

GUIDELINES FOR ENSURING AND MAXIMIZING THE QUALITY, OBJECTIVITY, UTILITY, AND INTEGRITY OF INFORMATION DISSEMINATED BY THE FEDERAL TRADE COMMISSION

I. Purpose

These guidelines implement section 515 of the Treasury and General Government Appropriations Act for FY2001, Pub. L. No. 106–554, and government-wide guidelines issued by the Office of Management and Budget (“OMB”) for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies that are subject to the Paperwork Reduction Act, 44 U.S.C. 3502(1).¹

II. FTC’s Role in Public Information Dissemination

Section 5 of the Federal Trade Commission (“FTC”) Act authorizes the FTC to prevent the use of unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. See 15 U.S.C. § 45. Section 6(f) of the Act authorizes the FTC to make public such portions of information that it obtains under the Act as are in the public interest, to report to Congress, and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use. 15 U.S.C. § 46(f). At the same time, the Commission’s authority to disseminate information is subject to legal restrictions or limitations applicable to the disclosure, use, or transfer of information that it collects or maintains. See, e.g., FTC Act § 21(b) & (f), 15 U.S.C. § 57b-2 (b) & (f) (information obtained pursuant to compulsory process or in lieu thereof in a Commission law enforcement investigation); FTC Act § 6(f), 15 U.S.C. § 46(f) (trade secrets and confidential commercial or financial information obtained from a person); Clayton Act § 7A(h), 15 U.S.C. § 18a(h) (filings under the Hart-Scott-Rodino pre-merger review program).

¹ See 67 Fed. Reg. 8452 (Feb. 22, 2002) (final OMB Guidelines republished in their entirety); see also 66 Fed. Reg. 34,489 (June 28, 2001) (proposed OMB Guidelines); 66 Fed. Reg. 49,718 (Sept. 28, 2001) (initial publication of final OMB Guidelines and request for public comment); 67 Fed. Reg. 369 (Jan. 3, 2002) (final OMB Guidelines following public comment); 67 Fed. Reg. 5365 (Feb. 5, 2002) (correction). Section 515 and the OMB Guidelines direct agencies to: (1) issue, no later than one year after the date of issuance of the OMB Guidelines, their own information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency; (2) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the OMB Guidelines; and (3) report to the Director of OMB the number and nature of complaints received by the agency regarding agency compliance with the OMB Guidelines and how such complaints were resolved.

III. The FTC’s Commitment to Quality Information Dissemination

In carrying out its functions, the FTC strives to ensure that the information it disseminates reflects a level of quality appropriate to the nature and timeliness of the information. Consistent with applicable disclosure restrictions, the FTC seeks to disseminate information, including relevant supporting data or analyses, in as broad and prompt a manner as possible for the public to benefit from the FTC’s efforts and expertise. This general commitment to quality extends to all information disseminated by the FTC, whether or not the activity constitutes the “dissemination” of “information” for purposes of these guidelines. See para. V. of these guidelines below (definitions).

IV. Information Quality Principles

In accordance with OMB Guidelines, paragraph III.1., the FTC intends:

- A. to ensure that the information the FTC disseminates, including factual or statistical data, meets basic standards of quality, including objectivity, utility, and integrity;
- B. to treat information quality as a performance goal, and to take appropriate steps to incorporate information quality criteria into its information dissemination practices; and
- C. to adopt specific quality standards that are appropriate for the categories of information disseminated in particular cases.

The remainder of these guidelines explains how the FTC strives to achieve information quality, objectivity, utility, and integrity, and outlines the administrative mechanism (see para. XI. below) by which affected persons shall be able to seek and obtain appropriate correction of information maintained and disseminated by the FTC that does not comply with the OMB or FTC guidelines.

V. Definitions

For purposes of these guidelines, the definitions set forth below shall apply, consistent with the OMB Guidelines, paragraph V. (definitions), which shall also apply. Unless otherwise stated, information dissemination products and activities that fall outside the scope of these definitions are not subject to these guidelines.

- A. “Information” means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that the agency disseminates from a Web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where the agency’s presentation makes it clear that

what is being offered is someone's opinion rather than fact or the agency's views (i.e., "views" officially approved or adopted by the agency in an agency-initiated or -sponsored "dissemination," as defined below).

B. "Dissemination" means agency-initiated or -sponsored distribution of information to the public. It does not include, for example:

1. Distribution limited to government employees or agency contractors or grantees;
2. Government information intended merely for intra- or inter-agency use or sharing;
3. Responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law;
4. Other correspondence with individuals or persons, including, but not limited to, written agreements with particular entities or parties, responses to specific requests for advisory opinions or other advice, etc.;
5. Press releases, unless they contain new substantive information not covered by a previous information dissemination subject to the guidelines;
6. Archival records (e.g., library materials);
7. Public filings, including, but not limited to, submissions in rulemakings or other FTC proceedings or matters, requests, petitions, applications, supporting materials, etc., except to the extent the agency disseminates the data or information in a manner reasonably suggesting that the agency endorses or agrees with it, or adopts, endorses, or cites the data or information as support for an agency regulation, guidance, or other agency decision or position;
8. Subpoenas, including, but not limited to, civil investigative demands and other administrative subpoenas or compulsory process, subpoenas or discovery orders issued in adjudicative proceedings or court litigation, etc.;
9. Information dissemination products relating to or arising from adjudicatory processes, including, but not limited to, factual allegations made, evidence submitted, analyses prepared, findings and determinations made, and rulings or opinions issued in any administrative or judicial litigation or other adjudicatory matter;

10. Disclosures, notices, or other information disseminated by persons or entities other than the FTC, where the text of such disclosures, notices, or information is not explicitly prescribed or specified by the FTC itself (e.g., statutorily mandated text of warning labels on cigarette packages, disclosure language developed and used by regulated entities in order to satisfy legal standards established under FTC regulations, orders, or agreements); and
 11. Studies, statements, or other issuances or publications by FTC employees, officials, contractors, consultants, or others who may be or have been paid, employed, or retained by the FTC, where the issuance or publication is not represented as being an official position of the agency or used by the agency in support of its official position.
- C. “Information dissemination product” means any books, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, the agency disseminates to the public. This definition includes any electronic document, CD-ROM, or Web page.
- D. “Quality” is an encompassing term comprising utility, objectivity, and integrity.
- E. “Utility” refers to the usefulness of the information to its intended users, including the public. When transparency of information is relevant for assessing the information’s usefulness from the public’s perspective, transparency is addressed to the extent practicable and appropriate in the FTC’s review of the information, as discussed below in paragraph VIII. of these guidelines. There may be legal limitations, however, on the FTC’s ability to make publicly available the data or methods underlying a particular information dissemination product, and persons seeking access to such data or methods must comply with certain FTC requirements and procedures for requesting such access.
- F. “Objectivity” involves two distinct elements, presentation and substance.
1. “Objectivity” includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner, including whether the information is presented within a proper context and identifying the source of the disseminated information to the extent possible in light of confidentiality protections, if any. In a scientific, financial, or statistical context, the FTC may make supporting data and models publicly available so the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users, subject to legal or other restrictions on disclosure.

2. “Objectivity” also involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, original and supporting data are normally generated, and the analytic results are normally developed, using sound statistical and research methods.
 3. To ensure “objectivity” in cases, if any, where the FTC is responsible for disseminating “influential scientific, financial, or statistical information,” the FTC shall provide the highest practicable degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties, consistent with legal restrictions or limitations on disclosure. See OMB Guidelines, para. V.3.b.ii.A, B & C, and paras. V.I. (reproducibility) & VIII. (transparency) of these guidelines below.
- G. “Integrity” refers to the security of information, i.e., protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.
- H. “Influential,” when used in the phrase “influential scientific, financial, or statistical information,” means that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions. Whether a particular FTC information dissemination product is “influential” will depend on the nature and multiplicity of issues for which the FTC is responsible and the breadth and intensity of the impact, if any, that the information dissemination product is likely to have on those issues (e.g., its anticipated effect, if any, on compliance with laws administered or enforced by the FTC or on the final outcome of a rulemaking proceeding).
- I. “Reproducibility” means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. As provided in the OMB Guidelines, this standard does not apply to all agency information or data, but only to “influential scientific, financial, or statistical information,” if any, disseminated by the agency.
1. Original or supporting data. The FTC may identify and/or limit the specific types of such data that can practicably be “reproduced,” given ethical, feasibility, or confidentiality constraints and, in doing so, may consult, as needed, with relevant scientific and technical communities. The agency shall assure reproducibility for such data according to commonly accepted scientific, financial, or statistical standards.
 2. Analytic results relating to original or supporting data. The FTC is not required to, and generally will not, reproduce each analytic result before it is disseminated.

3. Analysis of risks to human health, safety, and the environment disseminated by the agency, if any. The FTC will apply, as appropriate and feasible, the standards set forth in OMB Guidelines, paragraph V.3.b.ii.C. Any such risk assessments shall adhere to the standards set forth in the FTC's guidelines at paragraph V.F. to ensure that the assessments are objective and unbiased.
- J. "Affected persons" are people who may benefit from, be harmed by, or otherwise be affected by, the disseminated information.

VI. Pre-Dissemination Information Quality Review

- A. Internal agency review. To the greatest extent practicable and appropriate, information disseminated by the FTC is internally reviewed for quality--including objectivity, utility, and integrity--before such information is disseminated.
 1. Information disseminated to the public by the FTC is normally subject to one or more levels of internal staff, supervisory, or Commission review for quality before such information may be disseminated.
 2. The number of levels of internal quality review applied in a particular case depends on the nature, scope, and purpose of the information to be disseminated. For example, routine reports that may be prepared by staff about the agency's activities or operations may be subject to one or two levels of staff or supervisory review for basic accuracy and completeness before such reports are released to the general public. Additional levels of internal review, supplementation, clarification, or approval by agency management and/or the Commissioners may be appropriate, however, to the extent such a report may be intended as the basis for more complicated budgeting decisions or legislative reporting purposes (e.g., to satisfy a need for greater statistical detail or explanation).
- B. Public comment. In rulemakings and certain other agency matters (e.g., workshops, conferences, etc.), information or data may also be subject to public comment or exposure before such information or data may be approved or adopted by the agency. This public comment process provides an opportunity for interested parties, including persons who may be most affected by the dissemination, to corroborate or dispute the objectivity, utility, or integrity of the information or data. In these cases, the FTC may provide on the public record of the proceeding or upon request public access to the underlying data or methods used by the agency (e.g., statistical models, assumptions, etc.), to the extent relevant and consistent with any confidentiality restrictions. Where corrections are necessary and appropriate, the information or data may be re-disseminated with such corrections before they become the basis for final agency action or dissemination.

C. Peer review.

1. Peer review by outside parties is normally reserved for FTC economic reports and studies. The FTC may also use peer review to ensure the quality of other information dissemination products to the extent they are “influential,” or to ensure quality in other appropriate cases. Where data and analytic results have been subjected to formal, independent, external peer review, the information is entitled to a presumption of acceptable objectivity, subject to rebuttal based on a persuasive showing by the petitioner in a particular instance. OMB Guidelines, para. V.3.b.i.
2. To ensure competent and credible review, peer reviewers are normally selected with the following criteria and conditions in mind: (a) that they have the necessary technical expertise; (b) that they will be expected to disclose to the FTC any prior technical/policy positions they may have taken on the issues at hand; (c) that they will disclose to the FTC their sources of personal and institutional funding (private or public sector); and (d) that such peer review will be conducted in an open and vigorous manner, subject to any applicable confidentiality restrictions. Id.

VII. Development of Quality Information and Data

Information quality is also integral to the development of information that will ultimately be disseminated, including its creation, collection, and maintenance. OMB Guidelines, para. III.1. The strategies that the FTC employs to develop quality information and data include, for example:

- A. Using a variety of methods to solicit relevant and reliable information, such as:
 1. voluntary and compulsory methods (e.g., in law enforcement matters);
 2. invitations for public comment (e.g., in rulemaking proceedings);
 3. public workshops;
 4. meetings with relevant industry and consumer groups, etc.
- B. 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.
- C. Conducting independent legal, economic, or statistical research, using an array of government and private commercial and non-profit databases, agency surveys and questionnaires, etc.

- D. Where information may be used to determine an individual's rights, benefits, or privileges under Federal programs and such information is maintained and retrieved from a system of records by the individual's name or other personal identifier within the meaning of the Privacy Act, collecting that information directly from the source to the greatest extent practicable, and ensuring that it is accurate, relevant, timely, and complete before it is disseminated, as required by that Act. See 5 U.S.C. § 552a(e)(2), (6).
- E. Allowing self-verification or self-reporting of information by consumers and others (e.g., consumer complaints, identity theft data, etc.).
- F. Encouraging outside parties to identify and correct errors in their information or data before submitting them to the agency.

VIII. Transparency of Underlying Data and Methods

- A. In cases where the Commission may disseminate "influential scientific, financial, or statistical information," the Commission, consistent with applicable law, regulations, orders, and policies, shall make underlying data and methods, including, where appropriate, sources and assumptions employed, available to the public to the greatest extent feasible and appropriate in order to facilitate the reproducibility of such information, either before or after its dissemination, by qualified parties. OMB Guidelines, para. V.3.b.ii.
- B. Where public access to data and methods will not occur under para. A. above due to other compelling interests, the FTC shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken. The types of robustness checks, and the level of detail for documentation thereof, shall depend on the nature and multiplicity of issues for which the FTC is responsible. OMB Guidelines, para. V.3.b.ii.B.ii.
- C. Even when an agency matter does not involve the dissemination of "influential scientific, financial, or statistical information," the FTC notes that it often makes underlying data and methods part of the public record and/or subject to public comment in certain categories of proceedings (e.g., rulemakings, etc.).
- D. To the extent that underlying data or methods are not part of the agency's public record or otherwise published or publicly available, persons seeking access to such data or methods are required to follow applicable Commission requirements and procedures for seeking such access. See, e.g., 16 C.F.R. §§ 4.9-4.11. In all cases, the interest in the transparency of the agency's data and methods shall not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections. OMB Guidelines, para. V.b.3.ii.B.i.

IX. Integrity of FTC Information and Data

- A. To preserve the integrity of information and data that the FTC may ultimately disseminate, the FTC takes appropriate measures to ensure that the security of information and data is not compromised while it is being collected, maintained, or used by the agency. OMB Guidelines, para. V.4. These measures are intended to be consistent with legal requirements such as the Computer Security Act, the Government Information Security Reform Act, the Privacy Act, the FTC and Clayton Acts, and any other applicable laws, regulations, orders, agreements, or guidance.
- B. These measures extend to FTC contractors, consultants, experts or others to the extent such information or data are shared with them on a non-public basis.

X. Documentation

- A. Where necessary or appropriate, the agency substantiates the quality of the information it has disseminated through documentation or other means appropriate to the information. OMB Guidelines, para. III.2.
- B. With respect to pre-dissemination review, this documentation may include intra- or inter-agency memoranda or communications, or other records or materials, including, where applicable, underlying data or methods, demonstrating that the information has been reviewed internally by appropriate agency staff or officials before it is disseminated to the public.
- C. With respect to the administrative mechanism for seeking and obtaining the correction of information disseminated by the agency, the FTC will submit annual fiscal-year reports each January 1, beginning in 2004, to OMB. See para. XII. below. The FTC will also make copies of requests for correction and the agency's responses publicly available.

XI. Administrative Mechanism for Seeking and Obtaining Correction of Information

- A. The Commission shall provide and maintain a mechanism by which affected persons may seek and obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines.
- B. This administrative mechanism shall be flexible, appropriate to the nature and timeliness of the disseminated information, and incorporated into agency information resources management and administrative practices.
- C. The administrative mechanism shall specify appropriate time periods for agency decisions on whether and how to correct the information, and how affected persons shall be notified of the corrections made, if any.

- D. If the person who requested the correction does not agree with the agency’s decision (including the corrective action, if any), the administrative mechanism shall provide that such person may file for reconsideration within the agency. The administrative mechanism shall include an administrative appeal process to review the agency’s initial decision, and shall specify appropriate time limits in which to resolve such requests for reconsideration.
- E. The office that originally disseminates the information at issue shall not have responsibility for both the initial response and resolution of a disagreement. In addition, if other agencies or entities have an interest in the resolution of any administrative appeal, the agency shall make reasonable efforts to consult with those other agencies or entities about their possible interest, although the FTC shall be solely responsible for determining whether to grant the request for correction.
- F. Where information or data relates to or arises in a matter in which there is opportunity for public comment (e.g., rulemaking), the public comment process may constitute the administrative mechanism available to persons seeking to obtain correction of information disseminated or proposed to be disseminated therein. In such cases, appropriate staff may respond to the initial request for correction and the Commission, unless otherwise provided, shall be responsible for resolving requests, if any, for reconsideration of the initial staff response. The agency may incorporate its response into its next formal action, notice, or issuance in the public comment process, or the agency may instead choose to re-disseminate the data or information with any corrections deemed necessary and appropriate before the data or information becomes the basis for final agency action (e.g., final rule), as noted above in paragraph VI.B. In such cases, the FTC may require a showing that actual harm would result if the agency were not to respond to the correction request until such final agency action.
- G. In all cases, the correction process shall serve to address the genuine and valid needs of the agency and its constituents without disrupting agency processes. The party requesting correction will bear the “burden of proof” as to the need for the correction and the type of correction needed. The agency may reject claims made in bad faith or without justification, and shall undertake only the degree of correction that the agency concludes is appropriate for the nature and timeliness of the information involved. The agency shall explain such practices in its annual fiscal-year reports to OMB (see para. XII. below).
- H. The FTC shall specifically describe and implement the administrative mechanism outlined above by means of its Web site and through other appropriate means.

XII. Compliance, Reporting, Effective Date, and Judicial Review

- A. The FTC’s Chief Information Officer, or other designated agency official, shall be responsible for agency compliance with these guidelines.

- B. The FTC shall respond to complaints in a manner appropriate to the nature and extent of the complaint, as described above in paragraph XI. of these guidelines above. Examples of appropriate responses include personal contacts via letter or telephone, form letters, press releases or mass mailings that correct a widely disseminated error or address a frequently raised complaint.
- C. The FTC shall submit (and, where required, post on its Web site, publish in the Federal Register, or otherwise make available) all reports, or notice thereof, required by section 515 and the OMB Guidelines. Such reports shall include an annual fiscal-year report submitted to the Director of OMB on the number and nature of complaints, if any, received by the agency regarding agency compliance with the OMB Guidelines and how the agency resolved such complaints. This annual report is to be submitted no later than January 1 following the end of the relevant fiscal year, with the first report due January 1, 2004.
- D. Effective Date. Pursuant to section 515 and paragraph III.4. of the OMB Guidelines, these agency guidelines shall become effective October 1, 2002.
1. To the extent these guidelines prescribe procedures for the pre-dissemination quality review of FTC information, such procedures shall apply only to information that the agency first disseminates on or after that date.
 2. To the extent these guidelines prescribe an agency administrative mechanism for affected persons to seek and obtain correction of information disseminated by the agency, that mechanism shall apply only to information that the agency disseminates on or after that date, regardless of when the agency first disseminated the information.
- E. Judicial Review. These guidelines are intended to provide administrative guidance and to inform the public of the agency's policies and procedures. The guidelines are not a regulation and are not intended to establish or modify any right to judicial review of agency action. They do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or any person.