

Prodigy's billing practices violated the Electronic Fund Transfer Act ("EFTA") and its implementing Regulation E. Sections 907(a) of the EFTA and 205.10(b) of Regulation E permit preauthorized electronic transfers from consumer accounts only if such transfers are authorized by consumers in writing that are signed or similarly authenticated. See 15 U.S.C. § 1693e(b); 12 C.F.R. § 205.10(d).

The complaint alleges that Prodigy represented that consumers who participate in its free trial offer will not be charged, provided only that they use the ten hours of allotted trial time within one month of their initial sign-on and do not exceed ten hours of online use. This representation is false, according to the complaint, because consumers who participate in Prodigy's free trial offer and use less than ten hours of online time during the month following their initial sign-on, but who fail to cancel their memberships during the trial period, incur charges. The complaint also alleges that Prodigy failed to disclose adequately to consumers that, upon completion of ten hours of online use or one month from the date of initial sign-on, whichever is earlier, consumers who fail to cancel are treated as members of Prodigy and are charged a monthly membership fee plus applicable usage fees. These fees continue until the consumers affirmatively cancel their memberships. These practices, according to the complaint constitute deceptive practices in violation of Section 5 of the FTC Act.

The complaint also alleges that, because Prodigy has debited consumers' accounts via their debit cards without their authorization, it violated Sections 907(a) of the EFTA and 205.10(b) of Regulation E. In addition, the complaint alleges that Prodigy failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers, thereby violating Sections 907(b) of the EFTA and 205.10(d) of Regulation E.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Prodigy from engaging in similar acts and practices in the future. Specifically, Paragraph I of the proposed order prohibits Prodigy, in connection with advertising, promoting, selling, or distributing any online service, from misrepresenting the terms or conditions of any trial offer of such online service.

Paragraph II of the proposed consent order prohibits Prodigy, in connection with advertising, promoting, selling, or distributing any online service, from representing that the online service is "free," "without risk," "without

charge," "without further obligation," or words of similar effect unless Prodigy discloses, "clearly and prominently," any obligation to cancel or take other affirmative action to avoid charges for use of the Online Service.

Paragraph II also contains two provisos that set out the requirements of a "clear and prominent" disclosure. First, with respect to a covered representation made by Prodigy in detailed instructional materials distributed to consumers (e.g., starter kits and guidebooks), the disclosure must be in a type size and in a location that are sufficiently noticeable so that an ordinary consumer could notice, read, and comprehend it. Second, as to representations made through other media, Prodigy must provide a statement directing consumers to a location where the required disclosure will be available (e.g., "For conditions and membership details," followed by: "load up trial software" or "see registration process" or words of similar effect). Audio statements shall be delivered in a volume and cadence sufficient for an ordinary consumer to notice, hear, and comprehend them. Video statements shall be of a size and shade and shall appear for a duration sufficient for an ordinary consumer to notice, read, and comprehend them. In the case of print media, the statement shall be in a type size and in a location sufficient for an ordinary consumer to notice, read, and comprehend it.

Paragraph III supplements Paragraph II. It provides that Prodigy, in connection with advertising, promoting, selling, or distributing any online service, shall disclose, "clearly and prominently," during the final registration process, and prior to consumers incurring any financial obligation or liability, the terms of all mandatory financial obligations that will be incurred by consumers as a result of using such online service. Specifically, subparagraph III.A. requires Prodigy to disclose the financial terms and conditions of any plan (e.g., trial offer) by which consumers enroll in or renew enrollment in the online service. Moreover, if such plan exists, Prodigy must disclose, "clearly and prominently," any obligation to cancel or take other affirmative action to avoid charges and provide at least one reasonable means by which consumers may effectively cancel their enrollment. Subparagraph III.B. requires Prodigy to disclose any mandatory membership, enrollment, or usage fees (e.g., monthly or hourly usage charges).

For purposes of Paragraph III, a disclosure is "clearly and prominently"

made if it is of a size and shade, and appears for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. The disclosure shall not be avoidable by consumers.

Paragraph IV requires Prodigy, in connection with an electronic fund transfer from a consumer account, to obtain authorization for the transfer, as required by Section 907(a) of the EFTA and Section 205.10(b) of Regulation E. In addition, Prodigy must provide advance notice of electronic fund transfers from consumer accounts that vary in amount from previous transfers, as required by Section 907(b) of the EFTA and Section 205.10(d) of Regulation E.

Paragraphs V through IX contain provisions generally found in Commission consent orders, including record-keeping requirements, distribution requirements, notice requirements, and a requirement that Prodigy submit a report setting forth the manner in which it has complied with the consent order.

Finally, Paragraph X contains a provision terminating the order, under ordinary circumstances, twenty years from the date of its issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**  
Secretary.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Correction of Notice of Findings of Scientific Misconduct

**AGENCY:** Office of the Secretary, HHS.  
**ACTION:** Correction.

**SUMMARY:** A Notice beginning on page 22950 in the issue of April 28, 1997, entitled "Findings of Scientific Misconduct" is hereby revised to correct the name of the University's organizational unit referenced in the original printing:

Weidong Sun, M.D., Ph.D., was a graduate student in the Department of Anatomy and Neurosciences (not the Department of Physiology), Medical College of Pennsylvania and Hahnemann University, at the time of misconduct.

**FOR FURTHER INFORMATION CONTACT:**

Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301)-443-5330.

**Chris B. Pascal,**

*Acting Director, Office of Research Integrity.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement Number 801]

### Cooperative Agreements to Conduct Research and Education Programs on Lyme Disease in the United States

#### Introduction

The Centers for Disease Control and Prevention (CDC) announces the expected availability of FY 1998 funds for a cooperative agreement program to conduct research on Lyme disease and illnesses caused by other related *Borrelia* species. Topics include: disease surveillance and epidemiologic studies, ecologic studies, and the development, implementation, and evaluation of prevention/control strategies. In addition, funds are available for the development of educational programs. This program's overall objective is to lower the incidence of Lyme disease in hyperendemic states to 5 per 100,000 population or less by the year 2000.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of "Healthy People 2000," see the Section "Where to Obtain Additional Information.")

#### Authority

This program is authorized under Sections 301 and 317(k)(2) of the Public Health Service Act, as amended (42 U.S.C. 241 and 247b(k)(2)).

#### Smoke-Free Workplace

CDC encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, daycare, health care, and early childhood development services are provided to children.

#### Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and governments and their agencies within the United States. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority and/or women-owned, nonprofit businesses are eligible to apply as the principal investigating entities. These United States entities may propose collaborative arrangements with investigators outside the United States, provided the proposal has a direct impact on United States public health.

Participation in proposed activities by scientists, health professionals and educators with expertise and experience in Lyme disease and its associated epidemiologic, environmental and entomological aspects is desirable. In addition, combined program activities involving State and local health departments, universities, colleges, and private nonprofit organizations are encouraged.

**Note:** Effective January 1, 1996, Public Law 104-65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

#### Availability of Funds

CDC projects approximately \$1,700,000 of the President's budget will be available for FY 1998 for cooperative agreements to conduct research and education programs on Lyme disease in the United States. However, this announcement is made prior to the actual appropriation of fiscal year 1998 funds to allow new and competing continuation applicants sufficient time to prepare applications, and to enable timely award of the cooperative agreements. Approximately 10 to 15 new and competing continuation awards will be made with a median award of \$150,000 ranging from \$50,000 to \$250,000. It is expected that the awards will begin on or about February 15, 1998. Awards will be funded for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change. Continuation awards within the project period are made on the basis of satisfactory progress and the availability of funds.

Applicants may apply for and receive support for activities under one or more of the three activity areas (A.1., A.2., and/or A.3.) listed in the Recipient Activities section. Approximately 35% of the available funds will be allocated to develop improved disease surveillance and conduct epidemiologic studies; approximately 40% of the available funds will be allocated to conduct ecologic studies and develop and implement strategies for prevention and control; and, approximately 25% of the available funds will be allocated to educate the public and health professionals on the primary and secondary prevention of Lyme disease. Applications may be submitted for any or all of the activities described above (any one or combination of the three subjects areas). Each category will be scored separately.

#### Recipient Financial Participation

There are no matching or cost participation requirements; however, the applicant's anticipated contribution to the overall program costs, if any, should be provided on the application. These funds should not supplant existing expenditures in this disease area.

#### Background

Lyme disease is one of the most important emerging infectious diseases in the United States, accounting for more than 90% of all reported vector-borne illness. The numbers of reported cases have increased steadily, resulting in a thirty-fold rise between 1982 and 1996. More than 16,000 cases were reported by 44 States to the CDC in 1996.

Lyme borreliosis is a potentially serious and debilitating infection that may lead to subacute and chronic disease of the joints, the peripheral and central nervous system, the heart, and the skin. Questions have been raised about microbial persistence and chronic Lyme disease. Although transplacental transmission has been reported, epidemiologic studies have not shown an association between Lyme disease and adverse outcomes of pregnancy.

Lyme disease cases have been reported nationwide; however, the disease is concentrated in three regions: the northeast and mid-Atlantic, the north central, and the Pacific coastal regions. Distribution of cases is principally related to the density of infected tick vectors. *Ixodes scapularis* is the principal vector throughout the northeastern, mid-Atlantic, and north central States, and is the cause of