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## **CRE Data Quality Interpretive Bulletin No. 1**

**Topic:** Efficient Handling of Multi-Issue Complaints

### ***Background***

Agency information products that are subject to the new OMB and agency-specific data quality guidelines vary widely in scope and complexity. A complaint might challenge anything from a single statistic to multiple facets of an extremely lengthy and detailed technical analysis. In addition, some information products may be interwoven with policy or legal positions that influence what data is used or how it is analyzed and presented.

Many types of agency information products could be challenged with complaints based on voluminous detail and arguments. This might prove to be the case especially when the affected person lodging the complaint expects the agency to be defensive and therefore views the complaint and subsequent appeal as a means to establish an administrative record for possible judicial review after the complaint is denied.

Consequently, worries have been expressed that many agencies will soon be overburdened with numerous complex information quality complaints that will interfere with the agency's central mission and other statutory responsibilities.

This issue has implications both for individual complaints and the overall program. Complaints that are very complex and detailed are likely to take considerably longer to resolve and increase the chances of needing to file an administrative appeal. Moreover, in the case of a complex complaint, a reviewing court is more likely to invoke deference to agency expertise. Such complaints may also induce the agency to interpret its definitions of covered information dissemination very narrowly or its list of exceptions very broadly.

The purpose of this bulletin, therefore, is to explore how both potential complainants and agency responders might either avoid or handle more efficiently such potentially complex complaints.

### ***Discussion***

At the outset, potential complainants should bear in mind that both OMB and most agencies have crafted their guidelines to ensure that they have considerable discretion with regard to how and when to respond to complex complaints that might overburden their resources. Following is a summary of the various conditions that some agencies have put on the manner and timing of their responses.

- Most agency timeframes for response are flexible. In the case of a complex complaint, an agency can respond within the initial time limit by notifying the complainant that a response will take considerably longer. Where there are multiple issues presented, an agency also presumably has the discretion to respond in stages.
- Some agency guidelines provide explicitly for consideration of costs or resource constraints, their duty to use resources efficiently, and the need to avoid disruption of other agency processes.
- Most agencies will take into consideration the magnitude and significance of an alleged error, or errors, the timeliness of the complaint and requested correction, and their perception of how frivolous or how much in bad faith a complaint may be in determining how and when to respond.
- Some agencies have set out the proviso that corrections will be made only to serve valid information needs and “not to resolve underlying substantive policy or legal issues”.

Given the degree of agency discretion reflected in the above types of conditions, and since none of them appear to be clearly in conflict with the statutory requirements or OMB guidelines, an affected party should consider carefully the implications of filing a complex complaint; or, if it feels it is necessary to do so, how the complaint should be framed in order to obtain the most benefit from the agency’s review without needing to resort to judicial review.

### ***Recommendations***

The following recommendations are offered in the spirit of attempting to help both complainants and responding agencies maximize results and make the most efficient use of resources.

1. If there are multiple issues, the complainant should prioritize them so that the agency can spend its limited resources on the most significant issues.
2. If the response to a higher priority issue diminishes or eliminates the significance of a lower priority issue, the agency should feel free to decline to respond to the lower priority issues and request the complainant to withdraw the remaining portion of the complaint.
3. If the complainant insists that the agency address the lower priority issues, the agency should notify the complainant of the extended review period of 3 months to 18 months.
4. Challenges to information in proposed rules, even if they satisfy the agency’s guidelines, might not satisfy judicial “ripeness” requirements because they could be addressed during the rulemaking process. Therefore the complaint should be designed to maximize the chances for a successful administrative outcome both as to timing and as to substance, while presenting more detailed issues and arguments in the rulemaking comments.
5. If the complaint implicates an underlying policy or legal issue, the complainant should bear the burden of showing why there is a valid concern with the informational content of the product.

6. Complainants should realize that if a complaint unavoidably implicates underlying legal or policy issues, resolution of those issues is likely to delay the response, since consultation between a program office and legal counsel and high-ranking agency officials will probably be necessary, and an administrative appeal will be more likely. Therefore, where possible, such issues should be separated from issues that are purely factual or analytical.