

National Science Foundation Comments on
**Proposed Guidelines for Ensuring and Maximizing the Quality,
Objectivity, Utility, and Integrity of Information Disseminated by
Federal Agencies, 66 Fed. Reg. 34489**

The National Science Foundation (NSF) submits the following comments on portions of the "Definitions" section of the OMB Proposed Guidelines required by section 515 of Public Law 106-554 implementing 44 USC 3504(d)(1):

V. Definitions

The following clarification should be included in the guidelines, perhaps in the "Discussion" section, V.1.B.i. or ii.:

Nothing in these guidelines alters the confidentiality protections of any information such as individually identifiable personal information, including statistical data, which is covered by the Privacy Act or any other confidentiality provision.

2. "Information" means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information others disseminate.

NSF supports the exclusion of hyperlinks from the definition of "Information." Federal agencies have no control over the content of linked sites. Yet links promote the broader dissemination and utility of information promoted by OMB Circular A-130. Moreover, agencies routinely include notices to Web users connecting to other sites through links that they are now leaving the agency's Web site so there should be no confusion about what information is disseminated by the agency, and what is available from other sites. Inclusion of "links" within "Information" would only discourage their use because an agency would have no ability to apply data quality standards to linked sites. Dropping all links is contrary to the general goals of A-130.

5. "Dissemination" means the government initiated distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act (5 U.S.C. 552) or Privacy Act. This definition also does not include distribution limited to replies to correspondence, and subpoenas or judicial process.

This definition must properly read "the agency initiated distribution of information to the public", not "government" initiated distribution. Section 515 of Public Law 106-554 directs the Director of OMB to issue guidelines under section 3504(d)(1) to Federal agencies for information disseminated by Federal agencies. Section 3504(d)(1) in turn provides "With respect to information dissemination, the Director [of OMB] shall develop and oversee information policies, principles, standards, and guidelines to -- apply to Federal agency dissemination of public information"

In addition, advisory committee documents required to be made available for public inspection and copying, or public inspection and use by sections 10(b) and 13 of the Federal Advisory Committee Act (FACA) should be added to the exclusions to "Dissemination" in addition to FOIA and Privacy Act responses. Agencies do not "initiate distribution" of these advisory committee documents. Like FOIA and Privacy Act responses, the FACA requires that covered advisory committee documents be made available to the public. Of course, if the agency subsequently uses an advisory committee report to create an agency document it disseminates on its Web site or by other means, that agency document will be subject to these OMB guidelines.

The "Dissemination" definition should read as follows.

"Dissemination" means the agency initiated distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; responses to requests for agency records under the Freedom of Information Act (5 U.S.C. 552) or Privacy Act, or records required to be made available for public inspection under the Federal Advisory Committee Act. This definition also does not include distribution limited to replies to correspondence, and subpoenas or judicial process.

Please contact D. Matthew Powell, NSF Assistant General Counsel, (703) 292-8060 should you have questions about these comments.