

Atlanta
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**McKenna Long
&Aldridge LLP**
allturneyc al l..aw

1900 K Street, NW • Washington, DC 20006
202.496.7500 • Fax: 202.496.7756
www.mckennalong.com

San Diego
San Francisco
Washington, DC
Brussels

PETER L. GRAY
(202) 496-7707

EMAIL ADDRESS
pgray@mckennalong.com

September 10, 2003

Sheldon E. Steinbach, Esq.
Vice President and General Counsel
American Council on Education
1 Dupont Circle, Suite 800
Washington, DC 20036

Re: Data Quality Act

Dear Shelley:

Per your request, we have reviewed an August 6, 2003 letter from the Center for Regulatory Effectiveness ("CRE"), which analyzes the implications of the so-called Data Quality Act ("DQA") for the academic community. CRE's letter creates the impression that universities are subject to the DQA, and must comply with its statutory mandates. The DQA, however, applies only to "federal agencies," requiring that every federal agency take steps to assure that information it disseminates meets certain minimum standards of quality. Universities that submit information to federal agencies have no express or implied obligations under the DQA to ensure that such information meets DQA standards. To the extent CRE merely intended to say that it would be in the self-interest of universities to make sure that information they submit to federal agencies meets DQA standards, thus enhancing the likelihood that federal agencies will publish the information, we concur with that view.

I. BACKGROUND

The "Data Quality Act" is the name that has been applied to 27 lines of text buried in the massive Consolidated Appropriations Act of 2001 (P.L. 106-554). Section 515 of the treasury appropriations portion of the Act provides in pertinent part that by September 30, 2001, the Office of Management and Budget ("OMB") shall "issue guidelines ... to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies." Section 515 goes on to state that the OMB Guidelines shall require federal agencies to "establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency."

On February 22, 2002, the OMB Issued DQA guidelines. (67 Fed. Reg. 8452.) In the Guidelines, OMB states that by October 1, 2002 all federal agencies must publish guidelines

containing procedures for interested parties to file data correction requests and specifying procedures for handling such requests. The OMB Guidelines also define the key statutory terms. Specifically, the Guidelines define "dissemination" to mean "agency initiated or sponsored distribution of information to the public." (Id. at 8460.) OMB elaborates that where a federal agency receives information from a third party, the agency must satisfy the DQA if it chooses to disseminate that information. (Id. at 8454.) The Guidelines also define each of the statutory criteria that federally disseminated information must meet, namely, "quality," "utility," "objectivity" and "integrity." OMB defines the term "quality" as encompassing the three other statutory criteria, i.e., "utility, objectivity and integrity." (Id. at 8459.) The OMB definition of "utility" and "integrity" adds nothing to the common meaning of the words. OMB's definition of "objectivity," however -- which spans nearly an entire page of the *Federal Register* -- merits closer examination. For information to be "objective," the disseminating agency must ensure that the data is "accurate, reliable and unbiased." (Id. at 8459.) Moreover, peer-reviewed data and analytic results "may generally be presumed to be of acceptable objectivity" under the OMB guidelines. (Id.)

II. DISCUSSION OF CRE LETTER

CRE's August 6, 2003 letter contains a number of statements that could be read as suggesting that the academic community is subject to the requirements of the DQA. For example, on page 3 of the letter, CRE states:

We have become aware of several instances in which university faculty and/or personnel have submitted information and data to federal agencies on, or pertaining to, agency programs or proposed regulations in the form of comments or research which clearly *did not comply with the new data duality standards*. Those submissions either had not been peer reviewed, or peer review comments had been disregarded.

(Emphasis added.) CRE then describes other instances of "non-compliance" with the data quality standards by the same unidentified university culprits. (Id.) CRE concludes the letter by recommending a number of actions in light of "the importance of these new federal information quality standards and their *applicability to non-governmental parties*." (Id.) (emphasis added).

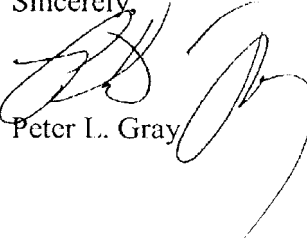
The impression created by these statements is that the DQA imposes certain statutory obligations on universities when submitting information to the federal government. As noted above, however, third parties that submit information to a federal agency do *not* have any DQA obligations. The only parties with DQA obligations are federal agencies, which must ensure that information they disseminate (including information received from third parties) meets the DQA standards.

If CRE merely intended to convey the view that universities should strive to meet the DQA standards in submissions to federal agencies so as to enhance the likelihood of such submissions being published or disseminated by federal agencies, we find no fault with that

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view. Plainly, if a university's goal is to have information published or used by federal agencies, it must ensure that such information passes muster under the DQA standards for federally disseminated information, as interpreted by OMB. Thus, we agree that a university may wish to advise its faculty and administrative staff of the new standards, as CRE suggests. But the thrust of such advice would not be that the university has DQA obligations with which it must "comply," but rather that adhering to DQA standards would enhance the likelihood of federal agencies disseminating or publishing a university submission.

Please let us know if you would like us to comment on any other aspect of the DQA and its relevance to the academic community. We should note that, as a service to our clients, my firm has arranged in-house DQA seminars and could do the same for members of the American Council on Education, if desirable.

Sincerely,

Peter L. Gray