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**OMB Watch Comments on President Obama's Memorandum on Scientific Integrity  
May 13, 2009**

OMB Watch<sup>1</sup> submits these comments in response to President Obama's March 9, 2009, memorandum<sup>2</sup> on scientific integrity and the Office of Science and Technology Policy's subsequent April 23 request for public comment.<sup>3</sup> We appreciate the opportunity to comment on the six principles identified in the president's memo and ask that our comments are considered as the Office of Science and Technology Policy (OSTP) prepares recommendations for executive action. We support President Obama's efforts to ensure scientific integrity in the federal government and encourage him to continue such efforts for the duration of his administration.

OMB Watch's experience with science and science-based policy is colored by our work on regulatory and information policy issues. We are attuned to decision makers' need for high-quality science, the need to effectively interpret that science, and the need to maintain integrity in the process. Government officials must be armed with the highest quality information to make the decisions necessary to protect public health and welfare, the workplace, and the environment.

As an organization that monitors the White House and the Executive Branch at large, we are also well aware of the relationship and tensions that exist between government scientists and government decision makers. Our comments generally revolve around that relationship, calling for greater transparency and new policies and safeguards that attempt to establish a clearer and more appropriate line between science and policy.

Our comments and recommendations are divided into three sections: The Role of the White House, Transparency, and Scientific Uncertainty. Our recommendations on the role of the White House address principles (b) and (e) identified in President Obama's memo. Our recommendations on transparency address principles (d), (e), and (f). Our recommendations on scientific uncertainty address principle (b).

### **The Role of the White House**

One way to ensure scientific integrity in decision making and to ensure scientists are not burdened by undue pressure is to leave decisions on science to the experts. Interference in science by non-experts risks clouding those decisions with the perception of impropriety. Political and policy officials should err on the side of deference to experts and not attempt to influence decisions about what scientific information is appropriate to include in addressing a problem. Distortion or suppression of scientific information and harassment of scientists should be avoided at all costs.

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<sup>1</sup> OMB Watch is a nonprofit, nonpartisan research and advocacy center promoting an open, accountable government responsive to the public's needs. Founded in 1983 to remove the veil of secrecy from the White House Office of Management and Budget, OMB Watch has since then expanded its focus beyond monitoring OMB itself. We currently address four issue areas: right to know and access to government information; advocacy rights of nonprofits; effective budget and tax policies; and the use of regulatory policy to protect the public.

<sup>2</sup> Available at [www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/).

<sup>3</sup> 74 FR 18596.

Principle (b) of President Obama's memo states, "Each agency should have appropriate rules and procedures to ensure the integrity of the scientific process within the agency." Those rules and procedures should strive to eliminate political interference in agency science and science-based policy.

Too often, non-scientists have attempted, sometimes with success, to inject non-scientific considerations into scientific study. Such a strategy can have severe consequences: By compromising the science that informs policy decisions, these non-science considerations can erode the foundation upon which sound policy is built.

White House officials have been known to intercede in agency decisions regarding science, often perniciously. The Obama administration should eliminate the role of the White House Office of Management and Budget (OMB) in editing, revising, or manipulating agency science and science policy and enact policies that restrain OMB officials from usurping agency authority over science decisions.

Increasingly, OMB – usually through its Office of Information and Regulatory Affairs<sup>4</sup> – has waded into the waters of federal science. OMB's presence adds little if any value to the scientific process. At a minimum, OMB's insistence that it be included during scientific development delays agency efforts. At worst, it casts a political shadow over science and science-based policy and threatens public protections.

For example, the review process for U.S. Environmental Protection Agency (EPA) hazardous chemical assessments illuminates the impropriety of OMB's role in science. EPA's Integrated Risk Information System (IRIS) serves as a publicly searchable database for studies on the human health effects of hundreds of industrial chemicals and other chemical substances. The studies in the database can lead to regulatory actions; however, the studies themselves are risk assessments and in no way address risk management or policy.

During the Bush administration, over the opposition of EPA scientists, OMB began reviewing draft IRIS assessments. During this process, OMB could also facilitate review of assessments by other agencies like the Department of Defense – a user of some IRIS-listed chemicals.

A 2008 Government Accountability Office report shows that OMB and other agencies both delayed and interfered with IRIS assessments.<sup>5</sup> For example, OMB forced EPA to halt work on five IRIS assessments because it disagreed with the agency's decision to study short-term, or acute, exposure to those chemicals. Overall, OMB review can add a year or more to the assessment process.<sup>6</sup>

OMB has also shown an inclination toward imposing requirements on all agencies' scientific processes. In 2006, OMB proposed guidelines that would have governed the conduct of risk assessment across the

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<sup>4</sup> OIRA oversees a variety of agency activities. OIRA was created under the Paperwork Reduction Act to monitor agency information collection activity and manage information policy. President Ronald Reagan expanded OIRA's role when he required agencies to submit to OIRA drafts of proposed and final regulations for approval. Every president since has maintained a similar role for OIRA, causing the office to frequently be referred to as the government gatekeeper of all things regulatory.

<sup>5</sup> John B. Stephenson, "Chemical Assessments: Low Productivity and New Interagency Review Process Limit the Usefulness and Credibility of EPA's Integrated Risk Information System," United States Government Accountability Office, GAO-08-440, March 2008. Available at [www.gao.gov/new.items/d08440.pdf](http://www.gao.gov/new.items/d08440.pdf).

<sup>6</sup> See OMB Watch, "OMB Interferes in IRIS Assessments of Toxic Chemicals: Questions and Answers," May 2008, available at [www.ombwatch.org/files/regs/PDFs/IRISfactsheet.pdf](http://www.ombwatch.org/files/regs/PDFs/IRISfactsheet.pdf).

federal government. The guidelines were chastised as overly broad and ignorant of agencies' specific needs. After a stinging rebuke from the National Research Council, OMB withdrew the bulletin.<sup>7</sup>

OMB often runs afoul of scientific integrity principles when the office reviews agency regulations reliant on scientific evidence. OMB sometimes challenges agency science and scientific conclusions during review. OMB challenges are particularly forceful when it disagrees with an agency's chosen policy option.

For example, OMB repeatedly interfered in the EPA's most recent revision to the national air quality standard for ozone. EPA depended on scientific studies, as well as staff interpretations of the policy implications of those studies, during the rulemaking. The Clean Air Act requires EPA to examine the relevant science and make a decision that best benefits public health.

OMB challenged EPA's scientific conclusions. OMB forced EPA to consider the possibility that ozone exposure does not contribute to premature mortality, even though experts inside the agency believed otherwise. Although EPA continued to use the link as rationale for a more protective standard, OMB's challenges delayed the rulemaking and forced EPA staff to conduct unnecessary analysis.<sup>8</sup>

OMB also challenged EPA's decision to set a separate, seasonal standard that would be more protective of plant life. This time, OMB won. Even in the face of strong objections from senior EPA officials, OMB, with the backing of then-President George W. Bush, forced EPA to abandon the scientific rationale it had developed in favor of a seasonal standard and proceed without one.<sup>9</sup>

#### Recommendations:

- President Obama should end OMB review of IRIS assessments and any other purely scientific information such as risk assessment.
- Agencies should maintain discretion over the conduct of scientific study, and inappropriate government-wide policies should be avoided. Where broad principles are appropriate or deemed necessary, such as those expected to come forth from this process, OSTP, not OMB, should develop and manage requirements.
- President Obama should, by the result of this process or in a new regulatory executive order, prohibit OMB from editing, revising, or manipulating agency science and science policy.<sup>10</sup>

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<sup>7</sup> See OMB Watch, "National Research Council Strongly Objects to OMB Risk Assessment Bulletin," Jan. 23, 2007, available at [www.ombwatch.org/node/3144](http://www.ombwatch.org/node/3144).

<sup>8</sup> See OMB Watch, "OMB Manipulates Science in Cost-Benefit Analysis for Ozone Rule," Aug. 6, 2007, available at [www.ombwatch.org/node/3393](http://www.ombwatch.org/node/3393).

<sup>9</sup> See OMB Watch, "White House Interferes with Smog Rule," March 18, 2008, available at [www.ombwatch.org/node/3635](http://www.ombwatch.org/node/3635).

<sup>10</sup> On Jan. 30, 2009, President Obama instructed the White House Office of Management and Budget to present him with recommendations on revisions to the current regulatory process. President Obama is considering issuing a new executive order to replace Executive Order 12866, Regulatory Planning and Review.

## Transparency

Transparency is essential to ensuring scientific integrity in government decisions. Science-based policy usually results from extensive research, documentation, and review, and the public must have access to this information to make sure that policy decisions – and the rationales behind those decisions – comport with the underlying information available to decision makers.

In this way, transparency serves as a means to ensuring an accountable government. Where decisions are sound, transparency shows how public policy serves the public good. Where government is in error, transparency shines a light on decisions made without adequate reliance on fact and on decision makers who distort or suppress information.

Transparency can also reveal the true motivations for a decision. Science is often not the lone criterion in policy making, nor should it be. But too often, a scientific veneer is applied to decisions made on political, ideological, or economic grounds. Allowing the public to examine the decision making process can strip away that veneer and permit a more honest evaluation of the government's actions.

The value of public participation should also be considered in the scientific integrity discussion. Enhancing the ability of the public to participate in the decision making process and evaluate decisions ultimately enhances the integrity of those decisions.

Meaningful participation is predicated upon access to information. To ensure the quality of public input, the government has a responsibility to make information easily available and to disseminate it widely.

In the context of scientific integrity, disclosure of both the underlying information used by decision makers and the communication and interactions among those decision makers is critical. The vehicle for disclosure is also important, as OSTP recognizes in asking, "What are the best ways to maximize the legitimate public release of scientific and technological information relied upon by agencies?"<sup>11</sup> With these points in mind, we offer the following recommendations:<sup>12</sup>

- Agencies should disclose all scientific information as it becomes available to them during the decision making process. Decisions by agencies should trigger a review to ensure the full body of information has been disclosed, regardless of whether that information actually informed the final policy decision. Agencies should indicate which information informed the decision and which was set aside. All of this information should become part of any rulemaking docket or other official record.
- To avoid overuse of confidential business information (CBI) claims on scientific data and related research, agencies should require that those making such claims provide sufficient proof. The justification warranting protection under a CBI exemption should be provided prior to receiving the protection and certified by a senior executive of the business requesting the protection.
- Agencies should make publicly available substantive written communications made between and among agencies, including White House offices (such as the Office of Information and Regulatory Affairs), regarding scientific results, conclusions, or policy. Substantive

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<sup>11</sup> OSTP asks this question in conjunction with its request for comments on President Obama's scientific integrity memo, see [blog.ostp.gov/2009/04/22/scientific-integrity-principle-d/](http://blog.ostp.gov/2009/04/22/scientific-integrity-principle-d/).

<sup>12</sup> OMB Watch made similar recommendations to the Obama administration in comments filed Feb. 18, 2009, with the White House Office of Management and Budget, available at [www.reginfo.gov/public/jsp/EO/fedRegReview/OMB\\_Watch.pdf](http://www.reginfo.gov/public/jsp/EO/fedRegReview/OMB_Watch.pdf).

communications would be any exchanges that discuss findings, edits or changes to reports, policy options or recommendations, interpretation of results, prioritization of goals, or reasoning for government actions or decisions. Agencies should clearly indicate the officials communicating and the date of communication.

- Agencies, including White House offices, should make publicly available substantive written communications and summaries of substantive oral communications, including meetings, made between and among agencies and nongovernmental entities regarding policy. Agencies should clearly indicate the officials and nongovernmental representatives communicating and the date of communication. If these communications include the submission of additional scientific studies, these studies and the underlying data should also be made public in keeping with the first transparency recommendation above.
- Agencies should disclose all information online and employ up-to-date and effective search, sort, dissemination, and aggregation functions (including but not limited to full text search, RSS and atom feeds, XML, and API, where appropriate). Agencies should disclose information both on their websites and through the prevailing e-rulemaking system, currently interfaced at [Regulations.gov](http://Regulations.gov).<sup>13</sup>
- Agencies should establish clear protections for whistleblowers that disclose repressed scientific information or expose manipulation of the scientific process at an agency.
- Agencies should be required to develop procedures to monitor implementation of scientific integrity and transparency guidance and report annually to OSTP on progress of implementation. These reports should also be available to the public.
- Agencies should require that persons or groups who challenge scientific information under the Data Quality Act provide for the public record original data referenced in the challenge.

## Scientific Uncertainty

Just as it is important to ensure the scientific integrity of government action, it is also important to ensure the integrity of inaction. Too often, agencies delay their pursuit of science-based policy in the name of scientific uncertainty. In many cases, this is both unnecessary and counterproductive.

Federal officials should stop using claims of uncertainty to delay or avoid regulation for at least three reasons. First, full scientific certainty can rarely if ever be achieved. Pushing for certainty is a slippery slope and may result in completely stopping regulation in policy areas that rely on scientific information. Second, federal laws often recognize that the government has a responsibility to protect citizens from harms they cannot control. Some statutes explicitly call for some margin of protection. The notion that officials must pinpoint risk (e.g., using dose-response data to find a precise exposure threshold at which harm occurs) before taking action runs counter to many of these statutory requirements. Finally, regulation is not an irreversible course of policy. In the event of significant uncertainty, federal officials should still choose to extend at least some protection as soon as possible while new information develops. As evidence grows, standards can be made more or less stringent if necessary. In fact, subsequent

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<sup>13</sup> The federal e-rulemaking system is intended to provide the public with a central location to view regulatory documents and file comments on regulations and other executive actions. Reforms to the e-rulemaking system are likely to occur in the near future. For an expanded discussion, see the American Bar Association, "Achieving the Potential: The Future of Federal e-Rulemaking," available at [ceri.law.cornell.edu/erm-comm.php](http://ceri.law.cornell.edu/erm-comm.php).

rulemakings may enhance the trust among federal officials and between government and outside stakeholders.<sup>14</sup>

In other cases, existing science is well-developed and opportunities exist to craft science-based policy that would yield substantial benefits to the public; but, whether for a lack of political will, the presence of marginal uncertainties, or other causes, agencies have not pursued new policies.

Agencies should not necessarily wait for some rationale other than science to present itself. Science is often subordinated to other values like ethics, economics, or views on government's proper role in society. But adherence to science can be a value too, one that coexists with other values. If the science is strong and points toward action, then it is incumbent on the agency to act.

#### Recommendations:

- President Obama should, by the result of this process or in a new regulatory executive order, instruct agencies to refrain from using scientific uncertainty as an excuse for not regulating.
- President Obama should, by the result of this process or in a new regulatory executive order, instruct agencies that, where compelling science shows that regulation could yield significant public health or welfare, workplace safety, or environmental benefits, science-based policy should be considered as soon as possible.

#### Conclusion

Ensuring scientific integrity is critical to setting up a decision making process that reflects public concern and producing policies that address public need. We encourage OSTP to develop recommendations that take decision makers, scientists, and the public into account. Thank you for the opportunity to comment.

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<sup>14</sup> These remarks first appeared in *Advancing the Public Interest through Regulatory Reform*, a report by an independent group of regulatory experts which included OMB Watch Executive Director Gary Bass. OMB Watch wishes to adopt the remarks in the comments submitted herein. Nothing in these comments should be construed to reflect or represent the authors of *Advancing the Public Interest through Regulatory Reform*.