

January 13, 2020

Mr. Russell Vought
Acting Director
Office of Management and Budget
1650 Pennsylvania Ave NW
Washington, DC 20502
Via e-mail

Re: Petition for Rulemaking on Enforcement of the Information Quality Act

Dear Mr. Vought,

We are writing to you about the problem of the non-compliance by two agencies with OMB’s memorandum of April 24, 2019 on its Information Quality Act (IQA) Guidelines. The Competitive Enterprise Institute (CEI) has encountered this problem in connection with two IQA correction requests that it filed.

The OMB memo, *Improving Implementation of the Information Quality Act*, recognizes that “Agencies frequently unilaterally extend their own deadlines for replying to RFC, taking a year or more to provide a substantive response. Excessive response times do not allow for correction in a timely manner. Agencies should set and adhere to reasonable timelines, not to exceed 120 days, for a response without the concurrence of the requester.” Memo p. 10.

After the April 24 memo was issued, we submitted two IQA requests (attached): one to the National Aeronautics and Space Administration on July 9, 2019 and another to the U.S. Environmental Protection Agency on May 13, 2019. As of this time, we have received no response to either request. The NASA request has been pending for 188 days, and the EPA request for 245 days—both far in excess of the OMB time limit. This is so even if one generously assumes that the 120-day limit began not when the memo was issued, but 90 days afterwards which was the maximum time the memo gave to implement the new rules.

We have repeatedly contacted each agency in an attempt to find out how much longer they expect to take, but both agencies have repeatedly refused to provide us with any expected completion date. Both agencies have informed us that our requests are currently being held in their administrator’s office, and that no one on the agency’s information quality staff had control over them.

All of this has occurred despite the fact that each agency has updated its own IQA procedures to recognize that taking more than 120 days to act on an IQA request is unreasonable.

OMB issued its memo under its statutory authority to “establish administrative mechanisms allowing affected persons to seek and obtain correction of information” that has been incorrectly

disseminated. Public Law 106-554, Section 515(b)(2)(B). When an agency merely allows people to request the correction of inaccurate information, without any assurance that such corrections will ever be acted on, does not satisfy IQA. The OMB memo attempts to correct this, but it is apparent that OMB should do more. If IQA time limits can be ignored without consequence, they are useless.

Moreover, OMB does not currently know to what degree agencies are complying with its new time limits. As neither we nor NASA or EPA had previously informed OMB of these IQA requests, it is currently impossible for OMB to track such compliance.

We propose that there should be an administrative remedy for an agency which fails or refuses to respond to an IQA correction request within the 120 day time limit.

Specifically, we propose that OMB publicize a generic OMB email address to which members of the public can submit IQA requests to which they have not received a timely response. (For instance, LateRfCs@omb.eop.gov). A requester could easily inform OMB of a late response by simply attaching the correction request to the email.

We propose that if the request seems valid (that is, not duplicative or abusive), then OMB should email the agency, cc'ing the requester, requesting an explanation within one week of its inaction and requesting a date certain by when the agency intends to respond. This is in line with OMB's ability, under the IQA, to require reports as to "how [IQA] complaints were handled by the agency." Public Law 106-554, Section 515(b)(2)(C)(ii).

It is likely that requiring the agency to explain its compliance failure to OMB will often ensure relatively swift action. Agencies do not like having to admit that they failed to do what is required of them. But OMB should be ready for situations in which an agency fails or refuses to adequately respond to such an OMB question. In such situations, we submit that OMB has the power to grant the IQA request and order the agency to comply, and that such an order should be enforceable in court by the requester. Hopefully such actions would never be necessary.

We understand that some of these changes, especially the provision for legally enforceable OMB orders, may require a notice-and-comment rulemaking. If so, we request that this letter be considered to be a petition for such rulemaking under 5 U.S.C. § 553(e).

Sincerely,

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