



MICHAEL LUZIER
SENIOR STAFF VICE PRESIDENT
REGULATORY AFFAIRS
ADVOCACY GROUP

August 13, 2001

Ms. Brooke Dickson
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Re: Comments on Proposed Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated By Federal Agencies

Dear Ms. Dickson:

On behalf of the more than 203,000 members of the National Association of Home Builders (NAHB), I am pleased to submit these comments on the Office of Management and Budget's (OMB's) "*Proposed Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated By Federal Agencies*" (herein "Information Quality Guidelines" or "Guidelines") which were published for comment in the *Federal Register* on June 28, 2001. Congress directed OMB to prepare these guidelines in Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106-554) (herein "information quality legislation"). NAHB is a federation of more than 850 state and local home builder associations nationwide consisting of individuals and firms engaged in land development, single and multifamily residential construction, building material trades, and commercial and industrial projects. NAHB members collectively employ over eight million people.

Because many construction and land development activities fall under the direct and indirect reach of various Federal regulatory agencies, including economic, housing, environmental, and occupational safety and health issues, Federal regulatory actions frequently have a significant impact on NAHB members. As such, our members are looking to OMB's "Information Quality Guidelines" to help inform them of the practical effect these new guidelines can have on their ability to influence agency actions and to promote a more open and transparent regulatory process. We presume that the new information quality legislation's reference to the "use" of information means that the guidelines apply to not only to the government's "dissemination" activities, but also to the "use" of information by government to make substantive regulatory and policy decisions. Indeed, the Paperwork Reduction Act (44 U.S.C. Chapter 35), which the new legislation amends, specifically states as a purpose, "to improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness." Accordingly, we look to OMB to clarify how the guidelines apply where the government "uses" information for substantive purposes, but does not necessarily "disseminate" it in the traditional conception of that term. In our view, it is this substantive "use" of information by government that is the most significant aspect of the new legislation.

NAHB also looks to the new OMB guidelines to improve the administrative mechanisms that permit affected members of the public to challenge the government's use and dissemination of data and information. We have found the current administrative mechanisms provided under existing OMB

Circular A-130, "*Management of Federal Information Resources*," to be of little practical value to our members and the public. In fact, when Congress was considering this new legislation, it asked OMB about the number and nature of complaints that agency Chief Information Officers (CIOs) were receiving under Circular A-130. OMB responded¹ that they had surveyed the agency CIOs and found that the CIOs were receiving few complaints about data and information quality. However, like Congress, we suspect that the small number of reported complaints are due more to other factors than to a lack of controversy over data and information quality. More likely, the low numbers are attributable to a lack of public knowledge that they should address complaints to the agency CIOs, that the CIOs serve in an "ombudsman" capacity, or that there are existing "administrative mechanisms" available to the public. The low numbers may also be attributable to the fact that the agencies themselves are unaware that they are supposed to involve the CIOs in data and information controversies. Regardless, it is obvious to us that Congress passed this new legislation to address the shortcomings of the existing process.

Finally, while NAHB is pleased with OMB's apparent commitment to data and information quality, we remain skeptical that the new guidelines will accomplish their stated goals unless the agencies embrace them as an important means of improving the quality of information used to make regulatory and policy decisions. To date, our experience suggests that agencies view these requirements as a "nuisance" and do little more than pay lip service to the statutory mandates to improve data quality. An indicator of this is that fact that many regulators we have spoken to are unaware of OMB Circular A-130, the new information quality guidelines, or the ombudsman role of the agency CIOs. In fact, our general criticisms of agency practices are applicable to this very OMB action. For example, Congress specifically required OMB to develop these regulations with "public and agency involvement." However, OMB published proposed guidelines with little pre-notification to the public, little outreach to members of the public who are likely to be interested in the subject matter of the guidelines, no public information forums or opportunities to provide early input into the proposed guidelines, and a minimal (45-day) comment period in which to provide comments. We do not believe this is what Congress intended or what is necessary in such an important undertaking.

The above notwithstanding, NAHB is please to offer the following comments on the four specific questions raised by OMB in the *Federal Register* notice, as well as some general comments and observations on how the proposed guidelines might be improved.

- 1. OMB specifically requests comment on: a) its definition of the four substantive terms ("quality," "objectivity," "utility," and "integrity"); b) whether its definition is clear; c) whether both the agency and the public can readily judge whether something does or does not meet these definitions; and, d) how the definitions can be made clearer and less ambiguous for the agency and the public.**

NAHB is highly concerned with OMB's definition of the four substantive terms - "quality," "objectivity," "utility," and "integrity" - identified in the statute, particularly since it appears that OMB has avoided the difficult task of defining each of these terms by simply aggregating them under the term "quality," and declaring that "quality" has three attributes that amount to "objectivity," "utility," and "integrity." We do not believe this kind of circular reasoning is what Congress intended, or that OMB has demonstrated a sufficient degree of vigor and serious thinking in developing this definition. Indeed, it seems to us that OMB has the obligation to not only define these terms individually, but also to do so in a manner that gives them meaning and practical effect so

¹ See Letter from John Spotila, Administrator of OMB's Office of Information and Regulatory Affairs, to Rep. Jo Ann Emerson, dated April 18, 2000.

they can be understood by the public and used by Federal agencies in preparing their own implementing guidelines. In this regard, we believe OMB's definition falls well short of the mark.

Likewise, NAHB does not believe OMB's definition is clear, or that it adequately provides the necessary framework for agencies and the public to readily judge whether something does or does not meet the standard. On the contrary, by simply aggregating these terms OMB has left much confusion about what the terms means, what standards will be applied, or how to objectively judge whether the standards have been met. We are concerned that the proposed guidelines create, in effect, a "standard-less standard" that will leave Federal agencies with far too much latitude to simply declare whatever they are currently doing will comply with the guidelines. We do not believe this is what Congress intended or what is necessary in developing these guidelines.

Lacking any discussion in the preamble as to what alternatives OMB considered or how these alternatives differed from those selected, it is difficult to comment on how the definitions could be made clearer and less ambiguous. Clearly, Congress intended the term "quality" to distinguish certain types of data and information from others. We believe this refers not only the manner in which information is disseminated by government, but also how the information is used in the regulatory and decision making process. NAHB believes it is critical for OMB to consider the substantive uses of data and information as they attempt to define not only what data and information is, but also the impact its use has on both the public and government. We would like to see OMB provide more concrete, substantive definitions that establish clear and objective legal standards for determining whether data and information is of sufficient quality to justify its use as a basis for decision making. At present, the proposed guidelines do not accomplish this goal.

Finally, there are two other shortcomings with respect to terms specifically used in the new legislation, but not discussed in the proposed guidelines. First, the proposed guidelines say that agencies should adopt a "high" standard of quality, but again this definition of quality (i.e., "high" is vague and hardly informs either the public or agencies about what the implementing guidelines should accomplish. OMB should reconsider this definition. Second, the proposed guidelines completely fail to address the "sharing of" and "access to" information by Federal agencies as the legislation specifically requires. OMB should correct these deficiencies in its revision of the guidelines.

2. OMB invites comments on whether the proposed guidelines have struck the appropriate balance, and suggestions for how the guidelines can be improved in this regard.

As with the definition of the statutory terms ("quality," "objectivity," "utility," and "integrity") above, NAHB finds it difficult to fully assess whether the proposed guidelines strike the "appropriate balance" because OMB has not provided enough insight into its thought processes to fully inform us about what they are attempting to accomplish, why they have prepared the guidelines as they have, and what alternatives were considered and rejected. In addition, the guidelines fail to adequately define key terms, fail to fully develop important concepts, and generally provide insufficient information to the public and the agencies about what the guidelines mean and what they are intended to require. While the proposed guidelines do state that they should "apply to a wide variety of dissemination activities," "meet basic quality standards," and should "apply in a common-sense manner," these cursory descriptions are not adequate to inform agencies about their obligations under the guidelines.

In order to improve the guidelines, NAHB recommends that the guidelines provide far more substantive direction to agencies as to what their implementing guidelines should include, for instance: who, and under what circumstances, can utilize them; what the role and responsibility of the agency CIOs are; and, how the CIOs are supposed to utilize the administrative mechanism in their ombudsman capacity. NAHB believes that without clear and adequate direction in this matter, agencies will be left with too much discretion to tailor their practices so that their existing mechanisms will be declared satisfactory and no real government-wide practices will be adopted. NAHB believes OMB must define clear and objective legal standards for determining whether data and information management systems and administrative mechanism meet the stated principles. At present, the proposed guidelines do not accomplish this goal.

Finally, and perhaps most importantly, NAHB believes that OMB must consider not only how data and information is disseminated, but also how it is used by government in the formulation of regulatory and policy decisions. As we have stated, we believe it is this substantive "use" of information by the government that is the most significant aspect of the new information quality legislation.

- 3. Should the OMB guidelines devote particular attention to specific types of information or information dissemination products? If so, please identify the areas where specific focus should be directed, explain why the focus is needed or is desirable, and describe any guidelines that you recommend for those areas.**

From NAHB's perspective, two of the most important types of data and information we confront are technical and scientific data used for making policy decisions and statistical and economic data used in economic forecasting and modeling. Obviously, anything that can enhance the quality of this type of data and information is good for the public because people make important economic and investment decisions on based on it. NAHB members use government data and information frequently, and as such are acutely aware of its importance. For instance, our members frequently rely on U.S. census data, USGS data, wetlands boundary delineation data, economic forecasts, and other forms of government information. This information is critical to our industry and it should be of the utmost quality. But there is another aspect to data and information quality that we believe OMB must consider. That is, how that data and information is used by government to formulate policy and make substantive decisions.

As we stated above, we assume the proposed guidelines are intended to apply not only to the government's collection, use, and dissemination of data, but also to how the information is used substantively in the regulatory and decision making process. One of our major concerns is with policy bias. That is, some agencies may desire to achieve a particular policy outcome, so they use (and in some cases manipulate) data and information to achieve that result. For this reason, we believe the proposed guidelines must define how data and information is used and the methodologies that should be employed in its use. For instance, we suggest that the guidelines describe a full range of control measures for agencies to employ. These might include a requirement to use peer reviewed data (or require disclosures when peer review is not used), a full explanation of methodologies used, use of representative data, full disclosure of the sources of data, and disclosure of any financial or other interests that might produce bias in the data source.

Regrettably, NAHB has previously experienced data and information quality problems in these areas. For example, EPA's current effort to develop effluent limitation guidelines for the construction and development industry are based on a review of only six construction sites in one state. However,

given the tremendous number of variables that affect storm water runoff (such as soils, hydrology, topography, etc.), an analysis of only six sites fundamentally fails to meet basic data quality standards to serve as the policy basis for a regulation that could cost hundreds of millions of dollars. OMB's guidelines should describe how we can use the administrative mechanisms required by the guidelines to facilitate an independent inquiry into the sufficiency of the data used by the government in a situation like this. Similarly in the economic area, NAHB has observed that certain statistical mechanisms employed to develop housing subsidy information under the Bacon-Davis Act use outmoded economic methodologies for collecting and assessing data. These problems have the tendency to produce flawed data and statistical analysis. We would like the guidelines to clarify how we can use the new administrative mechanisms to have the methodologies independently reviewed and assessed. At present, the process by which we would do that is unclear.

- 4. Should OMB develop specific guidelines to address information that Federal agencies disseminate from web pages? Is there any need to adapt these guidelines to the agency use of a web page? If so, what guidelines are needed?**

NAHB believes that agency information disseminated on the Internet and agency websites should meet stringent data quality, access, and privacy standards. The potential for abuse in this area is enormous and OMB's guidelines should directly address this issue. Data and information quality is critically important to our members, who often base investment and economic decisions on the quality of information disseminated by Federal agencies. We are concerned that certain data and information that does not meet Federal quality standards will be disseminated through these new media that will have an adverse impact on our members. This problem has become particularly acute in this time of rapid technological change, when government data and information can be posted on agency websites for worldwide distribution with the click of a mouse. We do not believe that the proposed guidelines provide adequate consideration to these problems.

NAHB is also concerned that the Internet and agency websites will contribute to the so-called problems of "regulation by information." This term is commonly understood to apply to situations where information is disseminated to the public (and the media), often through agency websites, which has the impact (and often the intent) of driving public opinion and forcing premature governmental action in circumvention of the normal regulatory and policy making process. The problem is that this information often lacks the requisite attributes of quality that should precede its dissemination. Data and information disseminated over the Internet and agency websites should be covered by the full range of data and information quality requirements. As we have previously stated data and information are not simply abstract concepts the proposed guidelines must define; rather, they form the basis of government's substantive policy and decision making processes.

Additional Comments on the proposed guidelines.

In order for the new Data Quality Guidelines to be effective, NAHB believes they must provide a real mechanism for the public to influence agency actions and promote a more open and transparent government. In order to do that, we recommend that the guidelines more clearly define the role and responsibility of the agency CIOs and discuss how the agency CIOs are expected to carry out their "ombudsman" functions. In addition, we would like the guidelines to clearly define how the public can use the administrative mechanism established by the guidelines to seek and obtain the correction of information disseminated by agencies. We believe OMB must not only consider how data and information is collected and disseminated, but also how data and information are used to drive

substantive agency decisions. In this regard, we believe the guidelines would be improved if OMB considered the following additional items:

OMB should more fully explain what it believes Congress intended in passing the new Section 515 legislation. NAHB believes the proposed guidelines are deficient in several substantial ways. Specifically, as we have indicated, we believe OMB has failed to adequately define key terms, failed to provide sufficient information about what the agencies' implementing guidelines should look like, and failed to adequately explained the role and responsibility of the agency CIOs and the administrative mechanism they will be administering. For this reason, NAHB believes that OMB should provide a much more thorough explanation of what it believes Congress intended in passing this new legislation. We believe this additional information is needed to focus OMB on their task of preparing these guidelines, and to properly educate the public and agencies on the meaning and intent of the new legislation. Without this additional background and perspective, we are concerned that the guidelines will be ineffectively implemented and simply allow agencies to maintain the status quo.

OMB should more clearly define the role and responsibility of the Agency Chief Information Officer. NAHB believes the role of the agency CIOs are critically important to the success of the guidelines and OMB must clearly speak to the role and responsibilities of the agency CIOs. For instance, OMB must give practical meaning to the CIO's power to "investigate claims," "obtain correction" of information, and to "recommend or take action." At present, the guidelines do not adequately describe what these terms mean or what authority is to be granted to the CIOs. We do not believe the CIOs ability to influence and improve information practices that will be fully realized without clear OMB direction. We also recommend that the agency CIOs be more than information or computer officers. The Paperwork Reduction Act established the agency CIOs as senior officials who report directly to the agency heads. For this reason, the guidelines must ensure the authority and independence of the CIOs. Without this they will be subject to political pressure and be of little practical use. Finally, we believe the agency CIOs must who have a clear knowledge of policy and regulatory issues to properly understand the impact of the often highly technical data and information that agencies disseminate and use.

The guidelines should explain how the administrative complaint mechanism will work, and how and to what extent the guidelines are enforceable. NAHB believes the guidelines should clearly discuss how the administrative complaint mechanism required by the guidelines should work. We believe OMB is required by the legislation establish some type of a formal "petition" process that gives clear and enforceable rights to the public. For example, the new legislation states that OMB and the agencies must establish administrative mechanisms that allow affected persons to seek and obtain the correction of information used or disseminated by the agencies. However, the proposed guidelines fail to define these key terms or to describe what mechanism the agencies are supposed to implement. OMB should revise the proposed guidelines to fully describe how these administrative mechanisms should work. Accordingly, NAHB suggests that OMB consider the following issues: who qualifies as an affected person and therefore has standing to use the administrative mechanisms established by the guidelines; what form should the request (or "petition") for administrative review take; does the request have to be in writing; what allegations must be asserted; what background material must be provided; what time periods should govern the agency review process; how and to what degree are the guidelines binding and reviewable; what constitutes final agency action for the purpose of judicial (or some other form of) review?

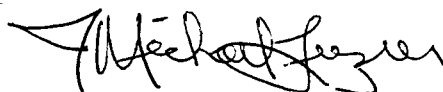
The guidelines should discuss how information quality requirements should be applied to Federal agency programs delegated to the states, and how programs receiving Federal assistance should be governed. NAHB believes the guidelines should address how Federal data and information quality requirements should apply to programs delegated to the states or how they impact activities performed by private organizations receiving federal agency support. In fact, the House Committee Report accompanying the data quality legislation specifically addressed this matter (House Report 105-592, p. 49-50). At present, the proposed guidelines do not address this issue. Since many important Federal programs that have significant data collection and reporting provisions are delegated to the states, OMB should specifically address the issue of delegated programs. In addition, there are many private groups, contractors, and other entities that perform very significant activities for governmental agencies that involve data and information collection, reporting, analysis, and dissemination. NAHB believes the guidelines should address how the guidelines apply to these entities as well. One solution might be to require, as a condition for program delegation or the receipt of Federal funding, that the receiving entities have data and information quality requirements equivalent to the Federal standard in place (or certify their compliance with it).

Agencies should be required to conduct public outreach and education about the new requirements. NAHB believes that public support and agency commitment to the data and information quality guidelines will be essential for their successful implementation. As such, NAHB recommends that the OMB guidelines specifically communicate how agencies should develop and conduct public outreach and education for the agency data and information quality guidelines as they are developed. Since agencies currently have guidelines for public participation and similar efforts in place, these might be effective models for OMB to consider.

While NAHB is encouraged by OMB's apparent commitment to data and information quality, we remain skeptical that the proposed guidelines, as written, will do much to improve the current administrative processes established by OMB Circular A-130. Congress has evidently expressed similar sentiments in passing the new information quality legislation. NAHB members and staff spend large amounts of time and resources monitoring Federal agency actions and participating in various governmental activities (such as policy and regulatory task forces, working groups, FACA committees, and SBREFA panels). Too often, however, our members feel that agency data and information management practices are inadequate, unfairly biased against them, and calculated to reach particular outcomes. Our members are also frustrated by the lack of effective mechanisms where they can seek redress of these problems. NAHB believes these guidelines can help solve these problems if OMB and the agencies are truly dedicated to their success, and we hope these proposed guidelines will begin this process.

Thank you for the opportunity to comment on these proposed guidelines. If you have any questions or would like to further discuss any issues raised in NAHB's comments, please contact Bruce Lundegren, NAHB's Regulatory Counsel, at (202) 822-0305.

Sincerely



Michael Luzier
Senior Staff Vice President for
Regulatory Affairs