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To: Mabel E. Echols OMB_Peer_Review/OMB/EOP@EOP

cc:

Subject: Comments on Proposed Bulletin

Please find attached comments on the Proposed Bulletin on Peer Review and Information Quality.

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- ALA Peer review comments.doc

December 15, 2003

Dr. Margo Schwab
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Washington, D.C.

Re: Proposed Bulletin on Peer Review and Information Quality

The American Library Association appreciates the opportunity to comment on the Proposed Bulletin on Peer Review and Information Quality. OMB proposes to “issue new guidance to realize the benefits of meaningful peer review of the most important science disseminated by the Federal Government regarding regulatory topics.”

While the ALA is supportive of efforts to “improve the quality, objectivity, utility, and integrity of information disseminated by the federal government to the public,” we also have a long-standing commitment to the public’s right-to-know what its government is doing and to know this on a timely basis. We are deeply concerned that the effect of this proposed bulletin would be to delay the government’s use and dissemination of information. One troubling example of this is the further expansion of the requirements on agencies in regard to challenges to agency compliance with information quality guidelines promulgated in 2001. We are greatly concerned, moreover, with the provision that would encourage agencies to conduct their external peer review outside the requirements of the Federal Advisory Committee Act.

We recognize that peer review has a role to play in the regulatory process. We are concerned, however, with the scope proposed and with the content of the review. In terms of scope, we are concerned that the requirement for peer review of “significant regulatory information, i.e., information that is “in the form of analytical results will likely have an important effect on the development of domestic or international government or private sector policies or will likely have important consequences for specific technologies, substances, products or firms” and is “relevant to regulatory practices” is overly-expansive. As this requirement is so encompassing, we believe that it would not only be wasteful but that is very likely lead to extensive delay in the dissemination of important information.

In regard to the content of the peer review, we find it troubling that this bulletin expands the content of what is normally understood as peer review and, indeed, what the “Supplementary Information” of the proposed Bulletin defines as peer review:

A “peer review,” as used in this document for scientific and technical information relevant to regulatory policies, is a scientifically rigorous review and critique of a

study's methods, results, and findings by others in the field with requisite training and expertise.

The Bulletin does state, "The charge shall be appropriately broad and specific to facilitate a probing, meaningful critique of the agency's work product. Peer reviewers shall be asked to review scientific and technical matters, leaving policy determinations for the agency. This must be clearly stated and adhered to during the peer review process so the review is based solely on the science being evaluated." It also requires, however, that reviewers shall be informed of:

- the reproducibility and other quality guidelines issued by OMB and federal agencies under the Information Quality Act;
- the content of OMB's guidelines for regulatory analysis, if the document is a formal regulatory analysis; and
- relevant background information on potential sources of controversy, if aspects of the agency's work are likely to be controversial.

In light of the statement that peer reviewers are to look at scientific and technical matters – and not policy determinations – these requirements are inappropriate. We also find the requirement that peer reviewers consider the comments of the public of concern for this reason, and because this requirement will further delay the dissemination of information.

We support the selection of peer reviewers on the basis of necessary scientific and technical expertise and note that many requirements outside this bulletin bar scientists who have a direct financial interest in the outcome of an administrative decision from serving on government peer review panels established to review scientific studies that affect such deliberations. We do not understand, therefore, why OMB is appearing to make a distinction between a scientist who is currently receiving or seeking substantial funding from the agency through a contract or research grant, and a scientist who is currently receiving or seeking substantial funding from a regulated or affected industry through a contract or research grant.

This same distinction recurs in the requirements for the peer review report: "shall disclose the names, organizational affiliations, and qualifications of all peer reviewers, as well as any current or previous involvement by a peer reviewer with the agency ..." No equivalent requirement is stated for current or previous involvement with an affected industry.

Even more importantly, while we understand OMB's concern with distortion on review panels, we are deeply troubled by the consideration of whether a potential peer reviewer "has, in recent years, advocated a position on the specific matter at issue." This consideration factor is all the more disturbing in light of OMB's permission to agencies to operate these review panels outside the accountability of the FACA.

We believe that OMB's concerns about could be met by requiring agencies to operate their panels under FACA, which requires that an agency ensure that any advisory

committee be “fairly balanced in its membership in terms of points of view represented and functions performed.” FACA also protects both the public and the process of review by mandating that the process be open to the public. This, in turn, increases public confidence in both the process of review and in the final outcome of the regulatory action.

Finally, OMB seeks to expand the requirements imposed on agencies under the Information Quality Guidelines promulgated in 2001. Those guidelines set out requirements for establishing “administrative mechanisms allowing affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines” and reporting requirements.” Now, OMB proposes to require any agency receiving a “non-frivolous” (a term nowhere defined) information quality correction request to provide a copy to OMB within seven day of receipt – or to post the request on its website (presumably within seven days). Moreover, upon request by OIRA, each agency is required to provide a copy of its draft response at least seven days prior to its issuance and to consult with OIRA and may not release its response until OIRA has concluded consultation with the agency.

Agencies have already submitted their agency information quality guidelines to OMB for approval and each agency has an administrative mechanism in place. If any agency has not met this requirement, OMB might appropriately focus its attention there. To require every agency to submit its “correction” requests to OIRA not only could create an information management problem for OIRA but, more importantly, open opportunities for the extended delay of dissemination of government information.

The American Library Association urges OMB to reconsider and redraft this proposed bulletin in order to ensure that the public can have confidence in the fundamental fairness of the processes of its government and timely access to the information of government and its activities.

Sincerely,

Patrice McDermott
Deputy Director, Office of Government Relations
American Library Association