

May 20, 2005

Federal Trade Commission
Attn.: Section 515
Office of General Counsel
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Federal Trade Commission:

This petition is a Request for Correction (RFC) of certain specific information disseminated by the Federal Trade Commission (FTC) in their *Federal Register* notice of January 31, 2005, pages 5022-5037, "Prescreen Opt-Out Disclosure, Final Rule."¹

This petition also seeks correction of certain specific information related to the Final Rule disseminated by the FTC in the following documents: "Credit Card Offer Study: Prepared for the Commission by Synovate Public Sector Research Group"² ["Synovate Study"]; "The Effectiveness of 'Opt-Out' Disclosures In Pre-Screened Credit Card Offers: A Report Submitted to the Commission by Manoj Hastak, Ph.D."³ ["Hastak Report"]; "Agency Information Collection Activities; Comment Request; Extension"⁴ ["1st ICR Comment Request"]; and "Agency Information Collection Activities; Submission for OMB Review; Comment Request"⁵ ["2nd ICR Comment Request"].

¹ This information is also disseminated by the FTC on their website at: <http://www.ftc.gov/os/2005/01/050124factafrn.pdf>.

² This information is disseminated by the FTC on their website at: <http://www.ftc.gov/os/2004/09/040927prescreencredcardstudy.pdf>

³ This information is disseminated by the FTC on their website at: <http://www.ftc.gov/reports/prescreen/040927optoutdiscprecreenrpt.pdf>

⁴ 69 FR 34166.

⁵ 69 FR 57931.

This RFC is being submitted by Jim Tozzi and the Center for Regulatory Effectiveness (CRE) under Section 515 of Public Law 106-554, the Data Quality Act⁶ and the FTC’s “Section 515 Administrative Mechanism: Ensuring and Maximizing the Quality of Information Disseminated by the Federal Trade Commission.”⁷

I. INFORMATION NEEDING CORRECTION: PRESCREEN OPT-OUT DISCLOSURE FINAL RULE

A. “Probative Evidence” Statement

Correction Needed

- ▶ The statement “*The Commission believes that the survey provides probative evidence of the comparative effectiveness of the three versions it tested (“current,” “improved,” and “layered”).*”⁸ should be corrected to read, “*The survey does not provide the Commission with a reliable basis for assessing the comparative effectiveness of the three versions it tested (“current,” “improved,” and “layered”).*”

FTC Information Quality Guideline Violations

- ▶ Development of Quality Information and Data. Section VII of the “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Federal Trade Commission,” [“FTC Information Quality Guidelines”] state that “Information quality is also integral to the development of information that will ultimately be disseminated, including its creation, collection, and maintenance.”

This section of the FTC’s guidelines also states the Commission development of quality information and data includes “Under the Paperwork Reduction Act, drafting agency information collections so that such information will be collected, maintained, and used in a manner consistent with the OMB and agency information quality standards reflected in these guidelines.” As explain in the Discussion section below, the information collection associated with the survey did not adhere to OMB and FTC information quality standards. Furthermore, the information collection also violated OMB’s guidance for implementing the 1995 Paperwork Reduction Act.

⁶ 44 USC 3516 Statutory and Historical Notes.

⁷ <http://www.ftc.gov/ogc/sec515/FTC515AdminMechanism.pdf>

⁸ 70 FR 5025, col. 2.

- ▶ Utility. The FTC Information Quality Guidelines define “utility” as meaning “the usefulness of the information to its intended users, including the public.”⁹ As discussed below, the FTC statement in the Final Rule is not supported by fact and, thus, not useful to the public, including members of the public who receive prescreened credit offers.
- ▶ Objectivity. The FTC Information Quality Guidelines’ definition of objectivity includes “a focus on ensuring accurate, reliable, and unbiased information. In a...statistical context, original and supporting data are normally generated, and the analytic results are normally developed using sound statistical and research methods.” As discussed below, the survey that is the subject of the FTC’s belief is biased and not reliable (not simply imperfect as implied in Footnote 35) and was not developed using sound statistical and research methods. In that the survey itself does not meet the FTC’s objectivity standard, any beliefs and/or conclusions based on the survey will also not meet the Commission’s objectivity requirement.

Discussion

- ▶ The non-random sampling methodology used in the survey does not permit tests of significance to be applied to the data nor does the methodology allow reliable inferences from the results to the universe of study. Thus, the survey cannot provide any reliable evidence, even probative evidence, regarding the behavior of consumers not surveyed. The problem is not that the survey methodology is less than perfect but rather that drawing inferences from a non-random sample to a larger population violates basic statistical theory and the unreliable results of any such inferences do not comply with the FTC’s Information Quality Guidelines.
 - No Statistical Significance. The FTC concluded that there is no statistically significant difference in the ability of the “layered” notice relative to the “improved” notice. This conclusion is explicitly made in the footnote to probative evidence statement (Footnote 36¹⁰), “there was not a statistical difference between the improved and layered versions in the communication of the opt-out right...” The footnote also states that “the layered version of the notice was more effective in the initial ‘natural’ exposure (as compared with the second ‘forced’ exposure) at communicating how to exercise that right.”

The problem with both statements is that they imply that tests of statistical significance can applied to non-random survey data. However, as discussed below in more detail, it is the overwhelming consensus of statistical authorities,

⁹ FTC Information Quality Guidelines, p. 4.

¹⁰ 70 FR 5025.

including the Office of Management and Budget (OMB), that tests of statistical significance cannot be applied to the results from non-random sampling techniques, such as those used in the Synovate Study.

Footnote 36 should, thus, also be corrected to clearly state that no tests of statistical significance can be applied to the Synovate survey data. Furthermore, since the statement in the footnote about the relative effectiveness of the layered version forms the basis of the FTC's probative evidence belief, the probative evidence statement itself needs to be corrected to comply with accepted statistical theory.

- Results From Non-Random Sample Surveys Cannot be Generalized to the Universe of Study. The survey which the FTC believes “provides probative evidence of the comparative effectiveness of the three versions” of the opt-out notice utilized a quota, i.e., non-random, sampling methodology. The study used a “mall-intercept design” and respondents “were screened to ensure, among other things, that they had received a credit card offer in the last year.”¹¹

The Need for Random Sampling

It is the consensus among statistical authorities that results from studies using a non-random sampling methodology cannot be generalized to a larger universe. Attempts to draw inferences from a quota survey or apply tests of significance to the results violate “sound statistical and research methods” and therefore do not comply with the Commission's objectivity requirement.

Thus, there is no basis for the FTC's belief that the survey provides evidence (even non-conclusive evidence) regarding the comparative effectiveness of the opt-out notice options considered by the Commission. Dissemination of such belief is in violation of the FTC's utility and objectivity information quality standards (which require that disseminated information be useful, accurate, reliable and unbiased) and the disseminated information needs to be corrected.

The following citations demonstrate that diverse statistical authorities agree that the results of surveys utilizing non-random sampling techniques cannot be generalized to a larger population and tests of statistical significance cannot be applied to the results of such surveys.

¹¹ Hastak Report, p. 2. [emphasis added]

- ***The Office of Management and Budget.*** OMB’s guidance for implementing the 1995 Paperwork Reduction Act, in a sub-section titled, “**Avoidance of Unreliable Statistical Studies**” states:

The statistical laws that permit inference from a sample to a population assume complete coverage, complete response, and random selection. If any of these conditions are not met, then inferences cannot be demonstrated to be valid. Thus, for example, “quota samples” cannot produce results that can be generalized to the universe of study.¹²

The OMB guidance also states:

If the agency is seeking to implement a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study, the Supporting Statement needs to explain why.¹³

This guideline intends generally to prohibit statistical surveys that do not produce reliable results for the population under study. When survey results can not be generalized, it is usually because of poor methodology or execution that introduces errors or uncertainties of such size that the data do not support needed inferences. While any substantial bias or even excessive variance can prevent needed generalization, the most common failures are nonrandom selection, coverage gaps, and nonresponse.¹⁴

This section of the of the OMB guidance also states that:

The agency's explanation [of why it is using an unreliable study design] should be based on more than simple assertions or ad hoc demonstrations of generalizability. Plans that purport to compensate for unmeasured errors

¹² The Office of Management and Budget, “The Paperwork Reduction Act of 1995: Implementing Guidance,” (draft), February 1997. [emphasis added]

¹³ 5 CFR 1320.5(d)(2)(v); Specific Instruction A.7..

¹⁴ Ibid., [emphasis added]

*with published caveats or adjustments based on untested assumptions do not satisfy this guideline.*¹⁵

The OMB guidance refers readers to an appendix of “Frequently Asked Statistical Questions” for “a more complete discussion” of the problems with quota and other unreliable survey designs. The Appendix, which highlights the problems resulting from even large, sophisticated quota surveys, states:

Surveys that use quotas at some stage have provided indications of the large distributional distortions that may occur. In these cases, the quota scheme encourages a degree of the self-selection, a characteristic similar to low response surveys, but it is nearly impossible to estimate the equivalent level of non-response. The 1995 experience of BLS with their Current Employment Statistics (CES) program indicates the errors that occur with self-selection (in this case quota samples of businesses¹⁶.)

"The CES is a quota sample whose inception over 50 years ago predates the introduction of probability sampling as the internationally recognized standard for sample surveys. Quota samples are known to be at risk for potentially significant biases, and recently completed BLS research suggests that, despite the large CES sample size, employment estimates based upon that sample at times diverge substantially from those that a more representative sample would have been expected to produce."¹⁷

While standard measures of variance and bias are not valid for quota samples, BLS had used a sophisticated bias adjustment for the CES and regularly tracked the small amount of error identified by the periodic benchmark process. The small size of these typical adjustments created a false sense of security and failed to prepare users for the

¹⁵ Ibid., [emphasis added]

¹⁶ This is one of the rare exceptions to OMB's general policy of requiring probability samples for quantitative surveys, which policy has been pursued for over two decades -- see Statistical Policy Directive # 1.

¹⁷ June 2, 1995 press release from BLS announcing plans to convert to a probability sample.

*size of the error when the system inevitably blew up. Such behavior is common when the distribution observed in the sample is distorted due to inappropriate selection processes or low response rates.*¹⁸

- **Florida State University.** A statistics course at FSU provides materials stating:

ONLY PROBABILITY SAMPLES [with good response rates] ALLOW YOU TO CONSTRUCT CONFIDENCE INTERVALS, MAKE STATEMENTS ABOUT SAMPLING ERROR, OR LEGITIMATELY USE TESTS OF "STATISTICAL SIGNIFICANCE".¹⁹

- **North Carolina University.** A statistics course at the university provides materials stating:

Significance testing is not appropriate for non-random samples... We would like to make similar inferences for non-random samples, but that is impossible.

...
Significance testing is only appropriate for random samples.

*Random sampling is assumed for inferential statistics (significance testing). "Inferential" refers to the fact that conclusions are drawn about relationships in the data based on inference from knowledge of the sampling distribution. Significance tests are based on a sampling theory which requires that every case have a chance of being selected known in advance of sample selection...*²⁰

- **University of Colorado at Colorado Springs.** A political science course at the university provides materials stating:

¹⁸ The Office of Management and Budget, "The Paperwork Reduction Act of 1995: Implementing Guidance," (draft), February 1997. [emphasis added]

¹⁹ <http://edf5400-01.sp02.fsu.edu/Guide9.html>.

²⁰ <http://www2.chass.ncsu.edu/garson/pa765/sampling.htm>

TESTS OF STATISTICAL SIGNIFICANCE

– Tests are based on probability theory and must be used for analysis only when the data are from a probability sample

– Not appropriate to use on haphazard or quota samples²¹

- **Thomas Gschwend, University of Mannheim**, in an article discussing how to get quota data through peer review processes:

In general it is neither clear according to statistical theory how to compute a standard deviation, nor how to estimate standard errors or whether there is any other way to systematically assess the expected variability in quota sampling. Significance testing is only appropriate in probability samples.²²

A more complete discussion of the inability of quota sampling to produce results from which reliable inferences can be drawn may be found in the independent statistical and Data Quality analysis of the Final Rule and related documents (attached as Appendix A to this petition) prepared by Dr. Jerry Coffey. Dr. Coffey served as the senior mathematical statistician in the Office of Management and Budget (OMB) and also served as a confidential statistical advisor to the White House for five Administrations. Dr. Coffey's analysis of the documents demonstrating their lack of compliance with OMB and FTC information quality standards is an integral part of this petition.

Synovate Recognizes the Bias Problem In Quota Sampling

Although they failed to discuss bias in their study for the FTC, Synovate has papers available through their website that discuss the dangers of bias in non-random sampling. For example, Synovate paper #37 states,

some non-random sampling plans can yield biased estimates of population characteristics. ... Increasing the sample size in this situation does not remove the bias; it simply provides increasingly precise estimates of the incorrect (biased) values. (Weighting the

²¹ <http://www.uccs.edu/~pkeilbac/courses/methods/lectures/week14.html>

²² French Politics 2005,3(88-91).

samples may make the weighted total-sample estimates appear more 'reasonable,' but one can't be sure that similar results would have been obtained from a more representative sample, one unconstrained by quotas.²³

On an even more direct note, during a discussion of a non-random sampling technique in Synovate paper #59, the company admits that:

researchers weaned on probability sampling methods are understandably skeptical about using mail panel samples, and distrust conclusions from panel surveys because they typically violate the fundamental premise of statistical inference, i.e., knowing the probability of selection of sample elements.²⁴

The Synovate Study for the FTC is Biased

The “Screening Questionnaire” document that was used by Synovate explicitly instructs the screeners to “CHECK QUOTAS” for both gender and age.²⁵ It is very important to note that the screening questionnaire also directed screeners that if a consumer is “**OVER 74 YEARS OLD, TERMINATE...**”²⁶ even though older consumers receive prescreened credit offers. By excluding older consumers, the survey deliberately created a demographic bias. As the FRB Prescreen Report noted, there are important age-related differences in the extent to which consumers exercise their opt-out rights.²⁷

Although the Mail Screener document set quotas for age and gender, it did not attempt to even record let alone screen for the income level, education level, degree of urbanization, or the ethnicity of respondents even though:

²³ Synovate, “Sample Sizes for Analysis of Means and Proportions.”

²⁴ Synovate, “Mail Panels vs. General Samples: How similar and how different.”

²⁵ Synovate Study, pp. 63-64.

²⁶ Ibid., p. 64. [Emphasis in original].

²⁷ FRB Prescreen Report, p. 50.

- 1) Mall-intercept surveys design are strongly susceptible to socioeconomic, ethnic and other types of bias^{28, 29};
- 2) The FRB Prescreen Report found that consumer opt-out decisions vary considerably by a range of factors including the degree of urbanization (rural, urban, suburban) of the locality in which the sampling took place, income, and ethnicity.³⁰ For example, the FRB Prescreen Report found that “individuals residing in areas with a relatively low concentration of racial and ethnic minorities...are more than twice as likely to opt out as individuals living in predominantly minority areas...”³¹; and
- 3) The FTC formally stated that it would “ensure” a demographically-representative sample in their Information Collection Request *Federal Register* notice³².

Because the Synovate study did not record crucial demographic factors about survey respondents, there is no way to even attempt to estimate the level of socio-economic, ethnic, and other biases in the survey data. The lack of socio-

²⁸ The “Guidelines for Market Research” prepared by the Advertising Research Foundation explain the “vital importance” of screening for demographic factors such as ethnicity and education “because of the demographic skew of most malls.” See, <http://www.arfsite.org/downloads/GuidelinesForMarketResearch.pdf>, p. 28.

²⁹ The Federal Judicial Center’s “Reference Manual on Scientific Evidence, Second Edition,” assists “federal judges in recognizing the characteristics and reasoning of ‘science’ as it is relevant in litigation.” The reference work includes discussions regarding the various bias problems arising from the use of mall intercept surveys, including selection bias caused by “interviewer’s discretion in deciding who to interview...” and notes that “recruiters naturally prefer to approach friendly-looking potential respondents, so it is more likely that certain types of individuals will be selected.” The Reference Manual also notes that non-random sampling techniques including mall surveys “may suffer from serious bias.” Furthermore, the Manual explains that even when are carefully performed, “results from mall surveys can technically can be used to generalize only to the population of mall shoppers.” http://www.au.af.mil/au/awc/awcgate/fjc/manual_sci_evidence.pdf.

³⁰ FRB Prescreen Report, p. 51.

³¹ Ibid., p. 52.

³² 69 FR 34167, col. 1

economic, ethnic and other key demographic data about survey respondents raises serious questions as to how the FTC was able to perform its pre-dissemination review duty “to substantiate the quality of the information it has disseminated through documentation....”³³ discussed in Section VI of the FTC Information Quality Guidelines.

The failure of the FTC to have ensure a demographically-representative sample of consumers was interviewed means that the information quality requirement regarding the development of quality information and data was not met.

The survey methodology demonstrates that the Synovate study is biased and cannot considered reliable from an information quality perspective, thus violating the objectivity requirement. Furthermore, even in the limited world of quota surveys, the research does not pass muster as there is no indication that Synovate sampled at various time segments or took precautions not bias the sample in favor of frequent shoppers. Any reliance by the FTC on the Synovate quota survey would result in a decision based, at least in part, on biased data.³⁴

B. Footnote 35

Correction Needed

- ▶ The footnote stating “*The Commission has long recognized that methodological perfection is not required before a consumer survey can be probative and reliable; rather imperfections in methodology affect the weight that is given to the survey.*”³⁵ should be corrected to include a clear statement of the weight that the Commission gave to the survey. The footnote also needs to explain the methodology used to determine the weight given to the survey.

FTC Information Quality Guideline Violations

- ▶ **Objectivity.** The FTC Information Quality Guidelines’ definition of “objectivity” includes the requirement that the information be “clear, complete....” The statement

³³ 67 FR 8459, col. 1.

³⁴ In addition to breaching FTC information quality standards, use of the biased data may raise civil rights issues by under-representing disadvantaged population segments when developing a consumer information and education regulatory requirement.

³⁵ 67 FR 5025, col. 2.

is neither clear nor complete nor is it useful to the public (utility) because essential information needed to understand and evaluate the statement is missing.

Discussion

- ▶ At a basic level, the real problem with Footnote 35 is that it is irrelevant since the problem with the survey in question is not that the methodology did not achieve “perfection” but rather, as explained above, that it was so fundamentally flawed that no reliable inferences can be made and no tests of significance can be legitimately applied, i.e., it is not good enough for government work. However, to the extent that the FTC does rely on the study, the Final Rule needs to state: 1) the weight given to the survey; and 2) the methodology used to determine the weighting. Without these essential pieces of information, the footnote is neither clear nor complete.

C. “Real-World Conditions” Statement

Correction Needed

- ▶ The statement “*The Commission recognizes the limitations of any survey testing methodology because of the artificial setting of the test environment, but maintains that the study approximated real-world conditions to the extent feasible.*”³⁶ should be corrected to read, “*The Commission recognizes...but maintains that the study approximated real-world conditions to the extent feasible for those consumers who open and examine prescreen offers.*”

FTC Information Quality Guideline Violation

- ▶ Objectivity. The statement will not be accurate, clear and complete until the Commission explains that survey methodology was analogous to the behavior of only those consumers who open and examine prescreened solicitations, 10% of all prescreened offer recipients according the FRB Prescreen Report.

Discussion

- ▶ The Methodology section of the Hastak Report on the Synovate Study states that in the first phase of each interview, “respondents were exposed to one of the three versions of the offer and were asked to look over the entire offer, front and back.”³⁷ This scenario can be reasonably construed to be analogous to the experience of

³⁶ 70 FR 5025, col. 2.

³⁷ Hastak, p. 3. [emphasis added]

consumers who “open and examine”³⁸ the offer. However, reading the entire offer, front and back, has no relevance to the behavior of the 34% of consumers who “open and glance at”³⁹ the offer. Thus, the behavior studied in the Synovate survey is potentially relevant to, at most, only 10% of consumers receiving prescreen offers.

- ▶ In order to be accurate, complete and clear, the statement needs to note that the survey approximated real-world conditions only for the 10% of consumers who open and examine prescreen offers. As discussed below, similar corrections are needed to Footnote 34.

D. Footnote 34

Correction Needed

- ▶ The statement “*The initial exposure may have simulated the experience of consumers who glance at prescreened solicitations but do not examine them closely, that is the experience of most consumers who actually open prescreened solicitations.*” needs to be corrected to read “*The initial exposure may have simulated the experience of consumers who examine prescreened solicitations rather than glance at them, that is the experience of a minority of consumers who actually open prescreened solicitations.*”

FTC Information Quality Guideline Violations

- ▶ Utility and Objectivity. The statement is not useful since it is flat-out wrong. The statement is not objective because it is highly biased in favor of an unsupportable interpretation of the applicability of the Synovate methodology to consumers who open and glance at prescreened offers.

Discussion

- ▶ As discussed above, in the Synovate study consumers were instructed to look over the entire offer, front and back.⁴⁰ Looking over an “entire offer, front and back” bears no resemblance to glancing at an offer. The Commission itself makes this distinction in Footnote 37 when they state that consumers “who examine the solicitation closely

³⁸ FRB Prescreen Report, p. 33.

³⁹ Ibid.

⁴⁰ Hastak Report, p. 3. [emphasis added]

might see any disclosure, even on the back of the notice...” and contrasts them with “those consumers who ‘glance’ at the solicitation...”

- ▶ Thus, the survey methodology roughly approximates the experience of those consumers who “examine” the offer. For the FTC to imply that consumers looking at an entire offer while under supervision simulates the experience of consumers glancing at an offer (even when the caveat “may” is used) is: 1) completely unsupported and incorrect; 2) contradicts their own distinction between examining and glancing made in Footnote 37; and 3) erases the distinction between a “glance” and an “examination” of an offer that exists in the real-world and was carefully noted in the Federal Reserve Board Prescreen Report.⁴¹
- ▶ The FTC provides no explanation as to how they determined that the Synovate methodology “may” have simulated consumers glancing at an offer. The Synovate Study itself only states that “the purpose of the study was to gain an understanding of consumer perceptions of current and possible future language contained in offers of credit...”⁴² and makes no claim that their methodology resembles or simulates a glance-type consumer exposure to the information.
- ▶ The Hastak Report on the survey states only that the methodology was designed to resemble “a fairly natural viewing condition” without specifying what “natural” means.
- ▶ Thus, the FTC’s claim the survey methodology “may have simulated the experience of consumers who glance at prescreened solicitations but do not examine them closely...” has no basis in the record and defies common sense.
- ▶ The attempt in the footnote to apply the Synovate methodology to the segment of the consumer population described in the FRB Prescreen Report who glances at rather than examines prescreened offers can only be described as disingenuous. The footnote needs to be corrected to make clear that the Synovate study could only be potentially applicable to that minority of consumers who actually examine, rather than glance at, prescreened offers.

⁴¹ FRB Prescreen Report, p. 33.

⁴² Synovate, p. 1.

E. Footnote 37

Corrections Needed

- ▶ The statement “*The results reported in the FRB Prescreen Report indicate that a layered notice may be a very effective means to ensure that consumers who open prescreened solicitations will see the prescreen disclosure.*” should be corrected to state “*The results reported in the FRB Prescreen Report provide no basis for believing that a layered notice may be an effective means to ensure that consumers who open prescreened solicitations will see the prescreen disclosure.*”
- ▶ The statement “*Thus, a layered notice seems more likely to be seen by the majority of consumers who open prescreened solicitations.*” should be corrected to read “*There is no basis for concluding that a layered notice is more likely to be seen by the majority of consumers who open prescreened solicitations.*”

FTC Information Quality Guideline Violations

- ▶ Utility and Objectivity. Both statements lack utility since there is no basis in the record for either of the caveated conclusions. Both statements also fail the unbiased requirement of objectivity criteria since they distort and do not objectively represent the FRB Prescreen Report. Furthermore, the FTC’s statements are directly contradicted by Hastak Report, Synovate Study (if the study were actually usable), and the FRB Prescreen Report.

Discussion

- ▶ The FRB Prescreen Report does not indicate that a layered notice, or any alternative type of disclosure notice, may be at all effective in communicating opt-out rights to consumers. In fact, the effectiveness of alternative types of opt-out notices is not even considered in the FRB Prescreen Report. Thus, the FTC’s statements that the report provides any indication as to the effectiveness of the layered notice is a complete misrepresentation and distortion of the FRB Prescreen Report and the statements do not comply with information quality requirements.
- ▶ The FTC suppositions in Footnote 37 refer to findings in the FRB report concerning how consumers currently handle prescreened offers. The FRB Prescreen Report found that 10% of consumers who receive prescreened solicitations open and examine them and an additional 34% of consumers open and “glance” at the offer while the majority of consumers receiving the offers throw them away unopened. The Commission reasons that consumers “who examine the solicitation closely might see any disclosure, even on the back of the notice or in fine print; but those consumers

who ‘glance’ at the solicitation may be more likely to see a prescreen disclosure located on the first page...”

- ▶ The FTC’s suppositions, irrespective of whether they correctly predict consumer behavior, are based on their own logic and reasoning and are not inherent or even implied by the FRB Prescreen Report. For the FTC to insinuate that their suppositions are inherent in the report (“results reported in the FRB Prescreen Report indicate that...”) is a out-and-out misrepresentation of a report that never considered the issue. Thus, the FTC’s statements are biased, inaccurate, not useful to the public and in violation of the Commission’s Information Quality Guidelines.
- ▶ Furthermore, the FRB Prescreen Report provides information that, when viewed in light of the Synovate Study, would, if the study were reliable, directly contradict the FTC’s conclusion that the layered notice “may be very effective” at ensuring consumers see the opt-out disclosure option.
- ▶ Since the FRB Prescreen Report found that only 10% of consumers “open and examine” the materials and the Synovate Study methodology attempts to emulate the experience of only that those consumers who open and examine the offer, it would be possible to estimate the proportion of the full population whose behavior might be influenced by the treatments proposed by the FTC – if one assumes that the Synovate Study could be used at all.
- ▶ When the Synovate findings are corrected for the 10% of the consumer population to which they could potentially be applicable, it becomes clear that the layered notice would do an abysmal job at communicating opt-out information to the public. As the attached independent statistical analysis demonstrates, “If the experimental results can be taken at face value, they imply that improvements to the offer notices would improve message penetration among consumers by less than 1%.”
- ▶ It is a bit of an understatement to note that a disclosure format that enhances communication of key information by perhaps 1% does not qualify as “very effective” regardless of the caveats employed.
- ▶ The attached statistical appendix discusses in detail the full population impact of the Synovate results. If the Synovate Study were usable, it would demonstrate, as Dr. Coffey explains in Appendix A, “the Synovate study appears to demonstrate is that the current notice strategy and the two ‘improved’ strategies ALL perform so miserably as to defy the intent of Congress that...”

F. §642.1 (a)

Correction Needed

- ▶ The statement “*This part implements section 213(a) of the Fair and Accurate Credit Transactions Act of 2003...*”⁴³ “should be corrected to state “*The Federal Trade Commission has been unable to demonstrate the development of an Enhanced Opt Out disclosure notice meeting the ‘simple and easy to understand’ requirement of section 213(a) of the Fair and Accurate Credit Transactions Act of 2003.*”

FTC Information Quality Guideline Violations

- ▶ Development of Quality Information and Data. The information and data on which the FTC based its determination that it complied with the requirements of section 213(a) of FACTA were not developed in accordance with the Commission’s Information Quality Guidelines.
- ▶ Objectivity. The section of the Final Rule mistakenly implies that the Commission has been able to reliably determine, in compliance with OMB and FTC data quality requirements, that the layered notice meets the statutory requirement of the Act

Discussion

- ▶ Because the data and information on which the FTC based its determination that it met its statutory requirement in section 213(a) did not comply with Commission data quality requirements, the Commission’s statement in the Final Rule cannot meet the quality requirements and needs to be corrected.
- ▶ As Dr. Coffey concluded in the attached analysis, “the Synovate study appears to demonstrate is that the current notice strategy and the two ‘improved’ strategies ALL perform so miserably as to defy the intent of Congress...”

G. §642.2 (a)

Correction Needed

- ▶ The statement “*(a) Simple and easy to understand means: (1) A layered format as described in § 642.3 of this part;*”⁴⁴ “should be corrected to delete the discussion of a “layered format.”

⁴³ 70 FR 5032, col. 1.

⁴⁴ Ibid., col. 2.

FTC Information Quality Guideline Violations

- ▶ **Development of Quality Information and Data.** Data in the Synovate study which provided the Commission with probative evidence that a layered format would be “simple and easy to understand” was not collected and used in a manner consistent with the OMB and agency information quality standards.
- ▶ **Objectivity.** The definition in the Final Rule of simple and easy to understand relies, in part, on an inaccurate, biased and misleading misinterpretation of the FRB Prescreen Report.

Discussion

- ▶ The FTC’s determination that the layered format is simple and easy to understand rests largely on: 1) inferences from a biased, non-random survey from which no inferences can reliably be drawn; and 2) a misrepresentation of the FRB Prescreen Report by falsely claiming that the results reported in the report “indicate that a layered notice may be a very effective means...” when the report never directly or indirectly examined the effectiveness of alternative opt out disclosure notices.
- ▶ Furthermore, the FTC’s conclusion that a layered notice provides enhanced communication of consumer opt out rights is directly contradicted by the data in the record. As Dr. Coffey explains in his independent analysis of the Synovate Study and FRB Prescreen Report, “If the experimental results can be taken at face value, they imply that improvements to the offer notices would improve message penetration among consumers by less than 1%.” Dr. Coffey also explains that “it is quite likely that the total of bias and other error in the quota sample results may substantially exceed the magnitude of the estimated effect...” Thus, the FTC’s definition of simple and easy to understand does not meet OMB and FTC information quality requirements and needs to be corrected.

II. INFORMATION NEEDING CORRECTION: SYNOVATE STUDY

A. “Inform FTC Decision-Making” Statement

Correction Needed

- ▶ The statement “*The results of this study will help inform FTC decision-making when working with the financial services industry about how to best educate*

consumers about their options.”⁴⁵ should be corrected to read, “*The results of this study cannot be inferred to a larger population.*”

FTC Information Quality Guideline Violations

- ▶ Development of Quality Information and Data. The survey used in the Synovate Study did not comply with OMB and FTC quality requirements regarding information collection and use.
- ▶ Utility. The statement does not adhere to the utility standard because it conveys the mistaken notion that the quota survey is useful to FTC decision-makers.

Discussion

- ▶ As was discussed above, the survey methodology introduced substantial, unmeasured biases. Also, no inferences can be legitimately drawn from a quota survey and no tests of significance can be applied to the results. Thus, the survey violated quality information development requirements and is of no use to FTC decision-makers.

B. Appendix A: Cross-tabulations

Correction Needed

- ▶ All data should be deleted from the study.

FTC Information Quality Guideline Violations

- ▶ Objectivity. The FTC’s information quality guidelines state that “the FTC intends: A. to ensure that the information the FTC disseminates, including... statistical data, meets basic standards of quality, including objectivity...”⁴⁶ The Commission guidelines go on to define the “substance” element of the “objectivity” requirement to mean “ensuring accurate, reliable, and unbiased information. In a...statistical context, original and supporting data are normally generated, and the analytic results are normally developed, using sound statistical and research methods.”⁴⁷ None of the data in Appendix A complies with this objectivity requirement.

⁴⁵ Synovate Study, p. 1.

⁴⁶ FTC Information Quality Guidelines, Section IV.

⁴⁷ Ibid., Section V.F.2.

Discussion

- ▶ As was discussed in Section I. A. of this petition, the data in the study are biased and not reliable. The data were not normally generated and the analytic results were not developed using sound statistical and research methods and thus do not comply with FTC Data Quality requirements and cannot be disseminated by the Commission.
- ▶ As the OMB guidance on “Avoidance of Unreliable Statistical Studies” points out, the quota survey methodology utilized by Synovate “cannot produce results that can be generalized to the universe of study.”⁴⁸
- ▶ Appendix A of the Synovate Study includes Sigma, i.e. standard deviation, values. However, as Dr. Gschwend, a Senior Research Fellow at the University of Mannheim, pointed out in his paper, “...it is neither clear according to statistical theory how to compute a standard deviation, nor how to estimate standard errors... in quota sampling.” Because the proper computation of standard deviations is based on random sampling, i.e., “sound statistical and research methods,” the Sigma values in Appendix A, and all other values in the Appendix, fail to meet Data Quality standards and cannot be disseminated by the FTC.

III. INFORMATION NEEDING CORRECTION: HASTAK REPORT

A. Methodology

Correction Needed

- ▶ The Methodology section of the Hastak Report needs to be corrected to include a statement that “*The Synovate methodology did not conform to sound statistical and research methods.*”

FTC Information Quality Guideline Violations

- ▶ **Objectivity.** The “presentation” element of the FTC’s definition of “objectivity” states that it includes whether dissemination “information is presented within a proper context...”⁴⁹ The statement violates this aspect of objectivity by not placing the Synovate methodology in proper context.

⁴⁸ The Office of Management and Budget, “The Paperwork Reduction Act of 1995: Implementing Guidance,” (draft), February 1997. [emphasis added].

⁴⁹ FTC Information Quality Guidelines, Section V.F.1.

Discussion

- ▶ In order to place the Synovate methodology in proper context, the FTC’s consultant needs to highlight that the methodology did not adhere to sound statistical and research methods. Failure of the consultant to provide this critical information about the survey he was hired to evaluate means his report, as well as the survey, does not comply with Commission information quality requirements.

B. “Significantly More Effective” Statements

Correction Needed

- ▶ The statement, “*These results show that the layered version communicated significantly more effectively than the current version the message that consumers have the right to opt out of receiving prescreened offers.*”⁵⁰ should be corrected to read “*No determination of significance can be applied to the results regarding how effectively the layered notice communicated the message that consumers have the right to opt out of receiving prescreened offers.*”

FTC Information Quality Guideline Violations

- ▶ Development of Quality Information and Data and Objectivity. The Synovate Study used a non-random sampling methodology that is biased, unreliable and does not comply with the sound statistical and research methods requirement of the FTC’s Information Quality guidelines.

Discussion

- ▶ As was documented in Section I. A. of this petition, no tests of significance can be applied to quota surveys. Thus, any statements about the significance of Synovate results in the Hastak Report do not comply with the FTC’s objectivity standard and need to be corrected.
- ▶ It is important to note that the Report is using the word “significantly” in a statistical sense since the following sentence states, “Although the improved version also appears to have communicated...the difference is not statistically significant.”⁵¹ Of course, this sentence concerning the improved version of the opt-out notice also needs

⁵⁰ Hastak Report, p. 5.

⁵¹ Ibid.

to be corrected to state that no tests of significance can be applied to the Synovate Study.

- ▶ The Hastak Report discusses statistical significance in a number of places, including, Footnote 3, the discussion on page 6 (“The differences between the layered version and both the improved version and the current version are statistically significant.”), page 8, page 10, page 11, and the conclusions on pages 12. In all of these instances the FTC-sponsored report incorrectly imply that valid tests of statistical significance can be applied to Synovate’s non-random sampling data.
- ▶ This petition requests that each and every instance in which the Hastak Report discusses the significance or statistical insignificance of the Synovate data be corrected to reflect that no such tests can be rightfully applied to the data.

IV. INFORMATION NEEDING CORRECTION: 1ST ICR COMMENT REQUEST

A. Intended Use Statement

Correction Needed

- ▶ The statement, “*The FTC intends to use consumer survey research to develop and test the comprehensibility of disclosures regarding consumer rights and options that are mandated by various provisions in FACTA.*”⁵² should be corrected to read “*The planned consumer survey research is not suitable for use by the FTC in developing and testing the comprehensibility of disclosures regarding consumer rights and options that are mandated by various provisions in FACTA.*”

FTC Information Quality Guideline Violations

- ▶ Development of Quality Information and Data, Utility and Objectivity. The “description of the collection of information and proposed use” statement is not useful to the public and thus requires correction because it misleadingly implies that the proposed survey could be appropriately used by the FTC. The ICR notice is incomplete and violates the objectivity criteria because it does not state that the planned survey violated OMB Paperwork Reduction Act guidance restrictions against using unreliable statistical methodologies, explicitly including quota surveys.

⁵² 69 FR 34166, col. 3.

Discussion

- ▶ The ICR failed to explain that the survey did not conform to OMB’s general prohibition on information collections for “statistical surveys that do not produce reliable results for the population under study.” The ICR is not clear and complete (objectivity) without informing the public that the proposed collection of information violated OMB guidelines for Information Collection Requests.
- ▶ It is also important to note that the public was denied any opportunity for meaningful comment under the Paperwork Reduction Act on the proposed study methodology since:
 - The ICR Was Cleared Prior to Public Comment. The ICR was cleared by OMB on an “emergency” basis prior to the Federal Register notice for public comment. The Synovate study was conducted under this “emergency” approval. Therefore, the public could only comment on an extension of the ICR clearance, not on the clearance that would be used to conduct the study on which the Final Rule relied. As will be discussed in Section V below, the FTC repeated this practice of not providing a meaningful opportunity for public comment and in a manner that was quite deceptive.
 - Only a “Generic” Clearance Was Sought. The FTC sought approval only for a “generic” clearance and never provided the public with the specific proposed survey methodology. Thus, there was nothing specific on which for the public to provide comment (which may account for the lack of public comment.) Furthermore, even the generic description of the survey methodology provided in the ICR was inaccurate, as will be discussed in Section IV. B and C.

B. Description of Study Methodology – 1

Correction Needed

- ▶ The statement, “*The FTC will ensure that the selected contractors screen potential respondents on a set of demographic characteristics that will result in a representative sample.*”⁵³ should be corrected to read, “*The FTC will not ensure that the selected contractors screen potential respondents on a set of demographic characteristics that will result in a representative sample.*”

⁵³ 69 FR 34167, col. 1.

FTC Information Quality Guideline Violations

- ▶ **Utility and Objectivity.** The description of the planned screening methodology is not accurate because it incorrectly states that the FTC would ensure that a representative sample was taken when just the opposite was true.

Discussion

- ▶ As was discussed in Section I. A. of this petition, the screening methodology used by the contractor excluded all consumers over 74 years young, thus ensuring that a non-representative sample was taken. Neither the FTC nor their contractor provide any rationale for this age discrimination in developing consumer education messages.
- ▶ If the FTC were to at least attempt to ensure a representative sample was taken, they needed to require that the key demographic factors including the education level, income level and ethnicity of respondents was properly recorded. OMB provides detailed guidance for recording racial and ethnic data in their revised Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting. It should be noted that the Department of Justice's Bureau of Justice Statistics (BJS) explicitly requires compliance with this Directive in their Data Quality Guidelines.⁵⁴
- ▶ Since the FTC, through their contractor, required an age bias and did not seek to prevent racial and other demographic biases in their data, the statement that the Commission will ensure a representative demographic sample is untrue and needs to be corrected.

C. Description of Study Methodology – 2

Correction Needed

- ▶ The statement, "***The consumer surveys will involve individual interviews by telephone or focus groups and mall intercepts.***"⁵⁵ should be corrected to read "***The consumer survey will involve only mall intercepts.***

⁵⁴ <http://www.ojp.usdoj.gov/bjs/dataquality/overview.htm>

⁵⁵ 69 FR 34166, col. 3.

FTC Information Quality Guideline Violations

- ▶ Utility and Objectivity. The description of the planned survey methodology is not useful nor accurate because it falsely states that a more detailed, complex methodology would be used that was actually employed.

Discussion

- ▶ The actual study on which the FTC relied in developing the Final Rule involved only mall-intercepts. No individual interviews by telephone or focus group were conducted despite the statement that the study “will involve” such in-depth interviews.

V. INFORMATION NEEDING CORRECTION: 2ND ICR COMMENT REQUEST

A. Opportunity for Public Comment

Correction Needed

- ▶ The statement, “*The FTC is seeking public comments on its proposal to extend through October 28, 2007, the current PRA generic clearance for a group of consumer surveys that will examine the comprehensibility of various forms, disclosures, and notices required by The Fair and Accurate Credit Transactions Act of 2003 (“FACTA” or “the Act”), Pub. L. 108-159.*”⁵⁶ should be corrected to read “*There is no opportunity for meaningful public comment on the FTC’s extension through October 28, 2007 of the current PRA generic clearance for a group of consumer surveys that...*”

FTC Information Quality Guideline Violations

- ▶ Utility and Objectivity. The statement that the FTC is seeking public comment is both useless and misleading because no opportunity for meaningful public comment existed.

Discussion

- ▶ The FTC published a *Federal Register* nominally soliciting public comment on a “proposed” extension of an Information Collection Request on September 28, 2004.

⁵⁶ 69 FR 57931, col. 2.

However, the OMB docket of the ICR reveals that the three-year extension was approved on September 27, 2004.⁵⁷ Thus, the request for comment was a sham.

VI. CORRECTING INFORMATION: THE FISH AND WILDLIFE SERVICE PRECEDENT

- ▶ The Data Quality Act and OMB and FTC implementing guidelines require that the Commission correct information not meeting Data Quality standards. However, the Act and guidelines provide relatively little specificity as to the process for making such corrections. Fortunately, in response to an appeal of a Request for Correction, the U.S. Fish and Wildlife (FWS) has set an important precedent in detailing the steps an agency should take to correct disseminated information.

- ▶ The steps taken by FWS to correct information not meeting information quality standards include:
 1. Issuing a public statement:⁵⁸
 - A. Acknowledging the mistakes in the disseminated information; and
 - B. Specifying the corrective actions being taken by the agency including:
 - i. Ending further dissemination of flawed document;
 - ii. Correcting and updating flawed documents; and
 - iii. Providing public notification through its website and other means that these steps have been taken.
 2. Publishing revisions to the flawed documents for public comment.⁵⁹

⁵⁷ See Attachment B.

⁵⁸ U.S. Fish and Wildlife Service, News Release, March 21, 2005.
<http://informationquality.fws.gov/topics/FY2004/Florida%20Panther/3-21-2005-news.pdf>

⁵⁹ Department of Interior, Fish and Wildlife Service, Letter to Public Employees for Environmental Responsibility, March 16, 2005.
http://informationquality.fws.gov/topics/FY2004/Florida%20Panther/Final_Appeal_March_16_2005.pdf

- ▶ CRE strongly urges the FTC to follow the FWS precedent by correcting the information that is the subject of this petition.
- ▶ CRE also strongly recommends that the FTC put the corrected rule and related document through the required pre-dissemination review and documentation process prior to their release for public comment.

VII. WHY JIM TOZZI AND CRE ARE AFFECTED PERSONS

- ▶ The FTC’s Information Quality Guidelines define “affected persons” as “people who may benefit from, be harmed by, or otherwise be affected by, the disseminated information.”
- ▶ Jim Tozzi is an affected person since he is a consumer who receives and opens prescreened credit solicitations.
- ▶ The Center for Regulatory Effectiveness affected by the information in the Final Rule and related documents because it is a regulatory watchdog that closely monitors agency compliance with the Data Quality Act.^{60, 61}

VIII. RECOMMENDATIONS

- ▶ Since the Prescreen Opt-Out Disclosure Final Rule and related documents contain numerous, serious violations of OMB and FTC information quality standards that need to be corrected, the FTC should:
 - 1) Withdraw the Final Rule and related documents from dissemination;
 - 2) Correct the documents so that they comply with OMB and FTC information quality guidelines;
 - 3) Internally review, substantiate and document the quality of the corrected documents prior to their being disseminated for public comment;
 - 4) Release the draft corrected documents for public comment; and

⁶⁰ “Nixon’s ‘Nerd’ Turns Regulations Watchdog,” *Federal Times*, November 11, 2002. http://www.thecre.com/pdf/20021111_fedtimes-tozzi.pdf

⁶¹ Weiss, R., “‘Data Quality’ Law Is Nemesis Of Regulation,” *The Washington Post*, August 16, 2004, p. A1. <http://thecre.com/post/>

- 5) Publish the final corrected documents that are fully compliant with all information quality requirements.

Sincerely,

/s/

Jim Tozzi

Member, Board of Advisors

Center for Regulatory Effectiveness