

December 15, 2003

Dr. Margo Schwab  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
725 17th Street, NW,  
New Executive Office Building, Room 10201  
Washington, DC 20503

RE: OMB's "Proposed Bulletin on Peer Review and Information Quality"

Dear Dr. Schwab:

The NATIONAL ASSOCIATION OF REALTORS® is pleased to have the opportunity to comment on the Office of Management and Budget's (OMB) "Proposed Bulletin on Peer Review and Information Quality", as published in 68 *Federal Register* 54023-54029 (September 15, 2003). The NATIONAL ASSOCIATION OF REALTORS® (NAR) represents nearly one million members nationwide, who are involved in all aspects of commercial and residential real estate transactions.

Because of the economic impacts the regulatory process may have on the real estate industry, NAR has a keen interest in ensuring that scientific and technical information used in making regulatory decisions are adequately peer reviewed. NAR strongly supports OMB's on-going commitment and efforts to improve federal regulations through independent, objective and meaningful peer review of critical regulatory information. These proposed standards are an important first step toward instilling high standards for government-wide peer review. NAR's comments will focus on several, but not all, of the elements of the Proposed Bulletin.

### **The Value of Peer Review in the Regulatory Process**

Because many regulatory initiatives are based on highly complex scientific and technical information, it is essential that an effective peer review process for this information is established. Peer review of proposals, studies and monitoring plans, sampling protocols, publications, reports, and other scientific and technical material improves the quality of this information by incorporating the knowledge of other experts and by ensuring that studies conducted can withstand the rigorous scrutiny of other experts. The credibility of scientific research is enhanced by conveying to other scientists, policy-makers, managers and the public the knowledge that the work conducted has met accepted standards of rigor and accountability. Effective peer review can help foster research that is fundamentally sound and increases the broad acceptance of regulatory decisions based on that information.

### **Definition of "Significant Regulatory Information" Is Too Limiting**

As the OMB notice acknowledges, many federal agencies already have extensive peer review

requirements. These proposed guidelines would supplement and augment those requirements for the peer review of “significant regulatory information” which is defined as scientific or technical information that (1) qualifies as “influential” under OMB’s information quality guidelines; and (2) is relevant to regulatory policies. NAR believes the definition of “significant regulatory information” is too limiting – this definition gives too much discretion to federal agencies to decide whether peer review is appropriate for other types of non-science information. NAR would suggest broadening this definition to include other types of non-routine statistical and financial information, such as reports, studies or surveys mandated by Congress or those initiated by the federal agencies. In this regard, NAR is concerned about the exclusion of “most routine statistical and financial information” from the “significant regulatory information” classification. The Federal Reserve, for example, conducts “non-routine” surveys and produces reports such as the National Survey of Small Business Finances, the Senior Loan Officer Opinion Survey on Bank Lending Practices and the Survey of Consumer Finances, all of which should be subject to the peer review process.

The proposed guidelines require peer review of “significant regulatory information” that (1) has a “clear and substantial impact on important public policies or important private sector decisions with a possible impact of more than \$100 million in any year; (2) the Administrator of OIRA deems relevant to an Administration policy priority; or (3) is of significant interagency interest. NAR believes this \$100 million threshold is an arbitrary figure, given that regulation with a financial impact of less than \$100 million could still negatively influence private sector behavior and decision-making for many years into the future. NAR suggests two ways to address this concern: (1) OMB could establish the \$100 million threshold to represent cumulative costs to the industry over a period of five years, to allow the industry to more accurately determine compliance costs; or (2) in the event OMB retains the proposed threshold, OMB should also establish a mechanism to allow the impacted industry to petition for a review of the decision.

NAR would recommend EPA’s *Peer Review Handbook*, which describes a broader, more flexible approach to the issue of what scientific and technical work products will be peer reviewed. NAR recommends that OMB mirror EPA’s general approach by requiring external peer review for *all* influential/significant regulatory information. EPA’s *Handbook* includes the following list of criteria that could apply to information to be peer reviewed:

- Establishes a significant precedent, model or methodology;
- Addresses significant controversial issues;
- Focuses on significant emerging issues;
- Has significant cross-agency/inter-agency implications;
- Involves a significant investment of Agency resources;
- Considers an innovative approach for a previously defined problem/process/methodology;
- Satisfies a statutory or other legal mandate for peer review.

The OMB also excludes some types of proceedings, such as “individual adjudications” from these peer review requirements. NAR believes this is not clear, as some individual adjudications may lead directly to a rulemaking procedure, as has happened in the

wetlands policy area. NAR believes OMB should clarify that if the results of a judicial decision lead to a rulemaking, that rulemaking should then be subject to the requirements of OMB's Data Quality and peer review guidelines.

### **OMB Should Exert Oversight of Peer Review Guidelines**

The value of the Data Quality Act, and OMB's implementation of the Act, lies in the fact that all agencies must comply with, and adhere to, a consistent set of guidelines that determine what types of data are the subject of public scrutiny, comment, and correction. OMB should implement these peer review guidelines in a similar fashion – all federal agencies will be required to develop peer review guidelines based on OMB's template; and OMB should exert oversight authority on these guidelines to ensure consistency of development and implementation. OMB should also indicate in the proposed guidelines how it will measure and evaluate the effectiveness or success of these unified peer review practices.

### **Comments on the Proposed Peer Review Process**

Section Three of the Proposed Guidelines describes a process by which federal agencies should conduct their peer reviews. In general, a robust peer review process will need to have sufficient resources to ensure peer reviews are conducted in an efficient and timely manner. The peer review panels will need to be balanced in terms of conflicts-of-interest and the perceived and apparent bias of the reviewers. When developing these panels, federal agencies will need to ensure transparency of process and results, adequate financial disclosure and diversity of experience and bias of the panel participants.

Regarding the selection peer reviewers, OMB is seeking comment on whether peer reviewers' disclosure requirements should be limited to a specific number of years. NAR would recommend that disclosure requirements should be limited to a ten year period, so as not to unduly limit the participation of peer reviewers. An indefinite disclosure period may artificially limit the pool of experienced peer reviewers willing to be part of this process.

Second, in Section 4(b) Agency Guidelines, NAR would recommend that OMB clarify the discussion of "entanglements with agencies". The existing text seems to leave an inordinate amount of discretion to the agency as to what constitutes an "entanglement". It might either overly limit the pool of potential peer reviewers, or not adequately limit the activities of reviewers who may have worked for the agency in the past, received research money from the agency, or have other personal or professional connections with the agency.

In addition, NAR recommends that OMB clarify the role of public comment in the peer review process. The proposed guidelines state that the agency will provide an opportunity

for other interested agencies and the public to provide comments. However, the guidelines are unclear at what point in the peer review process this comment period should occur. Nor do they describe what information is to be provided to the public for comment. NAR believes that public participation will be useful to achieve balance in this area, and recommends that federal agencies require public notice and comment on the selection process of peer reviewers, the charge to peer reviewers, and any information that the peer reviewers receive over the course of their peer review. Federal agencies should not be required to respond to these comments, but all public comments should be transmitted to the peer review panel for their review and inclusion in the peer review panel's final report. In addition, the final report issued by the peer review panel should also be subject to public scrutiny and a public comment period.

Once again, thank you for allowing NAR to comment on these proposed peer review guidelines. If you have any questions or require any additional information, please contact Russell Riggs at 202-383-1259.

Sincerely,

Joe Ventrone  
Managing Director  
Regulatory and Industry Relations  
National Association of REALTORS®