative guidance.

information disseminated to the public" (8.a.5.(d)(i), but it does not specifically address quality, integrity, accuracy, or objectivity, other than a single reference, in the Strategic Information Resources Management Planning section referring to preserving "the appropriate integrity" of information (8.2.(b))

The Circular does not provide any guidance on procedures for correcting inaccurate, etc. information that has been disseminated, or providing public comment opportunities before dissemination (although it does state that agencies shall provide adequate notice when initiating or substantially modifying information dissemination products (8.6.(j)).

Sharing of underlying data is not addressed directly, although the Circular does comment on one aspect of the issue when it states (in App. IV) that "the information responsibilities of grantees and contractors are not identical to those of Federal agencies except to the extent that the agencies make them so in the underlying grants or contracts." This indicates OMB's view that agencies have the power to impose information dissemination and sharing responsibilities on grantees and contractors.

Agency authority to disseminate information when such dissemination has not been specifically authorized by Congress is not explicitly addressed, but certain statements in the Circular come close, and also incorporate the concepts of "practical utility" and "quality", in stating--

Agencies must justify the creation or collection of information based on their statutory functions. Policy statement 8a(2) uses the justification standard -- "necessary for the proper performance of the functions of the agency" -- established by the PRA (44 U.S.C. 3508). Furthermore, the policy statement includes the requirement that the information have practical utility, as defined in the PRA (44 U.S.C. 3502(11)) and elaborated in 5 CFR Part 1320. Practical utility includes such qualities of information as accuracy, adequacy, and reliability.⁵

The term "function(s)" is not defined in the Act or the Circular, and a later statement in the Circular could be construed as detracting from the statement quoted above. that statement reads: "Every agency has a responsibility to inform the public within the context of its mission." The terms "context" and "mission" obviously leave a lot of room for

⁵ App. IV, sec. 3 (emphasis added). The reference to "policy statement 8a(2)" is apparently incorrect, and should be a reference to policy statement 8,a,1(k)2, which states: "Information Collection. Agencies shall collect or create only that information necessary for the proper performance of agency functions and which has practical utility." These statements regarding information "creation or collection" are connected with "dissemination" to some degree later in the same section of App. IV by the statement that "[d]isseminating information is in many cases the logical extension of information creation or collection."

interpretation. Still a third statement at another place in the Circular states that agency information dissemination products are to be "necessary in the transaction of the public business required by law of the agency."

III. Desirable Attributes of Publicly Disseminated Information

The credibility of Government information is critical. Both the general public and well-informed specialists should be able to expect that information disseminated by the Government has certain qualities:

- accurate/reliable
- complete within the limitations implied by context
- limitations/uncertainties clearly disclosed and explained as appropriate
- reasonably up-to-date
- understandable
- purpose/relationship to authorized agency function explained
- relevant/useful
- impartial/unbiased (substantially uninfluenced by political or policy motivations)
- objective (non-hypothetical and capable of validation, and policy information distinguished from factual information)
- necessary and useful in carrying out a function authorized by Congress
- privacy/confidentiality for certain sensitive data

In order to support development of information having such qualities, certain process elements should be implemented:

- public input into guidance
- public input into development of new information to be disseminated
- mechanisms for correction of such information, both before and after dissemination
- focal point for responsibility/accountability
- mechanisms for independent expert peer review of specialized data, and disclosure of results of peer review if advice not followed
- identification of sources (or access to such information on request)
- access to, or sharing of, underlying data, with due regard for resource burdens and privacy and confidentiality issues
- mechanisms for high-level review of policy issues
- legal recourse for individuals or entities that are adversely affected after attempting to obtain correction of inaccurate data
- annual agency reporting of complaints received
- OMB review of agency principles, procedures, and practices, and

implementation

judicial review of dissemination activities alleged to be unauthorized or not in accordance with law

IV. Deficiencies in Current Legislation and Guidance

The existing information dissemination provisions of the Paperwork Reduction Act are broad enough to cover all of the above qualities and process elements. However, the Act did not contain any deadlines for OMB or agency implementation of the Act. Although OMB has issued some guidance in Circular A-130, the guidance is extremely inadequate.

V. Options for Remediating Deficiencies

There are basically three options available, with some overlap:

1. Make the most of the existing legislation. Petition OMB and agencies to carry out its provisions. Bring Congressional pressure to bear through oversight hearings. If OMB and the other agencies fail to carry out rulemaking within a reasonable time, bring a suit for agency action "unlawfully withheld or unreasonably delayed" under sec. 706(1) of the Administrative Procedure Act.
2. Obtain amendment(s) of the Act setting deadlines for OMB and agency implementation, and possibly also delineating broad principles and elements that must be included.
3. Develop new legislation.

VI. Discussion of Options and Recommended Option and Strategy

1. Petitioning OMB is likely to be ineffective, since OMB sources have already asserted that they have no intention, and insufficient staff, to work on anything but the Y2K issue and technology issues. Congressional pressure might increase the likelihood of obtaining some results; but Congress has not demonstrated much motivation to address this issue expeditiously. A lawsuit under the APA would be subject to the defenses that OMB and agency delays have not been "unreasonable" in view of scant resources and other priorities.
2. The option of amending the Act would be the quickest and surest way to obtain results. A simple amendment based on implementation of the existing legislation would be difficult to oppose. The only realistic way to oppose it would be to argue that it would distract OMB from higher priorities. Therefore, it might be advisable to amend further the appropriations authorization in 44 U.S.C. 3520 to provide

slightly more resources to OIRA for one or two fiscal years. It might also be advisable to lay the groundwork for such amendments by arranging Congressional oversight hearings and/or a GAO report. It would also be possible to first try to petition OMB, then resort to legislative amendments when the petition was denied or there was a failure to respond or an inadequate response. The problem with utilizing this last tactic, however, would be that it would (a) delay matters, (b) possibly result in OMB taking implementation action that was inadequate, and (c) give up the element of surprise.

3. Entirely new legislation would be likely viewed as unnecessary, and suspect, in view of the broad existing provisions of the PRA of 1995.

VII. Draft Legislation

The most pertinent existing provisions of the PRA that address the attributes of information dissemination outlined in section III, above, are --

- 3504(d) and (e): OMB's need to develop and oversee implementation of policies, principles, standards, and guidelines for information dissemination that will fulfill the stated Congressional purposes, and ensure the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes.
- 3504(a)(1)(B)(v): OMB's need to provide direction and oversee disclosure and sharing of information;
- 3516 requires OMB to promulgate "rules, regulations, or procedures necessary to exercise the authority provided by this chapter."